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Consumer Failed to Cancel Home Improvement Contract Within a Reasonable Time

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indemnification of innocent automobile accident victims. Further, the court reasoned that in the absence of a specifically applicable statute, equity demands that an injured party be compensated to the extent of the injury. However, the court noted that similar to insurance companies, health care contractors may limit their liability to prevent a victim from receiving duplicate compensation for medical expenses.

The Provisions Were Contrary to UIM Purposes

The court noted that essentially, the SCPC contracts containing the UIM limitations deprived the insured of liability proceeds that would have been available if the negligent motorist maintained insurance. The court reasoned that this effect was contrary to the dual purpose of UIM statutes: (1) to allow injured parties to recover damages expected but for the culpable party's lack of liability insurance; and (2) to provide the insured with an additional, protective layer of coverage that "floats on the top of recovery from other sources." Thus, the court concluded that to fulfill the purpose of the UIM an innocent injured party must first be compensated for general and special damages.

The court rejected SCPC's argument that a policy in favor of low cost health care coverage outweighed the interest in invalidating the limiting provisions. It acknowledged that while low cost health care is clearly desirable, SCPC failed to identify specific cost increases. Furthermore, the court noted that SCPC conceded that treatment of automobile accident patients is a relatively minor portion of the total cost of medical care provided under its health care contracts.

Thus, the court found the provisions in the health contracts of both Hogsett and Brown invalid and reversed the judgments of the lower courts. ♦

— *Jean Prendergast*

Consumer Failed to Cancel Home Improvement Contract Within a Reasonable Time

In *Crystal v. West & Callahan, Inc.*, 614 A.2d 560 (Maryland 1992), the Maryland Court of Appeals held that under the Maryland Door-To-Door Sales Act, a consumer's right to cancel a contract continues for a reasonable amount of time when a seller fails to disclose this privilege. However, the court held that a delay of more than one-and-a-half years exceeded the reasonable time standard and required the consumer to pay both the cost of the contract and its prejudgment interest.

Lower Court Finds Sales Act Inapplicable

Joyce Crystal ("Crystal") owned a waterfront home in Caroline County, Maryland. She orally agreed that a contractor, Charles Callahan ("Callahan"), would extend and enclose her screen porch. Crystal stated that she was given a \$10,000 estimate. However, Callahan said he never gave Crystal an estimate of the total cost of the work.

In January 1989, Callahan submitted a bill for \$13,448, and in April 1989, he gave Crystal a second bill for \$10,321. Crystal paid \$2,000 and refused to pay the balance because the total cost of the construction was more than Callahan's alleged estimate, and she was dissatisfied with the work. Crystal eventually canceled the oral performance contract, one-and-a-half years after Callahan had completed the work.

Callahan's employer, West & Callahan, sued in the Circuit Court for Caroline County for the balance of the money owed under the contract. Crystal counterclaimed, alleging that Callahan had violated the Maryland Door-To-Door Sales Act ("Act"). This Act states that a buyer has an absolute right to cancel a contract for perfor-

mance within three business days. Accordingly, the seller must make disclosures concerning this right. Crystal said that Callahan had never informed her of her right to cancel the contract, thus violating the Act.

The lower court held that the Act did not apply to this type of contract and awarded West & Callahan \$21,169, the balance due under the contract. The court also awarded prejudgment interest to West & Callahan. Crystal appealed the decision to the Maryland Court of Special Appeals.

Reasonable Time Allowed To Cancel Contract

On appeal, Crystal asserted several arguments. First, she contended that the Act applied to her home improvement contract. The appellate court agreed, holding that the home improvement transaction did not fit any of the Act's specific exceptions. Since this contract for consumer goods and services met all of the Act's requirements, the court overturned the lower court and held the state statute applied.

Next, Crystal argued that since Callahan continuously failed to inform her of her right to cancel the contract, her right never expired. Crystal said that her cancellation one-and-a-half years after completion of the work was viable. The appellate court, however, rejected this argument. The court noted that the state's General Assembly had considered and rejected language establishing a continuing right to cancel door-to-door contracts. Furthermore, while other state statutes allowed the right to cancel to run until the seller complied with the law, Maryland's Door-To-Door Sales Act did not utilize this language. Accordingly, the court held that the right to cancel a contract did not continue until proper disclosures were made by the seller.

Instead, the court found that when the seller fails to give proper notice, the right to cancel continues for "a reasonable time." The court would determine a reasonable time period by evaluating all the circumstances surrounding the

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door-to-door contract. After examining the totality of the circumstances surrounding this transaction, the appellate court held that Crystal had not exercised her right to cancel within a reasonable amount of time. Since she acquiesced to the work the entire time it was being performed and waited one-and-a-half years after completion to cancel the contract, Crystal's right of cancellation had expired by the time she exercised it.

Prejudgment Interest Was Appropriate and Calculable

Finally, Crystal maintained that the lower court's award of prejudgment interest was improper. She argued that the court's failure to set a definite rate of interest made the award of prejudgment interest impossible to calculate. The appellate court resolved this problem by holding that the lower court's

failure to define a rate set the interest at the legal rate, which in this case was 6 percent.

Crystal next attacked the award by arguing that for cases involving unliquidated damages, interest runs from the date a court orders judgment, not before judgment. The court responded that the general rule Crystal relied upon stems from tort law. In this contract case, the payment of a set sum was due upon completion of the work. Thus, the court said, in contract cases such as this one, prejudgment interest is usually allowed as a matter of right. Even if not allowed as a matter of right, the award of prejudgment interest was within the trial court's discretion. Furthermore, the fact that Crystal's own expert witness believed West & Callahan charged a fair price for the work was enough to conclude that the trial judge did not abuse his discretion in awarding

prejudgment interest.

Dissent Argues Consumer's Knowledge Is The Key

The dissenting judge agreed that consumers should be given a reasonable time to cancel a contract if the seller fails to comply with the Act. However, the dissenting judge interpreted a reasonable time as either three days after the seller gave notice or three days after the consumer knew, or should have known, of the right to cancel. Since the record did not indicate when Crystal learned of her right to cancel, the dissent advocated reversal and remand of the case to the lower court for a decision on this issue. Additionally, the dissent did not agree that Crystal's presence during the construction and failure to complain at that time was dispositive of the issue of the timeliness of her subsequent cancellation. ♦

— *Ellen M. Sfikas*

Announcements

Child Resistant Caps Prevent Accidental Poisoning

Starting next year, makers of mouthwashes containing more than 5 percent alcohol will start using child-resistant caps on their products to help prevent accidental poisonings of children. The announcement came after the U.S. Consumer Product Safety Commission received a petition to make the caps mandatory. The commission reported that 2,000 children under the age of 5 have accidentally swallowed mouthwashes containing alcohol in the last 5 years, and 3 children have died in the last 10 years. Children often find mouthwash appealing because of its bright color. The alcohol content of mouthwash can range from 5 percent to as

much as 30 percent, which is more than most liqueurs. For example, regular-flavor Listerine is nearly 27 percent alcohol.

Air Miles Suspended in the U.S.

Due to a lack of money, a year-old program allowing consumers to accrue airline miles by using certain credit cards or shopping at designated stores has been suspended in the United States. Air Miles, owned by Air Miles International Group, was a success in Britain and Canada, but not in the United States. In this country, approximately 2.5 million households participated in

the program. Tickets already issued for Air Miles credits will be honored, a company spokesman said. Consumers without tickets, however, may have more difficulty getting the full value of the tickets they earned. Participants will be paid from a trust fund established by Air Miles, but there may not be enough money to refund all the miles consumers have earned, the spokesman said.

Cellular Phone Companies Reverse Charges

According to a new system being tested by major cellular phone companies, callers may now have to foot the

bill when they reach someone on a cellular phone. Traditionally, the cellular phone user paid for both outgoing and incoming calls. Under the new plan, someone calling a cellular phone number would get the bill for the call, even though the person might not know he was calling a cellular phone. While the companies say they are instituting the change in response to complaints from their cellular phone users, consumer groups charge that the new plan is an unfair gimmick, since consumers are accustomed to making local phone calls without charge. The new charges will be 45 cents per minute during peak hours, which is 10 cents more than cellular users traditionally pay. Callers will get no warning that they are calling a cellular phone.

Sunscreens: Do They Protect Our Skin from the Sun?

Contrary to popular belief, a team of California-based epidemiologists are warning that sunscreens may actually increase the chance of skin cancer rather than reduce it. According to the research team, use of sunscreens allows fair-skinned people to stay out in the sun longer than would be possible without the protective lotions. As a result, these people suffer the effect of a certain kind of sun radiation, UV-A, that most sunscreens do not protect against. But the American Academy of Dermatology has denounced the findings, saying that such research undermines its efforts to educate the public about the harmful effects of the sun. But both sides agree that the best protection against skin cancer is to avoid the sun as much as possible.

How to Reduce the Risk of Food Poisoning

While food poisoning is becoming a growing risk in this country, home cooks may have an advantage in preventing foodborne illnesses. To lessen the risks of food poisoning, experts suggest the following tips: 1) Handle animal foods carefully, for they are the most likely cause of food poisoning. Keep raw meats separate from other foods. Wash all raw meat juices off platters, cutting boards, or plates. Meats should be cooked until there is no pink; eggs should be cooked until whites and yolks are firm. Cover pans while cooking meats because the steam helps kill bacteria. 2) Wash fruits and vegetables thoroughly. Local produce is less likely to be contaminated. 3) Kosher poultry is usually safer because of the strict requirements. 4) Those cooks with questions should call the USDA's food-safety hotline at 1-800-535-4555.

Insuring Your Wedding Day Against Disaster

Fireman's Fund Insurance, based in Novato, California, has just introduced "weddinginsurance." Weddinginsurance is an insurance policy designed to cover the financial consequences resulting from any accidental nuptial nightmares, such as replacing lost or stolen wedding gifts, paying the medical expenses of guests who injure themselves at the reception, or covering deposits lost if the reception hall or caterer backs out at the last minute. Not covered, however, are "cold feet" or a change of heart by the bride or groom.

Weddinginsurance coverage starts at \$129 for the basic package, which pays up to \$3,000 toward non-refundable expenses. It increases to \$550 for coverage up to \$20,000. For more information, call (800) 428-1419.

Green Product Investigators

The New Consumer Institute provides research on green marketing issues, new product claims, and socially responsible investing. The group also has a database for finding green products, distributors, resources, or vendors. For more information, call the hotline at (708) 526-0522, 24 hours a day.

University of Wisconsin Recycling Videos

The University of Wisconsin at Stevens Point, which has recycled more than 2,000 tons of waste since its recycling program began in 1989, has produced two videos about the program. *Practicing the 3 Rs* explains how to reduce, reuse, and recycle on a university campus. *The Recycle Rap* is an educational video designed to provide recycling awareness to children. The videos are \$20 each. For information, contact: University of Wisconsin—Stevens Point c/o University Telecommunications, Communication Arts Center, Stevens Point, WI 54481, or call (715) 346-2647.

Energy Success Stories

The Results Center has published 10 profiles of energy efficient, demand-side management programs at U.S. utilities. *The Results Center 1992 Profile Series* gives information on individual programs, costs, and savings. For more information, contact: IRT Environment, P.O. Box 10990, Aspen, CO 81612-9689, or call (303) 927-9428.
