



THE DEFENSE LINE



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Telemedicine Liability: A Blended Standard of Care for the Modern World

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Also Featured

**"Analytical Gaps" Analysis Re-examined
by Maryland Court of Appeals**

**Ten Things Attorneys and Insurance
Professionals Should Know About Using
Drones in Insurance Claims**

**Watch Out for Double Damages!
An Opportunity to Lower Costs
of Arbitration**

SPOTLIGHTS

Joe Cardile and Thomas, Thomas & Hafer, LLP recently secured defense verdicts in the Circuit Court for Baltimore City



Joe Cardile wins a defense verdict for a UM/UIM carrier in the Circuit Court of Baltimore City.

On August 30, 2018, following a one-day jury trial in the Circuit Court for Baltimore City, **Joe Cardile** won a defense verdict in connection with a phantom vehicle case. Mr. Cardile represented an insurance company, the UM/UIM carrier for a vehicle in which both Plaintiffs were occupants. The Plaintiffs alleged that their vehicle was struck from behind by a truck driven by a Co-Defendant. It was further alleged that prior to the collision, a phantom vehicle cut the Plaintiffs off and caused the Plaintiff driver to brake suddenly, resulting in injuries due to the rear-end impact from the Co-Defendant's vehicle. At trial, Mr. Cardile successfully argued that the Plaintiffs had failed to establish that the alleged phantom vehicle was negligent. A Baltimore City Jury returned a verdict that the phantom vehicle was not negligent, and that the vehicle that rear-ended the Plaintiffs was negligent. As a result, the insurance company's UM/UIM policy did not apply.



Joe Cardile and Mike Burgoyne win directed verdict in furnace fire case.

In May 2018, TT&H Attorneys **Joe Cardile** and **Mike Burgoyne** won a directed verdict in a subrogation case brought by Nationwide Mutual Fire Insurance Company. Nationwide sought to recover some \$595,000.00 in payments made to its insured as a result of a residential house fire in Baltimore City. Nationwide brought suit against an HVAC contractor in Baltimore City Circuit Court and requested a jury trial, alleging that the HVAC contractor caused a high temperature limit safety switch to be bypassed, or observed the bypassed switch and failed to correct the condition. Nationwide alleged that the contractor thereby permitted an unsafe operation of the furnace, which subsequently overheated and ignited the wood structure above the furnace, consuming the home in a fire.

Representing the HVAC contractor, Attorneys **Cardile** and **Burgoyne** pursued an alternative theory for the origin and cause of the fire through their own experts. They also challenged the failure of Nationwide's fire investigator to follow NFPA 1033 and NFA 921, and to preserve the scene for other investigators. Motions in limine were denied, but at trial, the Court permitted cross examination on issues of spoliation of evidence. Following a five-day jury trial, and after a motion made by Attorney Cardile, the Court entered judgment for the defendant contractor. The motion was based upon Nationwide's failure to prove when the safety switch had been bypassed, which in turn meant a failure on the part of Nationwide to establish any duty on the part of Attorney Cardile's client.

BBSCJ Obtains an Appellate Victory for Mental Health Care Providers



Siobhan R. Keenan and **David J. McManus** of **Baxter, Baker, Sidle, Conn & Jones, P.A.**, obtained a Court of Appeals decision that clarifies and extends the scope of immunity for mental health professionals involved in involuntary commitment proceedings. *Bell v.*

Chance, No. 36, SEPT. TERM, 2017, 2018 WL 3409919 (Md. July 12, 2018). Brandon Mackey was admitted to Bon Secours hospital after emergency medicine physicians submitted an application for involuntary commitment due to a suspected suicide attempt. He came under the care of psychiatrist, Dr. Leroy C. Bell, Jr., and was scheduled for an administrative hearing. After several days of observation and treatment, and before the administrative hearing, Dr. Bell discharged Mr. Mackey to continue treatment in an outpatient setting. Tragically, Mr. Mackey committed suicide the following day. Mr. Mackey's mother brought suit, claiming he was discharged too soon. Prior to trial, the lower court declined to apply immunity to Dr. Bell's decision to discharge Mr. Mackey, holding that this immunity, set forth in Health-General § 10-618 and Court & Judicial Proceedings § 5-623, only applied to the initial application, and not to the decision to release an individual after he has entered the hospital. After the jury returned a verdict in favor of the plaintiff, the trial court, citing the recent opinion in *Williams v. Peninsula Regional Medical Center*, 213 Md. App. 644 (2013), *aff'd*, 440 Md. 573 (2014), granted judgment notwithstanding the verdict. The Court of Special Appeals overturned that decision, without addressing the immunity issue, and the Court of Appeals granted Defendants' petition for a writ. The Court of Appeals, in an unanimous decision, overturned the Court of Special Appeals and held that immunity for mental health professionals engaged in determining if a patient should be involuntarily committed for psychiatric treatment applies to the entire commitment process, from the initial application up to the commitment hearing before an administrative law judge.

Goodell DeVries Prevails on Behalf of OB/GYN in Malpractice Claim, Excludes Testimony on Economic Daubert Motion

September 2018

GDL attorneys **Kelly Hughes Iverson**, **Michael J. Wasicko**, and **Sean Gugerty** successfully obtained a jury verdict for an OB/GYN physician and his practice group in the U.S. District Court for the District of Maryland. The plaintiff alleged that the child's neonatal brachial plexus palsy had been caused by excessive clinician traction and sought in excess of \$2 million in damages. Echoing a recent trend across the country, the plaintiff had attempted to exclude defense testimony about the maternal forces of labor, including testimony from the defendant's expert in biomedical engineering and certain literature about the effects of maternal forces. Following an evidentiary Daubert hearing, at which the biomedical engineer testified and a library of medical literature about neonatal brachial