



Legal Views

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A Resource from Montgomery County's Office of the County Attorney

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Douglas M. Duncan, County Executive

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Court of Appeals Limits Time for Filing Occupational Deafness Cases

Wendy Karpel

In a four to three decision, the Maryland Court of Appeals carved out a two-pronged requirement for determining when the statute of limitations in occupational deafness cases begins to run. The statute of limitations begins to run when (1) the employee's hearing loss is compensable, and (2) when the employee becomes aware of the disablement. Unlike other occupational illnesses, the statute begins to run before the hearing loss affects the employee's ability to work. To be compensable, the hearing loss merely has to reach the mathematical level of compensable hearing loss, as outlined in the Workers' Compensation Act (Act).

Arnold Yox worked as a press operator for 47 years at the Tru-Rol Company. In 1987, he visited his treating

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Pizza Delivery Exclusion Voided By Court of Appeals

James Savage

Pizza delivery drivers have, on occasion, caused apprehension in many of us due to their speed and disregard of the rules of the road while attempting to deliver hot pizza to customers. Speedy delivery is often encouraged by employers, offering free food if the food is not delivered within a certain period of time after the order is placed. Understanding this, Progressive Classic Insurance Company (Progressive) sought to exclude automobile liability coverage entirely if an accident occurred while the insured was engaged in the delivery of food for a fee.

Michael Salamon, a student employed as a part-time pizza delivery driver, was involved in a two-car accident while on his job. Progressive, from whom Salamon secured a minimum coverage policy five months prior to the accident and before he obtained employment with the Pizza Connection, denied coverage. Progressive's policy contained an exclusion which allowed the insurer to deny coverage if the insured was delivering "property for compensation" at the time of the accident. When Salamon made his claim for coverage and indicated his intent to file a suit, Progressive filed a declaratory action in Baltimore County Circuit Court, seeking to avoid coverage. The Circuit Court granted Progressive's motion for summary judgment, which allowed the insurer to deny coverage and left the injured parties with only Salamon to compensate them for the damage.

Salamon appealed that decision to the Court of Special Appeals. However, on its own motion, the Court of Appeals took jurisdiction of the appeal and reviewed the case, finding in favor of Salamon. The

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Special Edition of *Legal Views* attached

*All gave some...
Some gave all.*

Memorial Day
May 31, 2004

physician, complaining of hearing loss. Mr. Yox informed his physician that he felt it was due to his employment. After finding extensive hearing loss in both ears, the doctor prescribed hearing aids for Mr. Yox. In 2000, Mr. Yox went back to his doctor, complaining that his hearing had worsened, and then filed a workers' compensation claim. The Maryland Workers' Compensation Commission denied the claim as being barred by the statute of limitations.

Both prongs of the limitations test are present in this matter. First, Mr. Yox had compensable hearing loss under the mathematical formula set out in the Act in 1987. Second, in 1987, he also knew that his hearing loss was related to his employment. Therefore, under the statute of limitations for workers' compensation claims, Mr. Yox had two years from 1987 to file his claim. He failed to file timely and, therefore, was barred from making any workers' compensation claim. Mr. Yox argued that the statute of limitations should not have begun to run until the hearing loss interfered with his ability to work. After all, for all other occupational diseases, the statute of limitations does not begin to run until that time. The Court of Appeals rejected that argument, finding that hearing loss claims are treated differently for statute of limitations purposes.

For all occupational disease claimants under the Act, the statute of limitations does not begin to run until the worker has knowledge that the occupational disease is related to his/her employment. The critical difference between hearing loss claimants and the rest of the occupational disease claimants is that the hearing loss claimant does not have to experience a disablement to receive compensation. While other occupational disease claimants must prove that the disease has affected his/her ability to perform the claimant's job functions, the hearing loss sufferer need only show that the hearing loss reaches the mathematical threshold established by the Act. He/she need not show any lost time from work, loss of productivity, and/or employer dissatisfactions in order to recover benefits under the Act. ❖

Yox v. Tru-Rol, Co., Inc., Court of Appeals, No. 31, Sept. Term 2003 (filed March 15, 2004).

Court reasoned that the exclusion was prohibited by public policy. Maryland has a comprehensive and compulsory automobile insurance statute which requires that all drivers maintain minimum levels of insurance coverage. Policy exclusion clauses that reduce coverage below the minimums are limited to those authorized by the statute. The Court's decision regarding these particular circumstances would render Salamon without auto insurance since he carried only the minimum required under the statute (\$20,000/\$40,000.00).

The statutory scheme intended to make certain that those operating autos are financially responsible and capable of compensating others for damages resulting from motor vehicle accidents. Allowing individual insurance companies to reduce their risks by asserting exclusions to their coverage makes financial business sense for those companies, but exposes all others to injuries and damage without adequate financial resources for compensation. Such exclusions defeat the purpose of the statutory scheme. ❖

Salamon v. Progressive Classic Insurance Co., 379 Md. 301 (2004).

How Many Jurors?

Chris Hinirchs

Individuals on trial for a crime are usually guaranteed the right to a trial by a jury. Throughout the evolution of Maryland jurisprudence, rarely has this guarantee caused much controversy. However, the Court of Appeals recently visited this issue, not from the perspective of whether one should be afforded a jury trial, but rather, whether alternate jurors should be allowed to deliberate and decide the ultimate issue of guilt or innocence.

Dontee Stokes was indicted on multiple offenses as a result of shooting Maurice Blackwell, his former priest and alleged abuser. The dispute over the alternate jurors arose because Stokes pleaded not guilty and not criminally responsible by reason of insanity and requested a bifurcated trial where there would first be a guilt/innocence phase and then an insanity phase. Maryland Rule 4-314 requires that the same jury try both phases and that alternate jurors should be retained

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Forget “Make-Work” – These Kids Went to Court!

Susan B. Squires

On April 22, 2004, *National Take Your Son or Daughter to Work Day*, 31 staff progeny attended a full-day program at the Office of the County Attorney. The day was a great success – not one child was detained, lost, or injured, despite the break-neck pace and range of activities.

Chuck Thompson kicked off the day with some general remarks about the Office. Denny Via took mug shots of the kids to create mock Montgomery County badges (which the organizers surmised could also be used to reign in any miscreants). Janet Tolbert and Tammy Cheraghi, in addition to designing the badges, shepherded the younger kids through a range of crafts and read them the story of the Three Little Pigs, in preparation for the afternoon session.

Tagged and oriented, the older kids broke down into groups to interview five attorneys, escorted by Ed Lattner, Tammy Seymour, Priscilla Shannon, Denny Via, and Susan Squires. Some learned more about what

Chuck Thompson does, as well as intimate personal details about him, including his golf handicap and middle initial. Others learned about code enforcement from Jim Savage; how laws are made from Marc Hansen; what contracts are and what they are used for from Rich Melnick; and what a trial is from Joann Robertson. They memorialized this new knowledge in a Special Edition of *Legal Views*, thanks to the editing talents of Jan Lillard (see attached copy). Still, there was more.

Thanks to arrangements made by Jim Savage, the Honorable Judge McHugh graciously entertained and enlightened the kids and staff in his courtroom, explaining what happens in a courtroom, where the various players sit and what they do, and the fundamental purpose of trials. With the help of Sheriff Frank Pruitt, the kids toured the lock-down facility adjacent to the courtroom. Next, Tobi Guy led the kids on a tour of the transcription services in the lower level, which included hearing a replay of their courtroom experience.

Saving the most dramatic for last, the kids were treated to a mock trial, *Pig v. Wolf*, with “Judge” Edward Lattner presiding. Eileen Basaman courageously and skillfully defended a subtly sinister Wolf (Chris Pashler). Despite her best efforts, Andy Thompson wrestled a victory for Pig (a sympathetic Janet Tolbert). The kids fulfilled the role of jury, enthusiastically reviewing exhibits and finding for the plaintiff.

Ed Lattner, the day’s official organizer (along with “the committee” – Eileen Basaman, Andy Thompson, Chuck Thompson, Tammy Seymour, Tammy Cheraghi, Janet Tolbert, Denny Via, and Susan Squires) presided over the concluding ceremony. He awarded certificates and complimentary copies of the kids’ own *Legal Views*, which were placed in specially designed folders created by Tammy Seymour. But, it didn’t end there!

Michael Bruen of the Public Information Office kindly and patiently – and without much advance warning – assisted the kids in hamming it up in the television studio. Most were not shy in front of the cameras.

We hope the kids gained an understanding of how the Office of the County Attorney and the County Government work. At the very least, we hope that they learned that lock-up is not the place they would ever want to be. ❖

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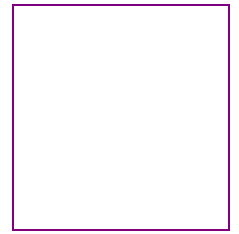
Edward B. Lattner

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Legal Views is a monthly newsletter prepared as part of the County Attorney’s preventive law and education efforts. This information is not legal advice, but an informative tool. While we attempt to ensure the accuracy of information, the informal nature of *Legal Views* does not allow for thorough legal analysis. If you have an interest in a reported article, please contact us. If you wish to be placed on our mailing list, please send your request with your full name, address, and phone number.



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ADDRESS CORRECTION REQUESTED

Jurors

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throughout the guilt/innocence phase. At Stokes' trial, the court first allowed the four alternate jurors to deliberate with the twelve original jurors during the guilt/innocence phase. After a few hours, the court realized its mistake and instructed the alternates that they could only observe. The jury found Stokes guilty of several handgun violations.

Although Stokes later withdrew his plea of not criminally responsible in return for a sentencing agreement with the State, he appealed the guilty verdicts on the ground that the trial judge allowed the alternate jurors into the jury room during the deliberations. Prior to consideration by the Court of Special Appeals, the Court of Appeals of Maryland granted certiorari.

While both parties agreed that nothing under Maryland law permitted more than 12 jurors in the jury room, the State argued that Mr. Stokes was not prejudiced by the additional four jurors and the verdict should be affirmed. In contrast, Mr. Stokes argued that the presence of the additional jurors was "no different than third parties who invaded the privacy, impartiality and secrecy of the jury . . . exposing the jury to impermissible outside influences, which is

inherently prejudicial."

The United States Constitution, the Maryland Constitution, and the Maryland Rules guarantee a person being tried for a criminal offense the right to a jury trial in most circumstances. The U.S. Constitution, through interpretation by the courts, guarantees a minimum of six jurors in criminal cases. The Maryland Constitution requires a jury of 12 in criminal cases. Also, Maryland Rule 4-311 guarantees the criminal defendant the right to a jury trial and specifically instructs the court to seat 12 people in a criminal jury trial. The Court of Appeals agreed with Mr. Stokes in adopting the position that the presence of the additional four jurors breached the "sanctity and privacy of the jury deliberations" and ordered a new trial. While this case arose under a bifurcated trial proceeding, the analysis of the Court applies to all criminal trials in Maryland. So whether Stokes chooses a regular or bifurcated trial, this time, only 12 jurors will be invited into the jury room to deliberate. ❖

Dontee Stokes v. Maryland, Court of Appeals, No. 47, Sept. Term, 2003 (filed February 18, 2004).

