On Law

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ATTORNEYS AND COUNSELORS AT LAW

Attorney Obtains Dismissal for Community College Client

Ethan Vinson

Ethan Vinson, Partner in our Livonia office, recently obtained dismissal in favor of his community college client. In this case, the plaintiff, a nursing student at the community college, filed state and federal disability discrimination claims against the community college.

The plaintiff left the nursing program because she would frequently become ill from exposure to latex products. She alleged the community college violated the Americans with Disability Act (ADA) by failing to accommodate her allergy.

Mr. Vinson argued that the plaintiff's ADA claim should be dismissed because her latex allergy is not a disability within the meaning of the ADA. He explained, "Under the ADA, 'disability' is defined as a 'physical or mental impairment that substantially limits one or more major life activities of an individual.'" Accordingly, in order to conclude that a person is disabled, a court must find:

1. there is physical impairment,
2. the physical impairment affects a major life activity identified by the plaintiff, and
3. the physical impairment substantially limits that life activity.

Mr. Vinson recognized that the plaintiff's allergy is a physical impairment and that "learning" is the pertinent major life activity, consequently the plaintiff satisfied two of the three components required to establish her disability. However, the third component of whether the plaintiff's latex allergy substantially limits her ability to learn, was not established.

In their ruling, the Court was not persuaded by the plaintiff's arguments that her allergy substantially limits her ability to learn. To constitute a disability under the ADA, the plaintiff's physical impairment must limit learning in general. "Properly understood then, learning is a major life function, but learning to be a nurse is not," the Court ruled.

The Court further explained, "While it may be true that the plaintiff's latex allergy hindered her ability to study nursing, there is no evidence- by way of allegation or otherwise- that the plaintiff's allergy prevented her from successfully completing a course of study in mathematics, teaching, social work, or any other field where direct exposure to latex would be a non-issue." In fact, the plaintiff earned two other degrees.

The Court agreed with Mr. Vinson's arguments, granted the motion for summary disposition and dismissed the plaintiff's lawsuit.

Ethan Vinson, a partner in our Livonia office, concentrates his practice on municipal law, labor and employment law, insurance law, and law enforcement defense. He can be reached at (734) 261-2400 or evinson@cmda-law.com.

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Attorneys Selected as Super Lawyers and Rising Stars

We are pleased to announce that several of our attorneys have been named by *Michigan Super Lawyers* as Super Lawyers and Rising Stars.

Jeffrey Clark in our Livonia office was selected to the 2013 Michigan Super Lawyers list. Each year, no more than 5% of the lawyers in Michigan are selected to receive this honor.

Additionally, **Karen Daley** and **Lindsey Kaczmarek** in our Livonia office; **Haider Kazim** and **Gregory Grant** in our Traverse City office; and **Andrew Brege** in our Grand Rapids office were all selected to the 2013 Michigan Rising Stars list. Each year, no more than 2.5% of the lawyers in Michigan are selected to receive this honor.

The attorneys selected for this esteemed list are made by the research team at Super Lawyers, which is a service of the Thomson Reuters Legal Division. Each year, the research team at Super Lawyers undertakes a rigorous multi-phase selection process that includes a statewide survey of lawyers, independent evaluation of candidates by the attorney-led research staff, a peer review of candidates by practice area, and a good-standing and disciplinary check.

T. Joseph Seward, Managing Partner of the Firm, explains, "Those attorneys who received Super Lawyer and Rising Star recognition is validation for the hard work they put into the Firm and their clients. It is also a positive reflection of the Firm's future direction and leadership."

2013 Michigan Super Lawyer

Jeffrey R. Clark

2013 Michigan Rising Stars

Karen M. Daley

Haider Kazim

Andrew J. Brege

Lindsey A. Kaczmarek and Gregory R. Grant

Attorney Wins Building Defect Case for Health Department

Gregory Grant, Associate Attorney in our Traverse City office, recently successfully defended a Northern Michigan Health Department in a building defect claim.

In this case, the female plaintiff returned to her place of employment at a space leased by her employer in a building owned and operated by the Health Department. When the plaintiff arrived at her office, the building was closed as it was after 5 p.m. She used her key to get in and worked for about an hour. Then, as she exited the building to go home, she slipped on ice that had pooled on the sidewalk underneath the overhang. The ice resulted due to water leaking from the gutter caused by a breakdown of a gutter sealant. The plaintiff sustained serious injuries.

The plaintiff subsequently sued the Health Department and asserted a claim under the public building exception to gov-

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Attorney Wins Building Defect Case (cont.)

ernmental immunity arguing that the leaking gutter constituted a building defect. Mr. Grant moved for dismissal of the case arguing that the Health Department was entitled to governmental immunity and that the plaintiff could not satisfy the required elements of the public building exception.

To prove the applicability of the public building exception, the plaintiff was required to demonstrate that the public building at issue was "open for use by members of the public." Mr. Grant argued that, in determining whether a public building is open for use by the public, it was necessary to consider the nature of the building, the building's use, and any limiting criteria on the public's right to access. Mr. Grant was able to prove through discovery that the building was not open to the public at the time of the plaintiff's fall, that the main entrance was locked before she arrived, and that the plaintiff was only able to enter the building with her key.

As a consequence, Mr. Grant argued that the building was not "open for use by members of the public" at the time of the plaintiff's fall. The court agreed and granted the Health Department's motion for summary disposition and dismissed the case with prejudice.

Gregory Grant, an attorney in our Traverse City office, concentrates his practice on municipal law, labor and employment law, general liability defense and prevention, and premises liability. He can be reached at (231) 922-1888 or ggrant@cmda-law.com.

LEGAL TERMS MADE SIMPLE

Understanding legal terminology can be tricky. If you are looking to retain the services of an attorney or just enjoy a crime drama on television, understanding the language of the law is helpful. In this month's newsletter, we will explain the legal term "hearsay."

Hearsay: An out-of-court statement, either written or oral, offered to prove the truth of the matter asserted in the statement.

Generally, hearsay is inadmissible evidence and cannot be used at trial. The rationale for this rule is credibility- the statement should be made in the presence of the fact-finder (jury) and be subject to cross examination.

An out-of-court statement may look like hearsay at first glance, but isn't if the statement is not offered to prove the truth of the matter asserted in the statement. The key issue in determining whether a statement is hearsay or not is why the statement is being offered. If offered for some other purpose, the credibility of the person making the statement is irrelevant.

For example, in a car accident case, Driver A tries to testify that he overheard a third party at the accident scene say that Driver B had been drinking alcohol prior to the accident. This testimony is not allowed.

Why not? Here are some of the reasons:

- Driver A, who may have a motive to be untruthful, could be making up the story about overhearing the statement that Driver B was drinking.
- Driver A, who may have a motive to favor himself over Driver B, could have heard the statement incorrectly; in other words, he may have heard the statement in a favorable light.
- The third party who allegedly made the statement is not present in the courtroom, and so cannot be cross-examined or have the judge and jury evaluate his credibility.

In summary, most hearsay is prohibited in the courtroom because it is often not reliable enough to be used as evidence to support or defeat a claim. Look for additional legal terminology explanations in future newsletters.

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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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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.

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