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ON LAW

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ALL OFFICERS CLEARED IN LAWSUITS

Recently T. Joseph Seward, the managing partner of the Firm, tried three cases representing the defendant municipalities and their police officers. In all three cases, the juries ruled in favor of the police officers.

Officers Cleared in False Arrest at Bar

This case arose out of a situation at an Oakland County hotspot. A patron at the bar tore his shirt and claimed he had been robbed in a restroom to provide an excuse to his wife for the $90 he was missing. He identified three minority males as robbing him.

Security at the bar called the police who arrived within minutes. The alleged victim and the three plaintiffs, who were handcuffed for safety, were placed in a police cruiser. After interrogating the victim and the plaintiffs, the police learned the description the victim had given of the situation was inaccurate. The three individuals were released. The victim admitted the robbery never occurred and was later convicted of filing a false police report. The three plaintiffs sued the police officers for unlawful seizure, unlawful search, false arrest and civil rights violations.

The trial, with Joe Seward representing the police officers, lasted three weeks in federal court. The plaintiffs were seeking $4.6 million for compensation and $4.6 million for punitive damages. The jury ruled in favor of the police officers and the plaintiffs received nothing.

Officers Cleared in Alleged Scuffle on Dock

The next case involved a woman who was driving a pontoon boat and was stopped by County Marine Patrol. She was suspected of being intoxicated and local law enforcement was contacted. Her pontoon boat was pulled to shore and the woman claimed the police officers pulled her arm behind her back when she was exiting the boat causing a broken rib. She filed a suit against the community and police officer.

When questioning the plaintiff, it became clear that her story was inaccurate. Firstly, the police officers never entered the boat, which she claimed they did. Secondly, the pulling of her arm could not have happened the way she described it because the dock was not large enough. The jury returned a verdict in favor of the officer.

Officers Cleared in Arrest on New Year's Eve

The last case involved a 65-year-old man who was stopped on a local freeway on New Year's Eve. When requested to take a sobriety test, the man threw the sobriety test and hit the officer. The officer performed a graphic physical control technique, which involved knee strikes to the plaintiff's thigh and stuns to shoulder. This was caught on video. In the plaintiff's vehicle, the police officer found an empty beer can, an empty wine cooler, two empty Jack Daniels mixed drink bottles and a bottle of vodka.

Joe Seward, representing the police officer, showed the graphic videotape to the jurors two dozen times. The police officer described, scene-by-scene, exactly why it was necessary to use the physical control technique on the plaintiff. The jurors, who were leaning towards the plaintiff after watching the videotape the first time, returned a verdict in favor of the officer. They explained that the scene-by-scene description of the videotape helped them understand the necessity of the officer to use the physical control technique.

T. Joseph Seward

THE L-1 VISA:
A SOLUTION FOR U.S. SUBSIDIARIES & AFFILIATES

The United States L-1 visa is a non-immigrant visa which allows companies operating both in the U.S. and abroad to transfer certain classes of employees from its foreign operations to U.S. operations for up to seven years. The employee must have worked for a subsidiary, parent, affiliate or branch office of your U.S. company outside of the U.S. for at least one year out of the last three years.

Companies operating in the U.S. can apply to the relevant U.S. Citizenship & Immigration Services

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THE L-1 VISA:
A SOLUTION FOR U.S. SUBSIDIARIES & AFFILIATES (CONT.)

(USCIS) service center for an L-1 visa to transfer someone to the U.S. from their overseas operations. Employees in this category will, initially, be granted an L-1 visa for up to three years.

Eligibility

There are two types of employees who may be sponsored for the U.S. L-1 visas:

1) Managers/Executives

The legal definition of management and executive roles for these purposes is quite strict, and a detailed description of the duties attached to the position will be required. In particular, the executive or manager should have supervisory responsibility for professional staff and/or for a key function, department or subdivision of the employer. Such personnel are issued an L-1A visa, initially for a three year period extendible in two year increments to a maximum of seven years.

2) Specialized Knowledge Staff

This category covers those with knowledge of the company's products/services, research, systems, proprietary techniques, management, or procedures. Staff in this category are issued an L-1B visa, initially for three years extendible to a maximum of five years.

On completing the maximum allowable period in L-1 status, the employee must be employed outside the United States for a minimum of one year before a new application is made for L or H status.

Qualifying Organization

There is no restriction on the types of business that can sponsor an L1 visa – corporations (S, C, LLC etc.), partnerships, government-owned entities and non-profit organizations are all eligible. The sponsoring employer need not be U.S. owned or incorporated. There are four business entities in the U.S. that can offer employment to the alien - a parent company, a branch, a subsidiary, or an affiliate. Only if these entities are able to offer full proof that they meet the definition of a "qualifying organization" will the alien be granted temporary, nonimmigrant work status in the U.S. by the USCIS. There are four tests to determine if the U.S. and foreign entities are of the same qualifying organization:

1) That business is executed in the U.S. during the entire stay of the L-1 Visa recipient;
2) That business is transacted in another country while the L-1 Visa recipient is working in the U.S.;
3) That there is more than just an agent's office in either the U.S. or abroad. It is really doing business;
4) That there is evidence of a systematic and continuous flow of goods or services within the context of a structured business with a business plan.

However, it is not necessary that international trade be taking place. Therefore, it is acceptable if the company produces goods or services in the U.S. that will be used entirely within the U.S. In order to sponsor an application for an L-1 visa:

1) A foreign parent must own at least 50% of a US subsidiary, and have veto powers over the subsidiary's actions;
2) A U.S. parent must own must own at least 50% of the foreign subsidiary, and have veto powers over the subsidiary's actions;
3) Affiliate U.S. and foreign companies must each be at least 50% owned by the same ultimate parent;
4) A U.S. organization with a branch office abroad qualifies, as does a foreign organization with a U.S. branch (though this must be more than simply an agent or representative);
5) A U.S. organization which employs e.g. sales personnel overseas can sponsor such employees for L-1's even if there is no non-U.S. office.

Ownership requirements are not as strict in the case of very large corporations, where a substantial minority shareholding will be a qualifying relationship.

Employee Eligibility for the L-1 Visa

All L-1 employees must have been employed by your company outside of the U.S. for at least one of the three years preceding the transfer unless the beneficiary of a blanket. It does not matter if the worker was directly employed by the sponsor, or paid through an agency or personal service company, or even on a freelance basis, provided the sponsor had management and control over the employee during the qualifying year.

The employee must have been employed during the qualifying year as an executive, manager, or specialized knowledge worker, though it permissible for a specialized knowledge worker to come to the U.S. as a Manager or Executive, and for a manager or executive to come as a specialized knowledge worker, provided the US operation has been doing business for at least one year.

As noted previously, the "standard of proof" for managers and executives is quite strict – they must generally supervise other professional or managerial staff and/or direct and control the day-to-day operations of a significant function, unit or subdivision of the employer. Specialized knowledge workers, however, qualify relatively easily – any employee with familiarity with the employer's specific products, procedures or methods may qualify.

CONFLICT PANEL RESOLVES PENALTY INTEREST PROVISION OF THE UNIFORM TRADE PRACTICES ACT


Christopher K. Cooke

On September 6, 2007, a special panel of the Michigan Court of Appeals resolved the conflict between the *Yaldo* court and the *Arco* court on the issue of whether or not an insured is entitled to collect 12% penalty interest on a claim that is not paid by the insurance company within 60 days after the insurer receives satisfactory proof of loss of the claim.

We recently reported on the decision of the Court of Appeals in the case of *Griswold v. Lexington Properties.* The Court, when faced with three consolidated cases involving first party property claims, was once again called upon to analyze the apparent conflict in the Uniform Trade Practices Act (UTPA) as it pertains to the penalty interest provisions of the statute for first party and third party claims.

In the *Griswold v. Lexington Properties* case, the Court reasoned that the statute should be interpreted according to the plain meaning of the language. Therefore, a first party claim must be paid within 60 days from the receipt of a satisfactory proof of loss or penalty interest will accrue no matter what defense the company has to the claim. The Court in *Arco Industries v. American Motorists Ins. 233 Mich App 143 (1998)* held that the intent of the drafters of the statute was to penalize dilatory payments by insurance companies unless they had a reasonable defense to the claim.

The *Griswold* panel felt constrained to follow the *Arco* decision and ruled that a "reasonably in dispute" defense was available in a first party action, but declared a conflict between the opinions and asked for a conflict panel of the Court of Appeals to be convened. Pursuant to MCR 7.215(J) a seven member panel form the Court of Appeals judiciary was convened and on September 6th announced their decision.

The panel held that the plain language of the statute controls the intent of the drafters and that the "reasonably in dispute" language does not relieve an insurance company from penalty interest if payment is not made within 60 days of receipt of proof of loss. This, of course, ups the ante for companies who are investigating arsonous or fraudulent claims. These investigations can be time consuming and complex. The defenses may be available but the company must also analyze the evidentiary support and potential success of the defenses in the forum in question. All the while, the interest clock is ticking on ultimately unsuccessful defenses.

Christopher K. Cooke

ATTORNEY NAMED EQUITY PARTNER OF FIRM

Christopher K. Cooke, an attorney in our Traverse City office, has accepted an offer to become the next equity partner of the Firm. He has earned this by working very hard and getting excellent results and because of his abilities to attract new work into the Firm while managing the Traverse City office and assisting significantly with the Firm's Grand Rapids office.

Other equity partners of the Firm include founder Owen Cummings, Gerald Davis, Ronald Acho, Robert Blamer, Timothy Young and T. Joseph Seward.

Mr. Cooke concentrates his practice on Arson and Fraud Investigation and Defense, Subrogation Cases, Wrongful Death and Major Property Damage, Personal Injury Defense, Medical and Legal Malpractice, Construction Defect, Municipal Defense, No Fault and PIP.

He received a Juris Doctor degree, *cum laude*, from Thomas M. Cooley Law School and a Bachelor of Science degree, *cum laude*, from Albion College in Computational Mathematics and Economics.

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Our Vision

To meld our legal expertise, professional support staff, technical resources and variety of locations to deliver first rate legal services at a fair value to a full range of business, municipal, insurance and individual clients.

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