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## MID-ATLANTIC PROPERTY & CASUALTY REPORTER

November, 2010

### PROPOSAL TO INCREASE JURY TRIAL THRESHOLD APPROVED BY MARYLAND VOTERS

On November 2nd, Maryland voters were asked to decide whether the threshold for the right to jury trial should be increased from \$ 10,000 to \$ 15,000. Although the threshold had been increased only a few years ago, voters resoundingly approved Question 2 on the Maryland ballot.

The law is not yet effective, and will not become effective until Governor O'Malley "proclaims" the amendment passed. Once the change becomes effective, it will apply only to lawsuits filed on or after the effective date, regardless of when the accident or injury giving rise to the lawsuit occurred.

The district court in Maryland is a court of limited jurisdiction. All cases are tried to the bench. Discovery in civil cases is limited to fifteen interrogatories, which can make it difficult to fully investigate the plaintiff's claims. However, the measure was supported by the local small business community because it would permit quicker, less expensive resolution of claims worth up to \$ 15,000.

Funk & Bolton's Coverage & Defense Practice Group provides advice and counsel to insurers in coverage and extra-contractual matters, product development and claim compliance, and defends claims and litigation matters.

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## MARYLAND RULES COMMITTEE TO CONSIDER ABANDONING CONTRIBUTORY NEGLIGENCE DOCTRINE IN FAVOR OF COMPARATIVE NEGLIGENCE

The Chief Judge of the Maryland Court of Appeals made a surprise announcement on November 21, 2010 that the Rules Committee will study the “feasibility” of moving from the contributory negligence standard to a comparative negligence system.

The General Assembly previously considered, but rejected, the change, despite significant pressure by the plaintiffs’ bar. Under the contributory negligence standard, if a defendant can establish that a plaintiff contributed even slightly to his or her own injury, the plaintiff is barred from recovery as a matter of law. The defense has frequently been the basis of motions for summary judgment, especially in slip and fall and similar cases. Under a comparative negligence approach, however, the plaintiff would be entitled to recover based on the “portion” of the accident for which he or she is not responsible.

Maryland is one of only a few states in the country to maintain the contributory negligence defense, along with other related common law concepts such as joint and several liability.

The Rules Committee is a group of attorneys and judges who study and write the Rules of Procedure. It is extremely unusual for the Committee to be asked to develop what would be an enormous change to existing law. Ordinarily the Committee addresses issues such as timelines for filing pleadings and other non-substantive procedural rules.

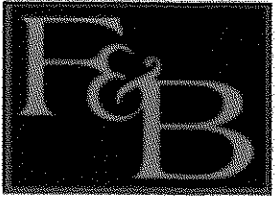
The Rules Committee is currently seeking input from several local bar associations, including Maryland Defense Counsel, Inc., which has historically opposed conversion to a comparative negligence scheme. Jennifer S. Lubinski is the President of that association.

Additional information may be found [here](#).

## THIRD CIRCUIT HOLDS THAT FCC REGULATIONS PREEMPT STATE TORT LIABILITY FOR CELL PHONE RELATED INJURIES

In a decision favorable to the cell phone industry, the Third Circuit has ruled that lawsuits against cellular companies are preempted by regulations propounded by the Federal Communications Commission (the “FCC”).

In *Farina v. Nokia, Inc.*, 51 Comm. Reg. (P&F) 955, decided on October 22, 2010, the Court was asked to decide whether a class of plaintiffs, made up of Pennsylvania cell phone users, could sue cellular companies for exposing them to allegedly unsafe levels of radiofrequency (“RF”) radiation. They claimed that the use of cellular phones without headsets created health risks, that companies were aware of these risks and failed to respond, and that the companies were in violation of state warranty law.



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The Court rejected the claim because it found that the action was preempted by FCC regulations concerning wireless phones. The FCC oversees cellular communications much as it regulates radio transmissions to ensure that the system is efficient and to permit service providers to comply with uniform national standards rather than a patchwork of state regulations. The FCC has regulated RF emissions since 1985. Regulations in place since 1996 limit exposure to RF emissions.

The Supremacy Clause of the United States Constitution invalidates any state law that conflicts with or is contrary to federal law. State law may be preempted by federal law in several ways: express preemption, where Congress specifically states in legislation that the law preempts state law on the issue; field preemption, where federal law so completely occupies the field that state laws dealing with the same field are invalid; and conflict preemption, where compliance with both state and federal law would be impossible or where state law stands as a barrier to compliance with federal law.

The Third Circuit held that the FCC had carefully balanced the risks of RF emissions with the need for rapid, dependable, efficient and accessible wireless service throughout the country. To allow Pennsylvania law to apply would invalidate the FCC's risk/benefit analysis. Accordingly, the Court held, state tort and warranty law concerning RF emissions was preempted by the FCC regulations on RF exposure.