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DELAWARE CLAIMS ASSOCIATION
LEGAL UPDATE – MAY 2011

CIVIL PROCEDURE – TRIAL CONTINUANCE – MANIFEST INJUSTICE

Meck v. Christiana Care Health Services, Inc., C.A. No. N10C-03-080 RRC (Del. Super. Mar. 29, 2011)

The plaintiff in *Meck* filed an unopposed Motion to Continue the Trial Date after the court held its pretrial conference. The plaintiff sought the continuance because her sole medical witness, Dr. Cramer, was unavailable. Dr. Cramer, the plaintiff's treating physician, was unavailable because he was not aware that the case was in trial, the plaintiff's counsel never spoke with him before the date of the pretrial conference,. The court found that the plaintiff could not establish either good cause or a manifest injustice sufficient to warrant the unopposed continuance of the trial because the plaintiff's counsel failed to confirm that Dr. Cramer was amenable to serving as the sole medical witness until after the pretrial conference. Thus, the court denied the motion. In denying the motion, the court stressed that litigants should have a general understanding that trial dates are "firm."

DEFAULT JUDGMENT – EXCUSABLE NEGLECT

Centralia Mining Co. v. Crawford, No. 543, 2010 (Del. Feb. 14, 2011)

In *Centralia Mining*, the plaintiff was injured when she slipped and fell in an isle of a Family Dollar store located in the Crossroads Shopping Plaza. Crossroads Shopping Plaza was originally owned by Centralia Mining, a Pennsylvania corporation. Subsequently, Centralia Mining changed its name to Crossroads Shopping Plaza, Inc. ("Crossroads"). Despite having purchased property and engaged in business in Delaware, Centralia Mining never registered to do business as a foreign corporation in Delaware, as required by 8 *Del. C.* § 371. Similarly, when Centralia Mining changed its name to Crossroads in 1991, it never made an appropriate filing with the Secretary of State disclosing the name change. The plaintiff sued Family Dollar and Centralia Mining. The plaintiff served Centralia Mining under Delaware's long-arm statute, and secured a default judgment against Centralia Mining. Three months later, Crossroads registered with the Delaware Secretary of State as a foreign corporation and moved to vacate the default judgment, arguing that its failure to respond to the complaint was the result of excusable neglect. The trial court denied the motion to vacate. The Supreme Court affirmed the decision, holding that Crossroad's neglect was not excusable. The Court also held that Crossroad's failure

to comply with registration requirements, not any lack of due diligence on the plaintiff's part, was what caused Crossroads not to receive notice that the Complaint had been filed.

INSURANCE COVERAGE – LOT OR BATCH ENDORSEMENT

ConAgra Foods, Inc. v. Lexington Insurance Co., No. 227, 2010 (Del. Apr. 28, 2011)

In *ConAgra Foods*, the insured recalled its peanut butter product and settled a number of claims associated with salmonella alleged to be in the insured's peanut butter. Lexington insured ConAgra, including providing products and completed operations coverage. The policy contained a definition of the term "occurrence" ("General Liability Occurrence") for general liability purposes, and provided a $3 million self-retained limit for this type of "occurrence." The policy also had a Lot or Batch Endorsement that defined the term "occurrence." The Endorsement amended the policy, stating that all Bodily Injury or Property Damage arising out of one lot or batch of products – defined as a single production run at a single facility not to exceed a 7 day period - shall be considered one "occurrence." The self-retained limit for a Lot or Batch "occurrence" ("L&B occurrence") was $5 million per "occurrence." After ConAgra spent $3 million settling claims, it sought coverage and a defense under the policy. Lexington denied coverage on the basis that ConAgra had to satisfy the $5 million retention limit under the Lot or Batch Endorsement. The Court held that there were two reasonable interpretations for the Endorsement. Under one interpretation, the Endorsement could be read to trigger coverage only when ConAgra incurred $5 million in liability for a given seven day period. Under the other interpretation, the Endorsement could be interpreted to convert multiple claims in one lot or batch into a single "occurrence," and trigger Lexington's duty to defend when ConAgra paid $3 million in liability claims. However, rather than interpret the Endorsement against Lexington from the outset, to met the insured's reasonable expectations, the Court remanded the case for the Superior Court to consider extrinsic evidence of what the parties intended. The Court remanded the case because the Endorsement was a negotiated Endorsement. Thus, the rule of *contra preferentem* would apply only if the extrinsic evidence did not reveal the parties intent as to the Endorsement. The Court also held that because the Endorsement was ambiguous and, arguably, applied because ConAgra had exceeded the $3 million retained limit applicable to a General Liability Occurrence, Lexington had a duty to defend as of the date ConAgra exceeded the $3 million limit.

INSURANCE COVERAGE – UNINSURED MOTORIST COVERAGE

State Farm Mutual Automobile Ins. Co. v. Enrique, No. 474, 2010 (Del. Mar. 22, 2011)

The plaintiff in *Enrique* made a claim for uninsured motorist benefits under a policy that provided $100,000 in uninsured motorist coverage. State Farm disputed the plaintiff's claim for benefits. State Farm advanced the sum of $25,000, and the plaintiff made a pre-trial demand, pursuant to 6 *Del. C.* § 2301(d), for an additional $65,000 in benefits. A jury awarded the plaintiff $260,000 for damages arising out of the accident with the uninsured motorist. Relying

on § 2301(d) - which allows the court to award of pre-judgment interest if a pre-trial demand is rejected and a jury subsequently awards a higher damages figure - the plaintiff filed a motion for pre-judgment interest. The trial court awarded prejudgment interest in the amount of $32,296.87, calculated based on the remaining $75,000 of the $100,000 coverage limit. State Farm argued that prejudgment interest is an element of damages and, therefore, the trial judge's total award (damages plus prejudgment interest) erroneously exceeded the $75,000 remaining under the UM coverage limit. The Court held that prejudgment interest is not an element of damages controlled by the uninsured motorist policy's coverage limits. Rather, it is an expense associated with the defense costs and strategy in a case. Thus, so long as the terms of § 2301(d) are met and interest is awarded based on the remaining coverage amount, not the actual jury damage award, a trial court can properly award prejudgment interest in addition to the damages awarded, even if the amount ordered results in an award that exceeds the uninsured motorist coverage policy limits.

WORKERS' COMPENSATION

Taylor v. Diamond State Port Corp., No. 287, 2010 (Del. Feb. 16, 2011)

In *Taylor*, an employee who worked sporadically for Diamond State filed a claim for workers' compensation benefits. The litigation involved a dispute over the computation of the employee's average weekly wage, which is based on the twenty-six week period immediately preceding the date of injury. During the immediately preceding twenty-six week period, the employee earned the sum of $12,610, and she worked sixteen of the twenty-six weeks. The employee argued that her wage should be calculated based on her earnings during the sixteen weeks she actually performed work, and that her average weekly wage was $788.12 ($12,610/16). The employer argued that her wages should be calculated by taking the total wages she earned over the twenty-six week period, and that her average weekly wage was $485 ($12,610/26). The Court held that the statute, 19 *Del. C.* § 2302(b), was ambiguous and, consistent with the legislature's intent to compensate injured employees for their lost earning capacity rather than their lost income, held that the employee's interpretation of the term "worked" in § 2302(b)(1) – referring to the time the employee "actually worked" – was correct.

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