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NEWSLETTER

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We send out this summary of the firm's progress every six months to clients and friends who have an interest in trial and appellate developments in the jurisdictions where we traditionally practice: Maryland, Virginia, and the District of Columbia. Although we consolidated our three offices previously located in Baltimore, MD; Washington, D.C.; and Alexandria, VA into a single location in centrally located Arlington, VA, we continue to be very active in both states and the District. The positive results of the prior period so reflect.

For those who recall our Newsletter highlights last December, you remember the multi-million dollar accounting firm dispute that we believe wrongly targets a well respected professional firm whose only fault is having a potential deep pocket that is irresistible to unsuccessful investors determined to recoup imprudent investments. To prevent such result, we have pending a well researched and particularly thorough Summary Judgment Motion, which covers not only the law related to accountants' liability issues, but draws upon the facts evidenced in some twenty-three depositions of parties and witnesses to posit our client's full entitlement to a judgment in its favor. Undoubtedly, this will be the major accountant malpractice decision in Maryland for years to come, and we look forward to a positive resolution.

Likewise, we earlier referenced a small case in the Maryland countryside that we found so disturbing in the court's disregard for the facts and the law at a bench trial, that we appealed at the firm's expense, not the carrier's. The result was justice done, as the appeal resulted in the award of a new trial to our insured. The case then settled.

Our major E&O decision last year that we referred to in the last Newsletter as Lloyd's "most favorable U.S. ruling in 2003," did not go down lightly with the claimant and his attorney. Given the thousands of dollars in attorneys' fees expended in a losing cause, the disappointed plaintiff filed an appeal in the Maryland Court of Special Appeals, challenging the trial court's findings in favor of the Lloyd's syndicate and denial of both coverage and a defense. As many of you know, denial of a defense, negating even the "possibility" of coverage, is not easily accomplished in most insurance disputes, so clearly we will make new law in Maryland when this case is decided and reported.

We now turn to a half dozen cases resolved by this firm over the past few months that present interesting legal and insurance issues. In January, we defended a sub-contractor in an American Arbitration Association proceeding in Richmond wherein the claimant general contractor sought in excess of $350,000.00 in costs for re-fitting fire protection sprinkler piping and valves earlier installed by our client. The case was arbitrated in the snow of a closed city before a recently appointed Circuit Court Judge, and took the better part of a week to complete. In the end, our evidence proved stronger despite the other side establishing

that the work done was not in accordance with the manufacturer's requirements for installation. We subsequently persuaded the manufacturer to represent it would stand by its limited warranty and this, coupled with good expert testimony from our engineer, won the day. Indeed, not only did the general contractor recover nothing, but our client was awarded some $12,000.00 in retainage wrongly withheld by the claimant.

In February, we were again in Richmond, but this time before the Supreme Court of Virginia. A lawyer malpractice claim we had successfully defended in the Circuit Court resulted in a grant of Summary Judgment for our insured client. An appeal was taken and a writ granted. The other side relied upon new case law from the appellate court which seemed to suggest that our prevailing defense in the lower court lacked vitality. In any event, this concern proved unfounded, as the Supreme Court unanimously affirmed the decision of the lower court in favor of our attorney defendants. Not only did these lawyers win against an aggressive, if misguided, client, but helpful precedent was set for all Virginia lawyers faced with a lawsuit by a disgruntled former client when an earlier fee dispute had been effectively resolved short of trial. While national statistics show that 47% of defendants prevail in litigation, the number as to attorneys is lower, and therefore trial and appellate decisions in their favor are prized. While this firm had made reported case law in years past in Maryland and the District of Columbia, this was our first such good result in the Supreme Court of Virginia.

In March, the United States Court of Appeals for the Fourth Circuit, which oversees disputes brought in federal courts in Virginia and Maryland reviewed a lower court ruling adverse to our insurer client related to a declaratory judgment action we had brought as to policy coverage. The lower court had ruled that a federal forum was inappropriate for determining the scope of policy terms and conditions related to a pending state court personal injury action. We contended the very purpose of a federal forum in this context was to provide quick resolution of policy coverage, free of any local prejudice regarding an out-of-state carrier. The appellate court unanimously agreed. In a reported opinion, the Court pointed out that the issues for decision in our case were different and independent of the facts seeking determination in the state court. Again, precedent was made that is helpful to insurers seeking prompt and fair adjudication of policy disputes, particularly our clients.

In April, we tried to verdict a personal injury case in rural Charles County, Maryland. The case seemed next to impossible to defend, given that our insureds were an out-of-state corporation and its driver, while the plaintiffs were a family who had been rear-ended by our truck driver at high speed. The defendant driver had been cited for, and convicted of, traffic violations. The demand predictably was six figures, based upon some significant special damages and permanent injuries. We undertook very intensive investigations; found an independent witness who favored our driver's recitation of facts related to the plaintiffs' making a U-turn in front of him just prior to the incident; put on evidence over the period of a week; and ultimately won our case. If proof were needed, this result shows again the truth of the adage that there can never be enough preparation of a case before trial. It also shows that country jurors are shrewd judges of the facts despite great appeals to sympathy from the injured parents and children.

In May, we concluded an automobile case which arose earlier in Loudon County, Virginia. In that case, the plaintiff collided with the insured's dump truck. At the time of the accident, the insured's vehicle was driven by its employee, who was acting within the scope of his employment. As a result of the collision, plaintiff sustained significant injury, including the fracture of vertebrae in her back. She sustained medical expenses in excess of $20,000.00. She also claimed ten (10) months of lost wages due to the accident. Consequently, she sued for $100,000.00 in compensatory damages.

Plaintiff subsequently testified, and her brothers confirmed, that she simply did not see our insured's driver when she made a left turn because the sun was in her eyes. Her witnesses testified that they spoke to an eyewitness, who said he was behind our vehicle at the time of the accident, and that it was speeding. Subsequently, we deposed this witness, who contradicted the testimony of plaintiff's witnesses. He testified unequivocally that he did not know our driver's speed at the time of the accident. We then deposed an accident reconstructionist, who responded to the accident scene that morning. We qualified him as an expert witness in the area of accident reconstruction, and he testified that, in his opinion, and to a reasonable degree of scientific certainty, the plaintiff was at fault in accident. Shortly after this deposition, plaintiff moved to non-suit her claim. The Non-Suit Order was entered by the Court, and we believe aggressive discovery and case preparation won this case.

Finally, in June we tried a four-day case to verdict in the Superior Court for the District of Columbia. It involved a wrongful eviction by our insured management company of a tenant who, while frequently in arrears with rent payments, nonetheless had paid her rent in full as of the time of the eviction. The insured had only recently assumed responsibility for management of the subject property, and its bookkeeping procedures were not yet correctly functioning. No record of plaintiff's payment existed, so eviction was the inevitable result. Predictably, it was protested by the tenant and her family; especially given the destruction and loss of property left curbside. The Court promptly ordered the tenant restored to her home and suit soon followed.

The case appeared quite difficult to defend, and yet settlement was impossible, given a six figure demand from a super confident plaintiff's attorney. Our emphasis then shifted to damage control. As the trial unfolded, the Judge was clearly favorable to the wrongfully evicted plaintiff, and frequently indicated a proclivity to direct a verdict for the tenant at the end of the trial. Part and parcel of such a result would have been a significant award of damages, including punitives. However, after strenuous argument from us, the Judge ultimately resisted so ruling, leaving the case to the jury, but promising to overturn any defense verdict. The jury returned a verdict for the plaintiff, but for only $3,500.00. The Judge rejected plaintiff's subsequent motion for a new trial.

In conclusion, the first half of 2004 was full of good results in hard cases. There were other less spectacular results, but fortunately, no bad news for insureds, insurers or private clients. We aim to pursue similar results during the remainder of the year.