

**MARYLAND STATE BAR ASSOCIATION
BOARD OF GOVERNORS
SPECIAL LEGISLATIVE MEETING
MINUTES
TUESDAY, FEBRUARY 6, 2007
MARYLAND BAR CENTER
520 W. Fayette Street
Baltimore, Maryland 21201
BAR HEADQUARTERS CONFERENCE ROOM**

The President, Edward Gilliss, called the meeting to order at 5:15 p.m.

As this was a special meeting called specifically to address certain legislative matters, all other Board of Governors' business was deferred until the next Board of Governors Meeting on February 20, 2007. There were 25 members in attendance, along with the Executive Director, Parliamentarian, Director of Legislative Relations and 5 guests.

I. HOUSE BILL 110 – COMPARATIVE NEGLIGENCE.

President Gilliss explained that the MSBA's Committee of Laws had met and made a recommendation on House Bill 110. We would first hear from the Committee of Laws as to their recommendation. We would then hear from the Maryland Defense Counsel and the Maryland Trial Lawyers Association. Thereafter, the Board would go into executive session to decide what, if any, position the Board wanted to take on the Bill at this time. It was noted that a House Committee would be conducting hearings on the Bill the next day.

A. COMMITTEE OF LAWS RECOMMENDATIONS

Guests Michael Baxter and Al Frederick spoke on behalf of the MSBA's Committee of Laws. They explained that after great study of the Bill, and after receiving approximately 10 e-mails saying that the MSBA should not take a position, they in fact did decide that a position should be taken. They looked back at the past positions taken by the MSBA and ultimately voted and recommend to the Board that the Board support House Bill 110 so long as it also has amendments pertaining to joint and several liability. The amendments are the same amendments as described in Senate Bill 618 from 1998. The main provisions of that Bill (618) are the following:

1. There is only several liability if the plaintiff is found to be contributorily negligent, otherwise standard principles of joint and several liability still apply;
2. If one of multiple defendants does not have money to pay a judgment, then the unpaid share of the impecunious defendant is split between the other defendants and the plaintiff (*i.e.*, everyone, including the plaintiff, shares the burden if one defendant cannot pay the judgment);

3. If one defendant settles before trial, the verdict is reduced by the percent of negligence which the jury ascribes to the settling defendant; and
4. For a defendant who is in the case based on principles of vicarious liability, standard principles of joint and several liability still apply.

B. Guest Gardner Duvall on behalf of the Maryland Defense Counsel next addressed the Board of Governors. He advised the Board that the MDC was opposed to House Bill 110 because it was poorly crafted and because if there is a change toward comparative fault, that change should also apply to strict liability actions. Mr. Duvall pointed out that there is a section in the Third Restatement of Torts which allows for comparative fault in products liability cases. Thus, it is the position of the MDC that they would like the MSBA to oppose House Bill 110.

C. Guests Bob Zarbin and Jim McAllister from the Maryland Trial Lawyers next addressed the Board of Governors. They stated that Maryland, D.C., Virginia, North Carolina and Alabama are the only places in the United States which still maintain contributory negligence. They asserted that contributory negligence is unfair. They further maintained that joint and several liability is unrelated to the issue of comparative negligence versus contributory negligence. They argued that a plaintiff's injury is indivisible and a defendant's shares for those injuries are also indivisible. Otherwise, you are not making the plaintiff whole, which is contrary to the public policy of Maryland. Finally, they pointed out that under common law of joint and several liability, defendants can seek contribution or indemnity from each other. Thus, it is the position of the MTLA that they would like the MSBA to support House Bill 110 as it is written, without any amendments.

After the guests were excused, the Board convened in Executive Session to discuss this matter. After this Session, the Board invited Michael Baxter back into the meeting.

II. OTHER LEGISLATIVE MATTERS

A. Mr. Baxter reported that the Committee of Laws had met and had made the following recommendations:

1. Oppose House Bill 207 which allows cameras in the courtroom for criminal sentencing.
2. Support House Bill 314 which provides for a civil action for certain employment discrimination matters.
3. Oppose Senate Bill 213 involving mandatory minimum sentences in first degree murder cases.
4. Oppose Senate Bill 223 which requires a court to hold a hearing on a motion to modify child support within 150 days after the date of the motion, and requires a decision within 30 days after the hearing.
5. Support Senate Bill 299 which allows expungement of certain juvenile civil offenses which presently cannot be expunged.

6. Oppose Senate Bill 308 which involves mandatory minimum sentences for child pornography cases.

B. Motion was made to accept the Committee of Laws' recommendations as described in Section A. above. Motion passed.

III. ADJOURNMENT

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Thomas C. Cardaro,
Assistant Secretary