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Recent Laws

RECENT LAWS

Auto theft prevention

Harrisburg, Pa.—In response to increasing numbers of auto thefts across the state, Pennsylvania Governor Robert Casey (D) signed legislation creating the Automobile Theft Prevention Trust Fund. The legislation, initiated by the Governor and the General Assembly, is designed to prevent, combat, and reduce automobile theft by developing a set of coordinated activities directed by a single state authority.

The new law establishes the state's Automobile Theft Prevention Authority. Consisting of a board that includes the Attorney General and seven members appointed by the Governor, the Authority is empowered to combat and reduce automobile theft. In this capacity it may employ personnel as required, make grants to provide governmental support to agencies and organizations, invest money held in the fund, develop and sponsor the implementation of statewide plans, audit the plans and programs it funds, and report annually to the Governor and General Assembly.

In addition, this new law creates the Theft Prevention Fund. Constituting a separate account in the state treasury, the Fund will be administered by the newly created Authority. All moneys deposited in the Fund will be used solely to promote the goals of the act. Furthermore, all interest earned from deposit or investment of money accumulated in the Fund will be used for further anti–theft efforts.

The Governor and General Assembly expect the Authority and the Fund to coordinate and foster local auto–theft efforts, thus making them more effective. PA. STAT. ANN. tit. 40, §§ 3601—3609 (1995).

Car dealer disclosures

Lansing, Mich.—A new Michigan law requires new car dealers to disclose any repairs or repaired parts on new cars.

The Michigan legislature now requires automobile dealers in the state to disclose any repairs and repaired parts in their new cars to purchasers. This itemization of repairs relates to any damage sustained by a new vehicle or program vehicle after it has completed the manufacturing process. Therefore, any test car, leased car, or employee courtesy car, which has received any repairs or repaired parts, must have the repairs and repaired parts disclosed to the customer.

Dealers are not required to disclose to the purchaser any glass, tires, wheels, bumpers, audio equipment, in–dash components, or components contained in the living quarters of a motor home if the damaged item has been replaced with original manufacturer's parts and material. Failure to comply with this act will constitute a violation of the Michigan version of the Uniform Commercial Code and other state consumer protection laws. MICH. COMP. LAWS §257.233b (1994).

Lead–free packaging

Richmond, Va.—Lawmakers have passed legislation mandating reduced quantities of metallic components in packaging.

To reduce environmental and public health hazards, manufacturers and distributors in Virginia will soon be prohibited from selling or offering packaging containing heavy metals. The Governor of that state recently signed legislation that outlaws such packages beginning July 1, 1995.

The new law establishes guidelines for promotional packaging that contains inks, dyes, pigments, adhesives, stabilizers, or any other additives composed or partially composed of lead, cadmium, mercury, or hexavalent chromium. It also provides that manufacturers and distributors are prohibited from selling or offering any packaging containing metallic compounds exceeding 600 parts per million (ppm). Moreover, the maximum amount of permissible metallic compounds will be further reduced to 250 ppm on July 1, 1996 and 100 ppm effective July 1, 1997. VA. CODE ANN. § 10.1-425.20—10.1-1425.25 (Michie 1994).

Insurance fraud targeted

Harrisburg, Pa.—Legislators have stepped up their fight against insurance fraud.

The Pennsylvania General Assembly recently enacted the Insurance Fraud Prevention Act. The purpose of this act is to improve insurance law enforcement, administration, and prosecution through the creation of the Insurance Fraud Prevention Authority, the Insurance Fraud Prevention Fund, and the Division of Insurance Fraud within the Office of the Attorney General.

The new legislation first creates the state Insurance Fraud Prevention Authority. The primary duties of the Authority will be to assess the scope of the problem of insurance fraud and coordinate the development and implementation of plans, programs, and strategies to combat the problem. Moreover, the Authority will act as an advisory to the Governor on matters related to insurance fraud. The Authority will be comprised of a board of directors consisting of seven members including the Attorney General, the Commissioner of the Pennsylvania State Police, four representatives of insurers and a representative of the Philadelphia Federal Insurance Fraud Task Force. All board members will serve for terms of four years without compensation. Second, the Act also establishes the Insurance Fraud Prevention Trust Fund. This fund will be a separate account in the state treasury that will be used solely to promote the efforts of the Authority. Any interest accumulated from the Fund is to remain in the Fund for future authorized activities.

The law also establishes the Division of Insurance Fraud to investigate and prosecute insurance fraud. A part of the office of the Attorney General, the newly created division will investigate and adjudicate violations of the law. It will have the power to make arrests, serve subpoenas, and prosecute on its own and in conjunction with other sections and divisions of the Attorney General's Office or upon request of any other prosecutorial authority. PA. STAT. ANN. tit. 40, § 3701-101 (Michie 1995).

Medical cost savings

Springfield, Ill.—A medical savings account will assist the fight against rising health care costs.

To help citizens cope with rising health care costs, the Illinois legislature passed the Medical Care Savings Account Act. Under the new law, employers may offer a medical care savings account program to their employees. Such a program would then exempt the principal, interest, and employee reimbursements on eligible medical expenses from state income taxes.

The Medical Care Savings Account program allows employers and employees to place money in a tax-free account to be used solely for medical expenses of the employee and her dependents. However, the funds from this account may not be used for medical expenses otherwise covered, including but not limited to medical expenses covered by automobile insurance, worker's compensation, a self-insured plan, or other health coverage.

According to the law, an employee becomes eligible for such assistance when she accrues medical expenses exceeding the limits of her insurance. At that time, the employer or account administrator may reimburse the employee for paid expenses. In the event that the cost of necessary care exceeds the sum of the account, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses if she agrees to repay the advance from the future installments to the account or upon termination of employment.

Withdrawals from the account not utilized according to the guidelines of this law constitute income for the purposes of Illinois income tax. The law mandates a penalty of ten percent of the amount withdrawn. Furthermore, any interest earned on the account during the taxable year removed in an unauthorized withdrawal constitutes income. 820 ILCS 152/1—152/99 (1994).

Warning for toys

Washington—President Clinton signed legislation mandating warning signs on toys containing small parts.

President Clinton recently signed legislation creating the Child Safety Protection Act. The new law requires manufacturers and distributors of children's toys to adequately warn children and their parents of dangers associated with these products.

The Child Safety Protection Act mandates that cautionary labels must be placed on toys that include small parts, balloons, small balls, and marbles. In addition, manufacturers must place warnings that are "prominently and conspicuously" displayed on the packaging of the toy and on any descriptive materials accompanying the toy. Furthermore, both manufacturers and distributors are required to place cautionary warnings on items used to display the toys. This legislation attempts to increase consumer awareness of the potential hazards present in these items. 15 U.S.C. § 1278 (1995).

Real estate brokers

Springfield, Ill.—A new law seeks to improve relationships between home buyers and real state brokers and salespeople.

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RECENT CASES

Hospital held strictly liable for defective implant

By Cary R. Latimer

In ***Bell v. Poplar Bluff Physicians Group***, 879 S.W.2d 618 (Mo.Ct.App. 1994), the Missouri Court of Appeals held that a hospital may be liable for damages associated with defective surgical implants under strict products liability. The court also held that while the state's two–year statute of limitations for medical malpractice claims applied to negligence claims, it did not control in claims of strict products liability against hospitals.

Summary judgment

On January 6, 1987, the plaintiff, Jo Ann Bell, received a "temporomandibular interpositional implant" bought from a hospital operated by the defendant. Subsequently, she brought suit in state court against the defendant for the defective surgical implant based on strict products liability and negligence. The trial court granted summary judgment in favor of the defendant on both claims. Bell then appealed the court's ruling.

On appeal, the defendant contended that the lower court had properly granted summary judgment on both of Bell's claims. Turning first to Count I, the strict products liability claim, the defendant contended that such liability did not apply to a hospital as it was not a seller within meaning intended by Section 402A of the *Restatement (Second) of Torts*. Rather, the defendant argued that the hospital's relationship with Bell was based upon rendering professional medical care. Any sale of a product by the hospital, such as a surgical implant, was an inseparable part of providing professional services.

The Missouri Court of Appeals rejected the defendant's assertions. In its analysis, the court first determined that a strict products liability claim could succeed against a hospital, even though the sale of a product was secondary to rendering medical services to its patients. Second, the court emphasized that such a claim did not require the selling of a product. Rather, liability may attach when the product is placed into the stream of commerce or transferred in the course of business. In reaching this decision, the appellate court reasoned that imposing strict tort liability upon a hospital would clearly protect a public interest in human life and health. Finally, the court held that a Missouri statute which defined products liability claims did not except health care providers or hospitals. Accordingly, it chose not

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Fraudulent scheme nets damages and fees

By Elizabeth Abbene

In ***Bowling v. Ansted Chrysler–Plymouth–Dodge, Inc.***, 425 S.E.2d 144 (W. Va. 1992), the Supreme Court of Appeals of West Virginia held that purchasers of used rental cars, having demonstrated that a car dealership engaged in fraudulent business practices, may recover damages from both the corporate business and its president when the president possesses constructive knowledge of the fraud. Additionally, the purchasers are entitled to reasonable attorney's fees upon a showing of clear and convincing evidence of fraud.

David Akers served as the president and majority shareholder of Ansted Chrysler–Plymouth–Dodge, Inc. ("Ansted"), a West Virginia car dealership. As part of this business, Akers purchased automobiles at commercial auctions in North Carolina, Ohio, and Pennsylvania. Ninety percent of the vehicles sold at these auctions were used rental cars; the remaining ten percent were leased vehicles, company cars, or new cars that had been damaged in shipment from the factory. After purchase, Akers shipped the automobiles directly to his dealership. Here, the cars were meticulously cleaned, serviced, and stripped of any evidence indicating that they had once been rental cars. The dealership then advertised the cars as "factory cars" or "fresh from the factory sale" cars, selling them at a significantly greater profit margin than that realized from the sales of identical, but new, vehicles.

Akers and his sales personnel sold a total of seventeen vehicles, identified as "factory cars," to the plaintiffs in this consolidated action. In each case, the prospective buyer had been informed by Akers or his staff that the car to be sold was a "demo" or a "factory demo." Additionally, all of the plaintiffs obtained their financing through the dealership. Many of these retail installment sales contracts either falsely identified the vehicles in question as new or "demos," or falsely listed the seller as Chrysler Corporation rather than the car rental agency that actually had owned the vehicle. In addition, the sales contracts often stated either an inflated value for the car purchased or a decreased value for the car traded in to reduce the amount of tax the dealership owed to the state.

Only the dealership liable

Eddie and Mary Bowling filed the initial suit against Akers. Subsequently, some of the Bowlings' allegations were published in the local newspaper. Ultimately, sixteen additional lawsuits against the dealership were filed. In total, the plaintiffs alleged twenty–one complaints involving common law fraud and violations of both the Magnuson–Moss Warranty Act, and the West Virginia Consumer Credit and Protection Act.

The cases were consolidated for trial and proceeded only on the common law fraud allegations. After all the evidence was presented, the trial court directed a verdict for Akers, the president. Although the jury returned a compensatory damage verdict against the corporation, it denied an award of punitive damages. The trial court also refused to award attorney fees and denied the dealership's motion for a judgment notwithstanding the verdict, or in the alternative, for a remittitur based on the depreciation of the vehicles from the time of purchase to the time of trial.

The plaintiffs appealed the trial court's decision. On appeal, they contended that the court erred both in

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Renter protected only at time of leasing agreement

By Sandra Berzups

In ***Richwind Joint Venture 4 v. Brunson***, 645 A.2d 1147 (Md. 1994), the Court of Appeals of Maryland held that a landlord who knows or has reason to know of a threat from lead–based paint on the rental premises may be liable for negligence arising from either common law or statutory duty when she failed to correct the situation in a timely manner. However, the court also held that under the Maryland Consumer Protection Act ("CPA"), a landlord could be held liable neither for renting a unit with intact lead–based paint nor for failing to respond to the hazardous conditions resulting from lead–based paint in the absence of notice. To find otherwise would subject the landlord to a strict liability standard for defects occurring on the premises. Furthermore, the court declared that the CPA is limited to material misstatements and omissions occurring solely at the inception of the lease and does not apply to those that may occur during the term of the lease. Such grievances may be best addressed by the state's comprehensive landlord and tenant statutes and common law remedies.

Lead paint violations cited

In December 1983, Barbara Richardson took possession of a residential rental property in Baltimore owned by Harry and Rita Baitch. While residing there, she gave birth to two children, Jamika and Jamall. Subsequently, in December 1985, the Baitches sold the rental property to Richwind Joint Venture ("Richwind"), a general partnership. Richwind then hired Scoken Management Corporation ("Scoken") to manage the property. In part, Richwind had selected Scoken because its president, Mark Chodak, had extensive experience in rental property management and had once worked as a housing inspector in Baltimore. At the time of purchase, there were no outstanding building violation notices against the property. However, neither Richwind nor Scoken personally inspected the premises.

Upon assuming ownership of the property, Richwind notified Richardson of the management change. Beginning January 15, 1986, Richardson sent Scoken a series of complaint letters describing the poor conditions of the premises. In one letter, she specifically