On Law

A Monthly Publication from CMDA

October 2010

Cummings-McClorey Davis & Acho, P.L.C.
Attorneys & Counselors at Law

Summary of the New Financial Reform Law

The Dodd-Frank Wall Street Reform and Consumer Protection Act

Gerald C. Davis

As the result of problems allegedly attributed to the 2008 financial crisis, and the perceived contribution to that crisis by the financial industry, Congress has passed, and the President has signed, legislation in major overhaul of the financial industry. Much of the "workout" of this legislation will be developed only after regulations are implemented to interpret and enforce the new law's provisions.

Although geared largely toward the financial industry, the new law has wide application and importance to the average citizen. For example, the increased protection for bank deposits and savings accounts has become permanent. During the financial crisis, the Federal Deposit Insurance Corporation (FDIC) increased the federal insurance on a temporary basis, from $100,000.00 to $250,000.00, for all deposit accounts in FDIC-insured facilities. The new $250,000.00 limit, scheduled to expire at the end of 2010, and then extended to 2013, now becomes permanent. As a result, citizens with deposits do not have to plan on re-investing or re-depositing bank accounts to maintain the maximum protection in anticipation of the increased limit expiring.

Further, there is a requirement for underwriters of derivative instruments, that is investments that are based on the value of other investments, that the derivatives must now be traded on a public exchange and the trades must be cleared through a registered facility. Non-standard derivatives can still be traded privately, but must be reported to a central authority to increase the regulator's ability to review the level of activity.

Credit rating firms will be subject to oversight by the Securities and Exchange Commission, and investors will now have right to sue an agency issuing ratings known to be inaccurate, or which the rating agency should have known were inaccurate. Hedge funds and private equity firms will have to be registered with the Securities and Exchange Commission. Further, the law provided that certain "accredited investors", including those with a $1 Million net worth, did not require as much disclosure about investments, based on the logic that the wealthy have more access to information and professional services, and have experience to better protect their own interests. Determining the $1 Million net worth threshold will no longer include an investor's principal residence. Furthermore, in anticipation that many investors lose money, the threshold will have to be reviewed every four years to see whether a credit investor still maintains the level of assets required.

There is also a curb on lending practices. The Act requires originators of residential mortgages to disclose any conflict of interest, and to disclose comparable costs and benefits of mortgages offered to a prospective borrower. Lenders must verify, whether based on income, credit history or other personal data, that the borrower has the reasonable ability to re-pay the loan, along with all other associated expenses, such as insurance, taxes and maintenance. This will mean that self-employed people, or anyone whose income is undocumented or irregular, will require better documentation to qualify for a loan. Lenders will no longer be able to compensate loan officers with incentives to induce them to higher profit financial instruments or mortgages, simply to increase their own commission. Prepayment penalties will be more limited, and a holder of an adjustable rate mortgage must receive notice of a proposed interest rate change six months in advance to allow that borrower the opportunity to re-finance elsewhere.

Homeowners who are unable to make their mortgage payments because they have lost their jobs, or because of a personal emergency for medical reasons, can qualify for up to $50,000.00 in assistance, obtained through the U.S. Housing and Urban Development (HUD) existing Emergency Mortgage Assistance Fund.

Banks will also be required to maintain healthier reserves, retaining at least 5% of their loans as capital.

The new Act brings sweeping changes that require compliance by financial institutions and will provide benefit to the average investor or depositor.

Gerald C. Davis

Gerald C. Davis is a partner in our Livonia office where he concentrates his practice on Transactional Law, Business Law, Commercial Law, Securities Law, Litigation and Administrative law. He can be reached by calling (734) 261-2400 or via e-mail at gdavis@cmda-law.com.

in this issue

Traverse City Office Obtains Directed Verdict in Traffic Accident Death

Christopher K. Cooke

After battling for over five years in federal and state courts, Chris Cooke of our Traverse City office, assisted by Andrew Brege of our Grand Rapids office, finally obtained summary disposition in favor of a township and its responding police and fire fighters in a fatal traffic accident case that created a furor in the local community.

On July 18th, 2003, a young serviceman on leave from his commission was driving his 2002 Ford Ranger eastbound on I-94 in the early morning hours. He left the travel portion of the roadway, crossed the median and vaulted headlong into a westbound semi-tractor trailer. Evidence showed that the force of the accident was equivalent to the truck striking a brick wall at 120 mph. The decedent's truck was blown into pieces and the crushed cab portion of the truck, entrapping the decedent, was thrown over 200 feet down the highway. Tragically, blood tests revealed that the decedent had high levels of cocaine and alcohol in his body at the time of the impact.

When the first township officer arrived on the scene, he saw a passenger car with two occupants, a semi trailer with obvious front end damage and the remains of the 2002 Ford Ranger scattered in different areas of the highway. There were injured passengers in and around the other vehicles. The officer first approached the remains of the decedent's truck and could only see one arm hanging out of the mangled vehicle. He could not obtain a pulse and could not access the remains of the vehicle. He also talked to two pedestrians who told him they likewise could not obtain a pulse. The officer believed, based on his experience and training, that noone could have survived this accident. The responding firefighter made similar observations and tried to crawl under the truck to no avail.

Two and a half hours later, after the Michigan State Police had diagramed the scene and given authorization to remove the remains of the vehicle, a tow truck was used to right the decedent's truck. While workers were doing so, the medical examiner at the scene noticed that the occupant was still breathing. Jaws of Life were used to extract him from the vehicle, but he died while being air lifted to the hospital.

In mid-2005, the decedent's estate filed a lawsuit against the township, the police officer and the firefighter, among others. The paramedics, who were also defendants in the case, pointed fingers at our firm's clients and a witness came forward claiming that he informed the officers that he saw the occupant still breathing prior to our arrival.

The estate alleged that the township and its employees had violated the decedent's Fourth and Fourteenth Amendment rights and acted in a grossly negligent fashion in failing to properly assess the scene, analyze information from bystanders and by failing to rescue the decedent.

The plaintiff uncovered no policy or procedure that was unconstitutional, and the township provided proper training to the responders. The plaintiff could not prove its case against the township on these claims, and the township was accordingly dismissed.

As to the claims against the individual defendants, there is no constitutional right nor is there a constitutional duty for officers to rescue a person, contrary to popular belief. Two exceptions to this rule exist: if the person is in custody, the state must take reasonable care to protect the person and to provide medical care for an obviously serious medical need. If a public officer or official performs an act that increases the risk that a person could be exposed to "private acts of violence", he or she could be liable for injuries caused by a "state created danger."

Quite simply, the plaintiff did not present evidence that carried the day under either exception. The decedent was not in custody. The court held that the decedent's actions, not those of the police, caused his entrapment. Also, considering the high speed collision, the degree of the damage and the lack of a pulse in the only exposed limb, it was reasonable for the officer and the fire fighter to conclude that the victim had not survived the accident. Thus, the defendants had no knowledge that their actions increased any special risk to the decedent. The federal court dismissed the constitutional claims against the individual defendants.

The federal judge declined to rule on the gross negligence claims under Michigan law, however, so the estate brought a second suit in circuit court. The plaintiff made many of the same arguments regarding the remaining state claim, but the court held that the officers' actions were reasonable under the circumstances . Their actions did not amount to conduct "so reckless as to demonstrate a substantial lack of concern for whether an injury results," and therefore were not grossly negligent.

The court's ruling made consideration of other defense arguments unnecessary and the litigation has been successfully and favorably concluded.

Christopher K. Cooke

Christopher K. Cooke is a partner in our Traverse City office where he concentrates his practice on Municipal Law, Subrogation, Insurance Coverage, Analysis and Litigation and Personal Injury Defense Litigation. He can be reached by calling (231) 922-1888 or via e-mail at ccooke@cmda-law.com.

CMDA Happenings

Attorney Gives Presentation on Law Enforcement Litigation

On October 15, 2010, **Anne McClorey McLaughlin** gave a presentation in Mt. Pleasant, MI to around 50 members of the 2010 Joint Law Enforcement Advisory Committee of the Michigan Municipal Risk Management Authority entitled, "The Good, the Bad and the Ugly."

Ms. McLaughlin spoke on the handling of litigation involving law enforcement issues with the focus being on the challenges posed by the underlying events themselves and obstacles presented during litigation, and how our Firm deals with those challenges in bringing the matter to a successful conclusion.

California Office Participates in Charity Golf Outing

On October 18th our Riverside, CA office was pleased to participate in a charity golf outing for our valued client, Southern California Schools Risk Management (SCSRM). The theme of the golf outing was education, and CMDA participation included sponsoring a hole. At the hole, golfers received a CMDA lunch sack and were invited to "pack their lunch" with an array of goodies we set out for them. Each foursome were given a "test" on the subject of humanities with a prize going to the golfer with the most correct answers.

It was a fantastic event and everyone from our CA office- **Sarah Overton**, **Marcia LaCour**, **Marsha Bradley**, **Jean Amodt** and **Luis Arellano**- enjoyed spending time with our clients. **Ron Acho** from our Livonia office also attended the outing and welcomed the opportunity to get to know everyone at SCSRM better.

Attorney Profile:
T. Joseph Seward

T. Joseph Seward

In this month's newsletter Attorney T. Joseph Seward is profiled. Mr. Seward joined the Firm in 1985, became a Partner in 1991 and has been Managing Partner since 2006.

Chris Lareau, Mr. Seward's legal assistant, explains "I have worked directly with Joe Seward for the past eight years. Joe is an aggressive attorney who works tirelessly for his clients, fighting to get the best possible results on their behalf. He has many loyal clients who would not want anyone else to represent them."

Mr. Seward concentrates his practice on civil litigation defense, municipal law and insurance law.

Our Firm, and specifically Mr. Seward, have developed expertise in areas of interest to police officers. Mr. Seward incorporates the use of forensics, ballistics and incident scene investigative techniques as well as video, audio and computer-enhanced evidence presentations that are courtroom qualified. He blends dedication to his clients and superior knowledge of the law with hard work and creativity to provide top-notch representation and undeniable results.

In the past 27 years Mr. Seward has tried approximately 100 cases with an exceptional winning percentage. Since 2000, he has tried to completion jury trials against 33 plaintiffs. Of those plaintiffs, ultimately only four obtained a judgment giving them any money (one of those verdicts is currently up on appeal). 88% of the time the plaintiffs walked away from trial either getting no money or owing money to Mr. Seward's clients, a very impressive winning percentage.

An example of Mr. Seward using video technology to assist in trial occurred in a case where both the trial court and the Sixth Circuit Court of Appeals suggested that a municipality and its officers could not win a case involving three plaintiffs who claimed they were falsely arrested due to their race. Undeterred, Mr. Seward proceeded to trial. During the trial, one of the plaintiffs began to sob on the stand, initially evoking sympathy from the jury. Prepared for the situation and armed with courtroom technology, Mr. Seward presented the jury with a video and audio clip of the plaintiff giving the same testimony at his deposition without the theatrics. Post-trial comments by jurors proved just how effective the strategy was, because jurors explained that the stark contrast between the plaintiff's trial and deposition testimony persuaded them that he was being untruthful. Mr. Seward secured a "no cause" verdict in that case.

Mr. Seward embraced courtroom technology to overcome potentially damaging evidence in another case alleging excessive force. A 65-year-old plaintiff offered an in-car video showing CMDA's clients repeatedly striking him during an arrest. Rather than shy away from the video, Mr. Seward used it to his advantage, breaking the video down piece-by-piece to show jurors the multiple signs of resistance exhibited by the plaintiff throughout the arrest. Because Mr. Seward effectively conveyed the perception of the police officers at the time of the incident, the jury returned a verdict in the officers' favor.

In addition to his municipal defense practice, Mr. Seward has extensive experience representing sports entertainment venues on premises liability claims. His experience led him to be selected as a Case Evaluator for both Wayne and Oakland counties. He has also served as a Discovery Master in Circuit Court.

Mr. Seward obtained a Bachelor of Arts degree from Wayne State University and a Juris Doctor Degree from the Detroit College of Law.

He lives in White Lake Township with his wife of 30 years, Luanne. Together they have two adult sons and a son who is a freshman at Northern Michigan University. In his free time, Mr. Seward enjoys playing paintball with his sons. He can often be found at Hell Survivors Paintball Playfield in Pinckney, MI, wearing #25 for his team the Mercenaries.

Cummings, McClorey, Davis & Acho
Office Locations

MICHIGAN

Livonia
33900 Schoolcraft Road
Livonia, MI 48150
Telephone: 734.261.2400
Facsimile: 734.261.4510

Grand Rapids
2851 Charlevoix Drive, S.E.
Suite 327
Grand Rapids, MI 49546
Telephone: 616.975.7470
Facsimile: 616.975.7471

Sterling Heights
43409 Schoenherr Road
Sterling Heights, MI 48313
Telephone: 586.731.5000
Facsimile: 586.803.1034

Traverse City
125 Park Street
Suite 415
Traverse City, MI 49684
Telephone: 231.922.1888
Facsimile: 231.922.9888

CALIFORNIA

Riverside
3801 University Avenue
Suite 560
Riverside, CA 92501
Telephone: 951.276.4420
Facsimile: 951.276.4405

MISSOURI

Kansas City
The Palace Building
1150 Grand Blvd. Suite 250
Kansas City, MO 64106
Telephone: 816.842.1880
Facsimile: 816.842.3070

GHANA

Accra, Ghana
P.O. Box 12556
Accra, Ghana
Telephone: +223-21-224260
Facsimile: +233-21-232262

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.

On Law is a monthly publication from Cummings, McClorey, Davis & Acho, P.L.C.

Comments and questions regarding specific articles should be addressed to the attention of the contributing writer. Remarks concerning miscellaneous features should be addressed to the attention of Jennifer Sherman.

CMDA- On Law
33900 Schoolcraft Road
Livonia, Michigan 48150
(734) 261-2400
www.cmda-law.com
E-Mail: jsherman@cmda-law.com

Editor-in-Chief:
Anne McClorey McLaughlin

Graphic Designer:
Jennifer L. Sherman

Would you like to reference previous issues of On Law?
View them at www.cmda-law.com.

33900 Schoolcraft Road
Livonia, Michigan 48150