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MARYLAND CIVIL LIABILITY LAW SUMMARY

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Maryland Civil Liability Law Summary

Table Of Contents

Introduction.....	2
Overview Of Maryland Court Structure.....	2
Selected Torts.....	2
I. Negligence.....	2
II. Premises Liability.....	2
A. In General.....	2
B. Lead Poisoning.....	3
Tort Defenses.....	4
I. Contributory Negligence.....	4
II. Assumption Of Risk.....	4
III. Employer’s Defense That Workers’ Compensation Is The Sole Remedy.....	5
IV. Sovereign Immunity.....	5
V. Parent-Child Immunity.....	6
VI. Interspousal Immunity.....	6
VII. Statute Of Limitations.....	6
Death Actions.....	7
I. Damages For Wrongful Death Beneficiaries.....	7
II. Settlement In Wrongful Death Actions.....	8
III. Damages In Survival Actions.....	8
Insurance Issues.....	8
I. Duty To Defend.....	8
II. Motor Vehicle Insurance.....	9
A. Minimum Policy Limits.....	9
B. Uninsured Motorist Coverage.....	9
III. Bad Faith.....	10
A. Third-Party Bad Faith.....	10
B. First-Party Bad Faith.....	10
Damage Issues.....	11
I. Statutory Cap.....	11
II. Emotional Distress.....	11
III. Pre-Judgment/Post-Judgment Interest.....	12
IV. Attorney’s Fees.....	12
V. Punitive Damages.....	12
Settlement Matters.....	12
I. Maryland Uniform Contribution Among Joint Tortfeasors Act.....	12
II. Worker’s Compensation Lien.....	13
III. Claims By Minors.....	13

Introduction

Many claims people have multistate responsibilities. We prepared this outline of selected Maryland legal issues as an aid to issues they commonly encounter.

Overview of Maryland Court Structure

The Court of Appeals is the State's highest court. The Court of Appeals selects the civil cases it wishes to hear. Generally all seven judges hear each case. The Court of Special Appeals is an intermediate court of appeal consisting of thirteen judges, who usually sit on panels of three. The Court of Special Appeals has appellate jurisdiction over any final or reviewable judgment of the Circuit Court or Orphan's Court. There is an automatic right of appeal from a final judgment of the Circuit Court to the Court of Special Appeals.

Maryland has two levels of trial courts: the Circuit and District courts. Maryland is divided into twenty-four (24) judicial circuits (counties). Each circuit has a Circuit Court and District Courts. The District Courts are divided into twelve (12) districts (many of the circuits are combined). The Circuit Courts have original jurisdiction over all actions except those that fall within the exclusive jurisdiction of the District Courts. The Circuit Courts have concurrent jurisdiction with the District Courts where the amount in controversy exceeds \$5,000 but not more than \$30,000. The Circuit Court has exclusive jurisdiction over all civil claims in excess of \$30,000. A case may be removed from the District Court to the Circuit Court for a jury trial where the amount in controversy exceeds \$10,000.

A party in a civil case may appeal from a final judgment entered in the District Court. The appeal is taken to the Circuit Court of the county in which the judgment was entered. In cases where the amount in controversy exceeds \$5,000 the appeal will be heard on the record made in the District Court. In every other case, an appeal from the District Court is tried *de novo*. An appeal from the Circuit Court's decision in civil cases is to the Court of Appeals by petition for certiorari.

Selected Torts

I. Negligence

The elements of negligence are: "(1) that the defendant was under a duty to protect the plaintiff from injury, (2) that the defendant breached that duty, (3) that the plaintiff suffered actual injury or loss, and (4) that the loss or injury proximately resulted from the defendant's breach of the duty." *Brown v. Dermer*, 357 Md. 344, 356, 744 A.2d 47, 54 (2000).

II. Premises Liability

A. In General

Occupiers of real estate, such as owners, landlords and lessees, may be liable for personal injury that occurs on their premises, such as slip and fall accidents, lead-based paint poisoning, and criminal attacks by others. The duty they owe to those on the premises depends upon their

status on the property. *Baltimore Gas & Elec. Co. v. Flippo*, 112 Md. App. 75, 684 A.2d 456 (1996), *aff'd*, 348 Md. 680, 705 A.2d 1144 (1998). The four different classifications and related duties are:

Status	Definition	Duty
Invitee	person who is invited or permitted to be on property for purposes related to business of the occupant	to use reasonable care to see that those portions of the property which the invitee may be expected to use are safe
Social Guest	person permitted on the property for no business purpose but as the express or implied guest	to use reasonable care to make the premises safe or to warn of known dangerous conditions that cannot reasonably be discovered by guest
Bare Licensee	person on the property with consent but not at the invitation of the owner and who is there to serve his/her own interest	no duty owed to bare licensee except to refrain from willful injury or entrapment
Trespasser	person on the property without consent	no duty owed to trespasser except to refrain from willful injury or entrapment

B. Lead Poisoning

Landlords have been stripped of many traditional premises liability defenses by the appellate courts in lead-based paint poisoning cases, particularly in Baltimore City, where virtually all such cases are litigated. Currently, the plaintiff is only required to prove that she resided at or regularly visited the subject property(ies) and that, during her time at the property(ies), she was exposed to chipping and peeling paint. The notice requirement has been eliminated. The plaintiff is no longer required to prove that the landlord had notice of chipping, peeling or flaking paint. The landlord has an affirmative duty to inspect under the Baltimore City code. *Brooks v. Lewin Realty III, Inc.*, 378 Md. 70, 835 A.2d 616 (2003), *aff'd*, *Polakoff v. Turner*, 385 Md. 467, 869 A.2d 837 (2005). Further, the plaintiff does not need to show that the defendants knew that the paint contained lead pigment. *Brown v. Dermer*, 357 Md. 344, 362, 744 A.2d 47, 57 (2000).

However, Plaintiffs still must prove exposure and causation. It is a plaintiff's burden to prove that the Defendant's conduct was a substantial factor in causing the plaintiff's lead poisoning. *Ross v. Hous. Auth. of Baltimore City*, 430 Md. 648, 667-668, 63 A.3d 1, 12-13 (2013); *Pittman v. Atlantic Realty Co.*, 359 Md. 513, 521, 754 A.2d 1030, 1034 (2000); *Bartholomee v. Casey*, 103 Md. App. 34, 56-57, 651 A.2d 908, 918 (1994). Where a plaintiff lacks proof that the exposure by itself was a substantial cause of the plaintiff's lead poisoning, the jury can only speculate as to causation, and thus, summary judgment is appropriate. *Johnson v. Rowhouses, Inc.*, 120 Md. App. 579, 596-97, 707 A.2d 933, 941 (1998).

Plaintiffs resort to circumstantial evidence when they lack direct evidence of lead-based paint on the defendant's premises. Circumstantial evidence is sufficient "if it amounts to a

reasonable likelihood or probability rather than a possibility.” *Dow v. L & R Properties, Inc.*, 144 Md. App. 67, 75, 796 A.2d 139, 144 (2002). However, “causation evidence that is wholly speculative is not sufficient.” *Id.* See also *West v. Rochkind*, 212 Md. App. 164, 170-171, 66 A.3d 1145, 1149 (2013). “[T]he mere fact that most old houses in Baltimore have lead-based paint does not mean that a particular old Baltimore house has a similar deficiency.” *Davis v. Goodman*, 117 Md. App. 378, 393, 700 A.2d 798, 805 (1997) (*dicta*). The *Dow* Court held that, **if** there is testimony of chipping and peeling paint **and** there is no other possible source of lead poisoning, *i.e.*, spending time/living any where else, **coupled with** the inference that homes built before 1950 often contain lead-based paint, one can “support an inference that the paint in question contained lead.” *Id.* 144 Md. at 76, 796 A. 2d at 144 (emphasis added). The Court of Appeals clarified in *Hamilton v. Kirson*, 439 Md. 501, 96 A.3d 714 (2014), that the *Dow* scenario is not the only way in which a plaintiff may prove the presence of lead-based paint at a subject property via circumstantial evidence. *Id.* at 537-538, 96 A.3d at 735-736. However, if a case is analogous to *Dow*, the plaintiff must eliminate all “other reasonably probable sources of lead exposure.” *Id.* at 538, 96 A.3d at 736.

Consumer Protection Act (CPA) claims require evidence that “at the inception of the lease, the landlord made material misstatements or omissions, which either had the tendency to or, in fact, did, mislead the tenant.” *Benik v. Hatcher*, 358 Md. 507, 531, 750 A.2d 10, 23 (2000).

Tort Defenses

I. Contributory Negligence

Maryland is one of five states where the plaintiff’s contributory negligence is a complete defense to liability for negligence. *Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 456 A.2d 894 (1983). In 2013, the Court of Appeals declined to abandon contributory negligence in favor of some form of comparative negligence. *Coleman v. Soccer Assoc. of Columbia*, 432 Md. 679, 69 A.3d 1149 (2013). It is not a defense in a strict liability products action. *Montgomery County v. Valk Mfg. Co.*, 317 Md. 185, 562 A.2d 1246 (1989).

The parent’s negligence may not be imputed to the minor. MD. CODE ANN., CTS. & JUD. PROC. § 10-910.

However, children may be contributorily negligent. Children are held to the degree of care “ordinarily exercised by children of the same age, capacity, discretion and experience under the same or similar circumstances.” *Pratt v. Md. Farms Condo., Phase I, Inc.*, 42 Md. App. 632, 636, 402 A.2d 105, 107 (1979). Children under the age of five years may not be guilty of contributory negligence as a matter of law. *State v. Barlly*, 216 Md. 94, 102, 140 A.2d 173, 177 (1958).

II. Assumption of Risk

Assumption of risk is a complete bar to liability. The three elements to the defense of assumption of risk are that the plaintiff: (1) knew of the risk of danger; (2) appreciated that risk;

and (3) voluntarily confronted the risk of danger. *American Powerlifting Ass'n v. Cotillo*, 401 Md. 658, 934 A.2d 27, 33-34 (2007).

III. Employer's Defense That Workers' Compensation Is The Sole Remedy Against An Employer

The Maryland Workers' Compensation Act, MD. CODE ANN., LAB. & EMPL. § 9-101 *et seq.*, is the exclusive remedy for injured workers against their employers and no action at law will lie. *Id.* §9-509(a). Maryland differs from many states in that fellow or co-employees are subject to suit and are not protected by this defense. *Hill v. Knapp*, 396 Md. 700, 914 A.2d 1193 (2007).

If the injured worker's employer does not purchase workers' compensation insurance, the worker may recover benefits from his "statutory employer" in the right circumstances. The Statutory Employer Doctrine is derived from the Workers' Compensation Act. MD. CODE ANN., LAB. & EMPL. §9-508. A "statutory employer" is defined as:

1. A principal/prime/general contractor;
2. Who has contracted to perform work;
3. Which is part of his trade, business or occupation; and
4. Who has contracted with a different party for that party to act as a subcontractor of all or part of the work required by the initial contract. *See Honaker v. W.C. & A.N. Miller Dev. Co.*, 278 Md. 453, 460, 365 A.2d 287, 291 (1976).

Therefore, for the statutory employment doctrine to apply, there must be two separate contracts: a contract between the principal contractor and a third party where the contractor becomes obligated to do work; and a contract between the principal contractor and a subcontractor, where part of that work is delegated to the subcontractor. *Para v. Richards Group*, 339 Md. 241, 661 A.2d 737 (1995). Employees of the subcontractor are statutory employees of the principal contractor. Statutory employers, like employers, are immune from common law suit by the statutory employee whether or not they pay benefits.

IV. Sovereign Immunity

The Maryland Tort Claims Act, MD. CODE ANN., STATE GOV'T §12-101 *et seq.*, permits suits against the State and its employees to the extent of its insurance coverage and only after compliance with prerequisites set forth in the Act. The State's tort liability limit is \$200,000 for a single claimant for injuries arising from a single incident or occurrence. MD. CODE ANN., STATE GOV'T §12-104(a)(2). Punitive damages and prejudgment interest are not recoverable. MD. CODE ANN., CTS. & JUD. PROC. §5-522. One year notice is required.

The Maryland Tort Claims Act, MD. CODE ANN., CTS. & JUD. PROC. §5-301 *et seq.*, permits suits against local governments and employees acting within the scope of their employment. Maximum recovery is limited to \$200,000 per person and \$500,000 per occurrence. The statute requires 180-day notice. MD. CODE ANN., CTS. & JUD. PROC. § 5-304. Punitive damages are not recoverable.

V. Parent-Child Immunity

Ordinarily, a minor child cannot recover against a parent for negligence. This parent-child immunity does not apply to step-parents, even if *in loco parentis* to the child, or to emancipated minors, or to cruel, inhumane, or outrageous conduct. Nor does the doctrine confer immunity on the business partner of the parent of an injured child. *Eagan v. Calhoun*, 347 Md. 72, 698 A.2d 1097 (1997); *Warren v. Warren*, 336 Md. 618, 336 Md. 618, (1994); *Waltzinger v. Birsner*, 212 Md. 107, 128 A.2d 617 (1957).

There is a statutory exception for motor vehicle accidents. Section 5-806 of the Maryland Code Annotated, Courts and Judicial Proceedings Article, provides that the doctrine does not apply to claims by a parent against a child or of a child against a parent for “wrongful death, personal injury, or property damage arising out of the operation of a motor vehicle” ... “up to the limits of motor vehicle liability coverage or uninsured motor vehicle coverage.” *Id.*; *Allstate Insurance Co. v. Kim*, 376 Md. 276, 829 A.2d 611 (2003).

VI. Interspousal Immunity

Maryland has abolished interspousal immunity. *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983).

VII. Statute of Limitations

Most tort actions, such as negligence, breach of contract and product liability must be brought within three years of the date of the injury or when the plaintiff knew, or with the exercise of due diligence, reasonably should have known of the wrong. MD. CODE ANN., CT. & JUD. PROC. §5-101; *Poffenberger v. Risser*, 290 Md. 631, 636, 431 A.2d 677, 680 (1981). The cause of action accrues when the plaintiff knows he has been injured, not when he knows the cause of his injury. *Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 448, 749 A.2d 796, 803 (2000). Therefore, the statute is not tolled “until the conclusion of a diligent investigation.” *Id.* Further, in construction defect cases, the running of limitations is not tolled during the defendant’s efforts to repair. *Booth Glass Company, Inc. v. Huntingfield Corp.*, 304 Md. 615, 622-624, 500 A.2d 641, 644-45 (1985).

Breach of warranty claims under the U.C.C. are subject to a four year statute of limitations that runs from the delivery of nonconforming goods regardless of when the breach was discovered. MD. CODE ANN., COMM. LAW § 2-725.

The statute of limitations is tolled for minor children until they reach the age of majority, which is 18 years old in Maryland. MD. CODE ANN., CT. & JUD. PROC., § 5-201(a). Claims for

indemnification and contribution accrue at the time the tortfeasor pays or is ordered to pay the injured person. *Washington Suburban Sanitary Com'n v. Riverdale Heights Volunteer Fire Co. Inc.*, 308 Md. 556, 570 n.3, 520 A.2d 1319, 1327 n.3 (1987).

Death Actions

There are two distinct causes of action that arise upon the death of a person caused by a wrongful act: (1) a “survival” action (MD. CODE ANN., EST. & TRUSTS §7-401 (y)) and (2) a “wrongful death” action (MD. CODE ANN., CTS. & JUD. PROC. §3-901 *et seq.*). Both are authorized by statute. A “survival” action is nothing more than the decedent’s own personal injury action. At common law, the personal injury action died with the victim. Maryland’s Survival statute permits the cause of action to “survive” the death of the victim. The survival claim is brought by the personal representative of the estate for the decedent’s pre-death harm such as pain and suffering, funeral expenses, medical expenses and lost wages (if any) prior to death. *See, e.g., Jones v Flood*, 351 Md. 120, 716 A.2d 285 (1998). The Wrongful Death statute, MD. CODE, ANN., CTS. & JUD. PROC. §3-904, permits a schedule of beneficiaries, including the surviving spouse or children, to make claims for specified damages, including loss of support and mental anguish. The wrongful death statute was amended in 1997 to coordinate with the cap on non-economic damages. MD. CODE ANN., CTS. & JUD. PROC. §11-108(b). At common law, there was no cause of action for wrongful death.

I. Damages For Wrongful Death Beneficiaries

Spouse – A spouse may recover for his/her economic losses, including the loss of financial support and services that the spouse could reasonably have expected to receive. A spouse can also recover for noneconomic losses such as mental anguish, pain and suffering, loss of society, companionship, comfort, protection, marital care, attention, and advice. A spouse qualifies even if he/she is separated from the decedent. *Forbes v. Harleysville Mutual*, 322 Md. 689, 589 A.2d 944 (1991).

Parent – A parent may recover for his/her economic losses as the result of the death of his/her child, including any financial benefits the parent would have been expected to receive from the child until the child turned eighteen. A parent can also recover for non-economic losses, including mental anguish, pain and suffering, the loss of society, companionship, comfort, protection, care, attention and advice. The non-economic damages are not limited to the period of time when the child is a minor.

Minor child - A surviving minor child can recover economic losses as a result of the death of a parent, including the loss of financial support and services that the child could reasonably have expected to receive from the deceased parent until he/she reached 18 years old. The child can also recover non-economic damages, including mental anguish, pain and suffering, the loss of society, companionship, comfort, protection, care, attention and advice.

Adult child - A surviving adult child may recover for economic losses upon a showing that the deceased parent rendered services of a pecuniary nature to the adult child and the child could reasonably have expected to continue receiving those services. In addition, an adult child

is also entitled to recover non-economic damages for the wrongful death of the parent without any limitation as to age, marital status or dependency.

Punitive Damages are not permitted under the wrongful death statute.

II. Settlement In Wrongful Death Actions

Settlement requires the consent of all joined parties or approval of the court because claims of individual plaintiffs are not severable. *Walker v. Essex*, 318 Md. 516, 569 A.2d 645 (1990).

III. Damages in Survival Actions

The estate of the decedent may recover for damages to the deceased between the time of injury and the time of death. MD. CODE ANN., EST. & TRUSTS § 7-401(2001). Damages for economic losses may include property damage, funeral expenses (generally not to exceed \$10,000 per MD. CODE ANN., EST. & TRUSTS §8-106(c)) and loss of earnings from the time of injury to the time of death. There can be recovery for pain and suffering sustained by the decedent from the time of injury to the time of death provided there is proof that decedent was capable of experiencing *conscious pain and suffering*. *Ory v. Libersky*, 40 Md. App. 151, 162, 389 A. 2d 922, 929 (1978). Punitive damages are recoverable in those cases where they might have been awarded to the decedent. *Smith v. Gray Concrete Pipe Co.*, 267 Md. 149, 160, 297 A.2d. 721, 727 (1972).

Insurance Issues

I. Duty To Defend

The insurer's duty to defend is much broader than its duty to indemnify. Insurance contracts generally provide that the insurer must defend *any* suit against an insured. This language has led to two rules: The "exclusive pleading rule" and the "potentiality rule." The "exclusive pleading rule" requires the insurer to determine its duty to defend solely based upon the allegations of the complaint. *Brohawn v. Transamerica Ins. Co.*, 276 Md. 396, 408, 347 A.2d 842, 850 (1975). The courts refer to the allegations of the complaint as shorthand for the allegations of the lawsuit, which may include allegations in motions hearings or discovery. *Baltimore Gas and Elec. Co. v. Commercial Union Ins. Co.*, 113 Md. App. 540, 569, 688 A.2d 496, 510 (1997), *citing St. Paul Fire & Mar. Ins. v. Pryseski*, 292 Md. 187, 193, 438 A.2d 282, 285 and *Brohawn*, 276 Md. at 407, 347 A.2d at 850. An insurer cannot look outside the pleadings to defeat the duty to defend. *Baltimore Gas and Elec. Co. v. Commercial Union Ins. Co.* 113 Md. App. at 567, 688 A. 2d at 509; *Aetna Cas. & Sur. Co. v. Cochran*, 337 Md. 98, 107, 651 A.2d 859, 863 (1995). However, an insured (or one in the shoes of an insured) may establish a "potentiality of coverage under an insurance policy through the use of extrinsic evidence." *Aetna Cas. & Sur. Co. v. Cochran*, 337 Md. at 111-112, 651 A.2d at 866.

II. Motor Vehicle Insurance

A. Minimum Policy Limits

Maryland's compulsory minimum motor vehicle limits are \$30,000/\$60,000/\$15,000. MD. CODE ANN., TRANSP. §17-103.

B. Uninsured Motorist Coverage

Minimum Limits: The Maryland Insurance Code requires that uninsured motorist limits be the same as minimum liability limits; that is \$30,000/\$60,000/\$15,000. MD. CODE ANN., INS. §§19-509(c)&(e) and MD. CODE ANN., TRANSP. §17-103. Where the insured elects liability limits greater than those required by statute, the UM limits must equal the liability limits unless waived by the first named insured in accordance with MD. CODE ANN., INS. §19-510. The minimum limits may not be waived. Personal Injury Protection, as contrasted with uninsured motorist coverage, may be waived by the first named insured. MD. CODE ANN., INS. § 19-506(a).

Stacking: There are two possible types of stacking: intra-policy and inter-policy. Intra-policy stacking is the aggregation of limits of liability for coverage of each car covered under one policy. Intra-policy stacking is prohibited in Maryland. Inter-policy stacking involves the aggregation of coverage under more than one policy. Inter-policy stacking is permitted but subject to the coordination of coverage provisions of the "other insurance" clauses so that the insured's potential recovery amounts to the highest UM limit involved.

Settlement Procedure: If an injured person receives a written policy limits offer to settle a claim from an automobile liability insurer, the uninsured motorist insured/injured person copies the offer by certified mail to the uninsured/underinsured motorist carrier. MD. CODE ANN., INS. § 19-511(a). The UM insurer then has 60 days after receipt of the notice to send the UM insured/claimant acceptance of the settlement offer and the execution of releases or a refusal to consent. MD. CODE ANN., INS. § 19-511(b); *Keeney v. Allstate Ins. Co.*, 130 Md. App. 396, 746 A.2d 947 (2000). If the UM insurer consents to the settlement, the injured person may accept the policy limits, and execute releases in favor of the liability insurer and its insured "without prejudice to any claim the injured person may have against [the UM carrier]." MD. CODE ANN., INS. § 19-511(e). If the UM insurer refuses to consent, it must, within 30 days after refusal, pay to the UM insured/claimant the amount of the settlement offer. *Id.* at §19-511(c). The refusal to consent and the payment to the UM insured/claimant preserves the UM insurer's subrogation rights against the liability insurer and its insured. Section 19-511 (d). It also gets an assignment of rights up to the amount of the payment against any recovery made by the UM insured/claimant against the available liability coverage. *Id.* at § 19-511(d)(2).

Coordination of Coverage: UM insurers are entitled to credits for the sums paid to the insured that exhaust all applicable liability insurance policies. MD. CODE ANN., INS. § 19-509(g). UM insurers may not take a credit for the amount paid pursuant to a medical payment endorsement. *Lewis v. Allstate Ins. Co.*, 368 Md. 44, 792 A.2d 272 (2002).

UM insurers are also entitled to coordinate their UM payment with workers' compensation benefits to a limited extent. This reduction is from the UM policy limits, not from the damages awarded to the injured plaintiff. In theory, this section is designed to preclude a double recovery by the injured party. *Lewis v. Allstate Ins. Co.*, 368 Md. 44, 792 A.2d 272 (2002). Note that the coordination is limited to benefits where the compensation carrier has not been reimbursed. Further, the UM carrier only gets the offset of workers' compensation benefits where the benefits have actually been "received"; that is, not where they are "receivable" or owed. *Gable v. Colonial Ins. Co.*, 313 Md. 701, 704, 548 A.2d 135, 137 (1988). The Court defined "recover" to mean "to get," "to obtain," "to come into possession of," "to receive." *State Farm Mut. Auto. Ins. Co. v. Insurance Com'r*, 283 Md. 663, 671, 392 A.2d 1114, 1118 (1978) (quoting *Garza v. Chi. Health Clubs, Inc.*, 347 F. Supp. 955, 962 (N.D. Ill. 1972)). Where an insured is entitled to receive workers' compensation benefits in the future, but does not make a claim or has not received the benefits yet, the UM insurer is not entitled to the offset. However, if the employer pays the medical expenses, even though a formal workers compensation claim has not been filed, the Uninsured Motorist Insurer gets a credit. *Parry v. Allstate Ins. Co.*, 408 Md. 130, 968 A.2d 1053 (2009).

III. Bad Faith

A. Third-Party Bad Faith

In Maryland, the courts have recognized a tort of wrongful failure to settle within policy limits. The tort arises only where the insurer has undertaken the defense of the insured. The insured may be entitled to recover the amount of judgment against the insured that exceeds the policy limits. Where the insurer denies coverage and refuses to undertake the duty to defend, however, Maryland has held that the insured will be entitled to recover up to the policy limits, plus the attorney's fees and expenses, in the underlying suit. The insured will not be permitted to recover the excess judgment. See *Kremen v. MAIF*, 363 Md. 663, 770 A.2d 170 (2001); *Mesmer v. MAIF*, 353 Md. 241, 725 A.2d 1053 (1999). A third-party may not bring a cause of action for bad faith absent an assignment. *Bean v. Allstate*, 403 A.2d 793, 285 Md. 572 (1979). An action for bad faith may be assigned. *Medical Mut. Liab. Ins. Soc'y of Maryland v. Evans*, 330 Md. 1, 25, 622 A.2d 103, 114 (1993).

B. First-Party Bad Faith

There is no common law cause of action for first-party bad faith in Maryland. *Johnson v. Federal Kemper Ins. Co.*, 74 Md. App. 243, 536 A. 2d 1211 (1988), nor is there a private cause of action under Maryland's Unfair Claims Settlement Practices Act. MD. CODE ANN., INS. §27-301 *et seq.*

However, a cause of action against first-party insurers for failure to act in good faith was created by MD. CODE ANN., CTS. & JUD. PROC. § 3-1701. An insured must first (with certain exceptions) bring an administrative action before the Maryland Insurance Administration ("MIA") pursuant to Md. Code Ann. Ins. §27-1001. If a case fits one of the following exceptions, it may be filed in court and is not subject to the jurisdiction of the MIA: a small claim within the

jurisdiction of the Maryland District Court, if the insurer and insured agree to waive the requirement or a commercial insurance policy on a claim where the policy limits exceed \$1,000,000.

Damage Issues

I. Statutory Cap

Maryland has a statutory cap on the recovery of noneconomic damages. MD. CODE ANN., CTS. & JUD. PROC. § 11-108 (2001 Supp). Noneconomic damages are capped at \$350,000 for actions arising on or after July 1, 1986 and \$500,000 for causes of action arising after October 1, 1994. The limitation increases by \$15,000 each year after October 1, 1994. In death cases under the post 1986 cap there are two separate caps: one for the survival claimants and a second for the wrongful death beneficiaries. If there is more than one wrongful death beneficiary, the cap is expanded to 150% of the statutory limit. MD. CODE ANN., CTS. & JUD. PROC. § 11-108.

<u>Non-Economic Cap</u>		<u>Wrongful Death Actions</u>	
<u>Year</u>	<u>Amount</u>	<u>Single Claimant</u>	<u>Multiple Claimants</u>
7/1/86 – 9/30/94	\$350,000	No Cap	
10/1/94 – 9/30/95	\$500,000	\$500,000	\$750,000
10/1/95 – 9/30/96	\$515,000	\$515,000	\$772,000
10/1/96 – 9/30/97	\$530,000	\$530,000	\$795,000
10/1/97 – 9/30/98	\$545,000	\$545,000	\$817,500
10/1/98 – 9/30/99	\$560,000	\$560,000	\$840,000
10/1/99 – 9/30/00	\$575,000	\$575,000	\$862,000
10/1/00 – 9/30/01	\$590,000	\$590,000	\$885,000
10/1/01-9/30/02	\$605,000	\$605,000	\$907,500
10/01/02-9/30/03	\$620,000	\$620,000	\$930,000
10/01/03-9/30/04	\$635,000	\$635,000	\$952,500
10/01/04-9/30/05	\$650,000	\$650,000	\$975,000
10/01/05-9/30/06	\$665,000	\$665,000	\$997,500
10/01/06-9/30/07	\$680,000	\$680,000	\$1,020,500
10/01/07-9/30/08	\$695,000	\$695,000	\$1,042,500
10/01/08-9/30/09	\$710,000	\$710,000	\$1,065,000
10/01/09-9/30/10	\$725,000	\$725,000	\$1,087,500
10/01/10-9/30/11	\$740,000	\$740,000	\$1,110,000
10/01/11-9/30/12	\$755,000	\$755,000	\$1,132,500
10/01/12-9/30/13	\$770,000	\$770,000	\$1,155,000
10/01/13-9/30/14	\$785,000	\$785,000	\$1,177,500
10/01/14-9/30/15	\$800,000	\$800,000	\$1,200,000

II. Emotional Distress

Physical impact is not a prerequisite for mental anguish damages; however, there must be physical injury manifested by external condition or symptoms indicative of resultant pathological or mental state. *Bowman v. Williams*, 164 Md. 397, 165 A. 182 (1993). There can be no

recovery for mental anguish resulting from damage to property, except where the act causing the injury is “inspired by fraud, malice, or like motives, mental suffering is a proper element of damage.” *Dobbins v. WSSC*, 338 Md. 341, 346 n.2, 658 A. 2d 675, 677 n.2 (1995). Maryland recognizes the tort of *intentional* infliction of emotional distress, but not *negligent* infliction of emotional distress. *Reagan v. Rider*, 70 Md. App. 503, 521 A.2d 1246 (1987); *Hamilton v. Ford Motor Credit Co.*, 66 Md. App. 46, 502 A.2d 1057, *cert. denied* 306 Md. 118, 507 A.2d 631 (1986).

III. Pre-Judgment/Post-Judgment Interest

Post-judgment interest is recoverable at the rate of 10% per annum from date of its entry. Pre-judgment interest is recoverable at the discretion of the jury and shall be separately stated in the verdict. Pre-judgment interest is 6% per annum.

IV. Attorney’s Fees

Attorney’s fees are ordinarily not recovered in Maryland except where the contract sued upon provides for fees. *But see St. Luke Evangelical Lutheran Church v. Smith*, 318 Md. 337, 568 A.2d 35 (1990) for discussion of “special circumstances” where fees may be recoverable.

Attorney’s fees are recoverable under the Maryland Consumer Protection Act. MD. CODE ANN., COMM. LAW I § 13-408. Attorneys’ fees are also recoverable in first-party failure to act in good faith cases. If the Maryland Insurance Administration finds that an insurer failed to act in good faith, the insured may recover its reasonable attorney’s fees, which may not exceed one-third of the insured’s actual damages. MD. CODE ANN., INS. §27-1001(e).

V. Punitive Damages

Recovery of punitive damages requires proof of actual malice or its equivalent. Punitive damages cannot be awarded without an award of compensatory damages. Punitive damages are not recoverable in wrongful death, breach of contract or breach of warranty actions. *Cohen v. Rubin*, 55 Md. App. 83, 101-102, 460 A.2d 1046, 1056 (1983) (wrongful death); *K & K Management, Inc. v. Lee*, 316 Md. 137, 169, 557 A.2d 965, 981 (1989) (breach of contract); *Sims v. Ryland Group, Inc.*, 37 Md. App. 470, 475, 378 A.2d 1, 4 (1977) (breach of contract and warranty). It is not against public policy for insurance policies to cover punitive damages. *See First Nat’l Bank v. Fidelity & Deposit Co.*, 283 Md. 228, 389 A.2d 359 (1978).

Settlement Matters

I. Maryland Uniform Contribution Among Joint Tortfeasors Act

A Plaintiff may recover all of his damages from one of two parties at fault because of the doctrine of joint and several liability, even where that Defendant was minimally at fault. That Defendant may sue the other party at fault for contribution pursuant to the Maryland Uniform Contribution Among Joint Tortfeasors Act, MD. CODE ANN., CTS. & JUD. PROC. §3-1401.

Joint tortfeasors are defined as “two or more persons, jointly or severally liable in tort for the same injury.” *Id.* §3-1401(c). A Defendant is a joint tortfeasor if he agrees in a release that he is a tortfeasor or if he and others are found to both be liable to the Plaintiff for a single harm at trial.

A joint tortfeasor release permits a claimant to settle with one party and pursue others. If the settling party was not guilty of negligence and was not a tortfeasor, and does not admit liability, then the settlement has no impact on the settlement or judgment of other parties who may be tortfeasors. A joint tortfeasor release generally provides a credit to the nonsettling tortfeasors for their *pro rata* share or a *pro tanto* (dollar for dollar) credit, whichever is greater. *Id.* at §3-1404. Thus, the plaintiff’s claim is reduced against the nonsettling tortfeasors in the amount of consideration paid for the release or in any amount or proportion by which the release provides that the total claim shall be released.

II. Worker’s Compensation Lien

The worker’s compensation carrier has a statutory lien for benefits paid. MD. CODE ANN., LABOR & EMP. §9-902.

III. Claims By Minors

Claims on behalf of minor children may be brought by a guardian, fiduciary or, if none, by a next friend. The suit may be settled by the next friend. If the next friend is not a parent or a person standing *in loco parentis*, the consent of the parent or other person responsible for the child must be obtained. If there is no parent or other person responsible for the child, the court must approve the settlement. Payments of \$5,000 or more must be made to the order of a trustee, unless the court appoints a guardian of the property of a minor. MD. CODE ANN., EST. & TRUSTS §13-403.

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This is a basic outline of Maryland law. The information contained herein is intended only as a general guide. The comments are not exhaustive and require explanation or clarification. Please do not rely on these comments as legal advice for any particular case or situation. Please consult an attorney for specific legal advice.