I. Regulatory Limits on Claims-Handling

A. Timing for Responses and Determinations
State Statutes Governing Timeliness or Acknowledgement of Claim and for Determination of Acceptance or Denial of Coverage

The District of Columbia Code dictates that no person shall commit or perform with such frequency as to indicate a general business practice any of the following: (1) knowingly misrepresent pertinent facts or insurance policy provisions relating to the claim at issue; (2) refuse to pay a claim for a reason that is arbitrary or capricious based on all available information; (3) fail to settle a claim promptly whenever liability is reasonably clear under one portion of a policy in order to influence settlements under other portions of the policy; (4) fail promptly upon request to provide a reasonable explanation of the basis for a denial of a claim; (5) fail to acknowledge and act reasonably promptly upon communication with respect to claims arising under insurance policies; (6) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed or after having completed its investigation related to the claims; (7) refuse to pay claims without conducting a reasonable investigation; or (8) not attempt in good faith to effectuate prompt, fair, and equitable settlement of claims submitted in which liability has become reasonably clear. See D.C. Code § 31-2231.17 (emphasis added). One can find more specific guidelines laid out in the District of Columbia Municipal Regulations. See, e.g., D.C. Mun. Regs. tit. 26, § 100.

B. Standards for Determinations and Settlement
State Statutory Guidelines for Insurance Policies

The District of Columbia Code defines unfair claim settlement practices. See D.C. Code § 31-2231.17. However, the Code also notes that this chapter permits only administrative remedies for violations therein, not private causes of action. See D.C. Code § 31-2231.02.

C. Privacy Protections (In addition to Federal Gramm-Leach-Bliley Act)
State Privacy Laws Governing Insurance Information

In addition to the Federal Gramm-Leach-Bliley Act, the District of Columbia has enacted the Required Annual Financial Statements and Participation in the NAIC Insurance Regulatory Information System Act of 1993, codified under D.C. Code Ann. §§ 31-1901 et seq. This Act is based on model legislation
II. Principles of Contract Interpretation

"Fundamentally, when interpreting a contract, ‘the court should look to the intent of the parties entering into the agreement.’" Intercounty Constr. Corp. v. District of Columbia, 443 A.2d 29, 32 (D.C. 1982) (citation omitted). The question of intent is resolved by an objective inquiry, and “[t]he first step” is therefore to determine “what a reasonable person in the position of the parties would have thought the disputed language meant.” Id. Contractual provisions are interpreted taking into account the contract as a whole, so as to give effect, if possible, to all of the provisions in the contract. See Akassy v. William Penn Apts., Ltd. P’ship, 891 A.2d 291, 303 (D.C. 2006) (noting that District of Columbia courts “construe the contract as a whole, giving effect to each of its provisions, where possible”).

Additionally, “[e]xtrinsic evidence of the parties’ subjective intent may be resorted to only if the [contract] is ambiguous.” Sacks v. Rothberg, 569 A.2d 150, 205-06 (D.C. 1990). However, “[t]he endeavor to ascertain what a reasonable person in the position of the parties would have thought the words of a contract meant applies whether the language is ambiguous or not.” Sagalyn v. Foundation for Pres. of Historic Georgetown, 691 A.2d 107, 112 n.8 (D.C. 1997). In this context, a reasonable person is: (1) presumed to know all the circumstances surrounding the contract’s making; and (2) bound by usages of the terms which either party knows or has reason to know. See Intercounty Constr. Corp., 443 A.2d at 32. “[T]he reasonable person standard is applied both to the circumstances surrounding the contract and the course of conduct of the parties under the contract.” Id. If an ambiguity in the contract raises a factual issue, it must be resolved by a fact finder. See Rastall v. CSX Transp., Inc., 697 A.2d 46, 51 (D.C. 1997).

III. Choice of Law

Generally, in determining choice of law, the District of Columbia employs a governmental interest analysis. District of Columbia v. Coleman, 667 A.2d 811, 816 (D.C. 1995). Under this analysis, District of Columbia courts first look at each jurisdiction’s policy to see what interests the policy is meant to protect, and then consider which jurisdiction’s policy would be most advanced by applying the law of that jurisdiction. Part of the test of determining the jurisdiction whose policy would be most advanced is determining which jurisdiction has the most significant relationship to the dispute. Id.; see also Hercules & Co. v. Shama Restaurant Corp., 566 A.2d 31, 41 n.18 (D.C. 1989); Vaughan v. Nationwide Mut. Ins. Co., 702 A.2d 198 (D.C. 1997).

and that of another state would not be advanced by application of its law, a false conflict appears and the law of the interested state prevails.” Id. (quoting Biscoe v. Arlington County, 738 F.2d 1352, 1360 (D.C. Cir. 1984)).

A true conflict arises when both states have an interest in applying their own laws to the facts of the case, in which case the law of the forum “will be applied unless the foreign state has a greater interest in the controversy.” Id. (citing Biscoe, 738 F.2d at 1360) (other citations omitted); see also Barimany v. Urban Pace LLC, 73 A.3d 964, 967 (D.C. 2013). In order to facilitate the governmental interests analysis, District of Columbia courts consider four factors, enumerated in the Restatement (Second) Conflict of Laws (1971) § 145, Comment d.:

- a) the place where the injury occurred;
- b) the place where the conduct causing the injury occurred;
- c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and
- d) the place where the relationship is centered.


IV. Duties Imposed by State Law

A. Duty to Defend

1. Standard for Determining Duty to Defend

In determining whether a duty to defend exists, it is appropriate to examine the complaint for all plausible claims encompassed within the complaint and to ascertain whether allegations of the complaint state a cause of action within policy coverage and give fair notice to the insurer that the insured is being sued upon an occurrence which gives rise to a duty to defend under the terms of the policy. American Continental Ins. Co. v. Pooya, 666 A.2d 1193 (D.C. 1995). To be sure, however, the obligation to defend “is not affected by facts ascertained before suit or developed in the process of litigation or by the ultimate outcome of the suit.” Id.; see also Fogg v. Fid. Nat'l Title Ins. Co., 89 A.3d 510, 514-515 (D.C. 2014). Rather, if the allegations of the complaint state a cause of action within the coverage of the policy, the insurance company must defend. If it is possible that the allegations of a complaint would bring it within coverage of the policy, the insurer is obligated to defend, even if it ultimately is not required to pay a judgment. Sherman v. Ambassador Ins. Co., 670 F.2d 251, 259 (D.D.C. 1981).

2. Issues with Reserving Rights

In Green Leaves Restaurant, Inc. v. 617 H Street Associates, the Court of Appeals of the District of Columbia specifically addressed issues concerning the reservation of rights. The court stated that it follows the traditional common law rule that a creditor may preserve its rights against the guarantors “by the simple expedient of reserving those rights expressly in its release of the principal debtor.” 974 A.2d 222, 234. Under this “so-called ‘reservation of rights’ doctrine, two consequences followed from the mere act of informing the principal obligor that the obligee was reserving rights against the secondary obligor in conjunction with conduct that would otherwise impair the secondary obligor’s recourse. First, by reserving rights against the secondary
obligor, the obligee preserved all rights of the secondary obligor as though the conduct had never occurred. Second, by reserving rights against the secondary obligor, the obligee prevented discharge of the secondary obligor based on the conduct of the obligee because, according to the doctrine, the preservation of the secondary obligor's rights as though the conduct had not occurred resulted in that conduct causing the secondary obligor no harm.” Id.

The court acknowledged criticism of the traditional “reservation of rights” doctrine, on the ground that an unsophisticated debtor would be unlikely to realize that a creditor’s mere “incantation of a ‘reservation of rights’” in a release preserves the debtor’s liability to its secondary obligors. See also Corto v. National Scenery Studios, Inc., 705 A.2d 615, 624 (D.C. 1997) (settlement which “expressly reserved ... rights to file claims against [third party]” necessarily could not act to protect third party from suit); Knight v. Cheek, 369 A.2d 601, 603 (D.C. 1977) (“Where the creditor releases a principal, the surety is discharged, unless (a) the surety consents to remain liable notwithstanding the release, or (b) the creditor in the release reserves his rights against the surety.”)

B. Duty to Settle

District of Columbia case law has not acknowledged a cause of action for breach of an insurer’s duty to settle within the policy limits. Choharis v. State Farm Fire and Cas. Co., 961 A.2d 1080 (D.C. 2008). Yet, the District of Columbia Court of Appeals has stated that it does not exclude the possibility of fiduciary principles coming into play in certain third-party situations, such as where the insurance company is involved in a settlement of a third-party claim or directs the actual course of the defense. Id.

V. Extra-Contractual Claims Against Insurers: Elements and Remedies

A. Bad Faith

1. First Party
   Elements and Remedies in Claims Against Insurers for Failure to Pay Benefits


2. Third Party
   Elements and Remedies in Claims Against Insurers for Failure to Defend or Settle Third Party Actions

   As in first-party bad faith claims, the District of Columbia does not recognize a tort of bad faith against insurance companies in the handling of third-party policy claims. See Choharis v. State Farm Fire and Cas. Co., 961 A.2d 1080 (D.C. 2008).

   B. Fraud
   Elements and Remedies in Cause of Action Against Insurers

   In order to recover damages for fraud under District of Columbia law, a plaintiff must prove the following elements:

   1. a false representation;
   2. in reference to a material fact;
   3. made with knowledge of its falsity;
   4. with the intent to deceive; and
   5. action is taken in reliance upon the representation.


   C. Intentional or Negligent Infliction of Emotional Distress (IIED or NIED)

   Under District of Columbia law, a claim for intentional infliction of emotional distress requires a showing of:

   1. extreme and outrageous conduct that;
   2. either intentionally or recklessly;
   3. causes the plaintiff severe emotional distress.

2007) (noting that the “intentional” element is key and must be clearly proven in order to prevail on an emotional distress claim). Rather, the alleged conduct must be “so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” Carter, 821 A. 2d at 893 (internal citations omitted).

Under District of Columbia law, a plaintiff can recover for negligent infliction of emotional distress only if the emotional distress results from a direct physical injury; if the defendant’s negligence placed the plaintiff in a zone of physical danger such that the plaintiff was caused by the defendant's negligence to fear for his or her own safety; or if the plaintiff can show that (1) the defendant has a relationship with the plaintiff, or has undertaken an obligation to the plaintiff, of a nature that necessarily implicates the plaintiff's emotional well-being, (2) there is an especially likely risk that the defendant's negligence would cause serious emotional distress to the plaintiff, and (3) negligent actions or omissions of the defendant in breach of that obligation have, in fact, caused serious emotional distress to the plaintiff. Etch v. Fannie Mae, 883 F. Supp. 2d 17 (D.D.C. 2011).

D. State Consumer Protection Laws, Rules and Regulations
State Statutes, Rules or Regulations as a Basis for Cause of Action Against Insurer Including Consumer Protection and Trade Practices

While the Unfair Insurance Trade Practices Act does not create or imply a private cause of action for violations thereunder, civil actions are available under the District of Columbia Consumer Protection Procedures Act (“CPPA”), codified in Chapter 39 of Title 28 of the District of Columbia Code. The CPPA affords a panoply of remedies, including treble damages, punitive damages and attorneys’ fees, to consumers who are victimized by unlawful trade practices. See D.C. Code Ann. § 28-3905(k)(1). “The Consumer Protection Procedures Act is a comprehensive statute designed to provide procedures and remedies for a broad spectrum of practices which injure consumers.” District Cablevision Ltd. Partnership v. Bassin, 828 A.2d 714, 722-23 (D.C. 2003) (citing Atwater v. District of Columbia Dep’t of Consumer & Reg. Affairs, 566 A.2d 462, 465 (D.C. 1989)). Actions under the CPPA may be brought by, or on behalf of, aggrieved consumers who are victimized by unlawful trade practices. See Ford v. Chartone, Inc., 908 A.2d 72, 80-81 (D.C. 2006) (citing D.C. Code Ann. § 28-3905(k)(1)). While the CPPA enumerates a number of specific unlawful trade practices, see D.C. Code Ann. § 28-3904, the enumeration is not exclusive. See Atwater, 566 A.2d at 465. A main purpose of the CPPA is to “assure that a just mechanism exists to remedy all improper trade practices and deter the continuing use of such practices.” D.C. Code Ann. § 28-3901(b)(1). Trade practices that violate other laws, including the common law, also fall within the purview of the CPPA. See Atwater, 566 A.2d at 465-66 (citing D.C. Code Ann. § 28-3905(b)). Accord Osborne v. Capital City Mortgage Corp., 727 A.2d 322, 325-26 (D.C. 1999) (stating that “the CPPA’s extensive enforcement mechanisms apply not only to the unlawful trade practices proscribed by § 28-3904, but to all other statutory and common law prohibitions.”). While the CPPA is broad in the conduct it proscribes, even more important perhaps is the array of enforcement mechanisms it contains for the protection of consumers. The CPPA empowers agency investigation and regulation of businesses, see §§ 28-3902, 3903; establishes consumer complaint procedures, see § 28-3905; and allows for civil actions in Superior Court for multiple damages and fees, see § 28-3905(k)(1). While the CPPA does not specifically address a consumer’s burden of proof under the Act’s protections, the District of Columbia Court of Appeals has held that the clear

Chapter 22A of Title 31 of the District of Columbia Code addresses unfair trade practices and other prohibited practices. See D.C. Code Ann. §§ 31-2231.01 et seq. Specifically, § 31-2231.17 contains provisions relating to unfair claim settlement practices.

VI. Discovery Issues in Actions Against Insurers

A. Discoverability of Claims Files Generally

There appears to be only one case in the District of Columbia dealing with the discoverability of an insurer’s claim file in an action against an insurer, albeit the case involved an automobile insurer. In Athridge v. Aetna Cas. and Sur. Co., 184 F.R.D. 181 (D.D.C. 1998), the Plaintiff was the assignee of an insured’s breach of fiduciary duty claim against the automobile insurer defendant. To make out its case against the insurer, the Plaintiff demanded access to the insurer’s claim file. The insurer objected on grounds of attorney-client and work product privilege. The Court held that the claims file was not protected by the attorney-client privilege as it was generated by the insurance company’s employees, and contained nothing that was communicated by any of them to any attorney, let alone confidentially and for the purpose of seeking legal advice. Id. at 188. In addition, none of the documents in the claim file were prepared for trial in the sense of the work product privilege either. Id. at 190. Therefore, the Court granted the Plaintiff’s motion to compel and ordered the production of the insurer’s claim file.

B. Discoverability of Reserves

Addressing the relevancy of reserve information in a coverage litigation discovery dispute, courts across the country have reached mixed conclusions. In one case, a District of Columbia court held that discovery of reserve information from an insurer in coverage litigation was not relevant, and thus, not discoverable, generally finding that whether a reserve has been set and the amount of such reserve is not relevant to the interpretation of the policies at issue or whether coverage is provided under such policies. See Indep. Petrochem. Corp. v. Aetna Cas. & Sur. Co., 117 F.R.D. 283, 288 (D.D.C. 1986) (denying motion to compel production of reserve information because of the “very tenuous relevance, if any relevance at all” of that information). In a later case, though, involving a breach of fiduciary duty claim, the same Court distinguished Indep. Petrochem. Corp., and held that reserve information was relevant and discoverable. See Athridge v. Aetna Cas. and Sur. Co., 184 F.R.D. 181, 192-193 (D.D.C. 1998).

C. Discoverability of Existence of Reinsurance and Communications with Reinsurers

Case law is unsettled as to whether discovery of reinsurance communications is relevant in a coverage dispute. Numerous courts throughout the country have recognized that reinsurance documents, including communications with reinsurers, are generally relevant and discoverable. District of Columbia courts, however, have explicitly held that reinsurance communications are not relevant, and not discoverable, in a coverage dispute
involving a policyholder and insurer because: (1) a policyholder is not a party
to the reinsurance contract; (2) the policyholder does not have any rights under
that reinsurance contract; and (3) the insurance policy between the policyholder
and insurer may have different terms and conditions. See, e.g., Potomac Elec.
that the correspondence [relating to reinsurance agreements]—if it exists—lacks
sufficient indicia of relevance. . . . In addition, the correspondence may well
constitute proprietary information or be protected by the attorney-client
privilege or the work product doctrine. Therefore, the discovery . . . does not
appear ‘reasonably calculated to lead to the discovery of admissible
evidence.’”). Yet, D.C. federal courts have found reinsurance agreements
See id. at 2 (reinsurance agreements discoverable under Rule 26).

D. Attorney/Client Communications
Issues Relating to Tripartite Relationship/Advice of Counsel
Defense

When a claim is made against an insured person under a typical liability
policy, a tripartite relationship is established between an insurance company,
its insured, and the defense attorney hired to represent their joint interests
in resolving the claim. The tripartite relationship between insurer, insured,
and defense counsel makes potential conflicts of interest inevitable.

Attorneys representing insurance companies in coverage disputes often
face reoccurring issues in determining whether certain communications are
privileged. See also Permian Corp. v. United States, 665 F.2d 1214, 1219 (D.C.
Cir. 1981) (“[W]hile the mere showing of a voluntary disclosure to a third
person will generally suffice to show waiver of the attorney-client privilege,
it should not suffice in itself for waiver of the work product privilege.”).
Even though the work product privilege likely protects information that a
policyholder prepares and shares with its insurer for the purposes of defending
the underlying claim or claims, insurers and policyholders should consider
entering into a confidentiality agreement if only to show that the disclosure
of the information was done with a mind toward maintaining secrecy of the
documents. See In re Subpoenas Duces Tecum, 738 F.2d 1367 (D.C. Cir. 1984)
(finding that a party waives work product unless it insists on a promise of
confidence before disclosure).

VII. Defenses in Actions Against Insurers

A. Misrepresentations/Omissions: During Underwriting or During Claim

One who has been induced by misrepresentations to enter into a contract
ordinarily may choose between two remedies: he may either rescind the contract
and recover what he has parted with or affirm the contract and sue for damages
caused by the fraud. See Dresser v. Sunderland Apartments Tenants Ass’n, 465
A.2d 835, 840 (D.C. 1983) (holding that the District of Columbia recognizes the
doctrine of misrepresentation and the remedy of rescission); see also Rubewa
Prods. Co. v. Watson’s Quality Turkey Prods., Inc., 242 A.2d 609, 615 (D.C.
1968). Chapter IIIA of Title 22 of the District of Columbia Code addresses
insurance fraud, including penalties. See D.C. Code Ann. §§ 22-3225.01 et seq.
See also id. § 31-2231.19 (prohibiting false or fraudulent statements or
representations in insurance applications).

Under District of Columbia law, an insurer alleging such a defense must
prove (1) that the insured made a false statement that (2) was material to the
insurer’s decision to provide coverage. See Hood v. Prudential Life Ins. Co., 758 F. Supp. 764, 766 (D.C. 1991). A statement is false if it contradicts facts shown to be in existence and known to the insured at the time he or she applied for insurance. See Skinner v. Aetna Life & Cas., 804 F. 2d 148, 151 (D.C. Cir. 1986). The test for materiality of representation in an insurance application is whether the representation would reasonably influence the insurer’s decision as to whether it should insure the applicant; it does not mean that the influence must be dispositive as to the insurer’s decision. See Burlington Ins. Co. v. Okie Dokie, Inc., 368 F. Supp. 2d 83, 88 (D.D.C. 2005). A misrepresentation that influences an insurer to assume a risk which it otherwise would not have underwritten inevitably is material. See Jones v. Prudential Ins. Co. of Am., 388 A.2d 476, 481 (D.C. 1978).

Where a party innocently misrepresents a material fact by mistake or makes such a representation without knowing it to be true or false, even though he believes it to be true, or without reasonable grounds for believing it to be true, such representation will support an action for fraud. See Stein v. Treger, 182 F.2d 696, 699 (D.C. Cir. 1950). Furthermore, where the misrepresentation would affect the company’s acceptance of the risk (or where the misrepresentation was made with an intent to deceive), there need be no causal relationship between the condition misrepresented or omitted from the application and the condition giving rise to the claim on the policy. See Jones v. Prudential Ins. Co. of Am., 388 A.2d 476, 480 (D.C. 1978).

B. Failure to Comply with Conditions
   Assistance and Cooperation/ Late Notice

Notice provisions in insurance contracts are of the essence of the contract. The D.C. Court of Appeals had stated that where a liability policy requires an insured to provide notice of occurrence or suit within a reasonable time as a contractual precondition to coverage, the issue of reasonableness of delay, though often question for jury, may become a question of law if evidence as to timing is uncontradicted. Greycoat Hanover F Street Ltd. Partnership v. Liberty Mut. Ins. Co., 657 A.2d 764 (D.C. 1995).

Thus, an insured’s failure to comply with notice requirements of a liability policy constitutes a waiver of the insured’s claim to coverage under the policy, and thus absolves insurer of duty to defend, even if the underlying claim would otherwise have been covered. Id.

C. Challenging Stipulated Judgments: Consent and/or No Action Clauses

Under certain circumstances, no-action clauses are enforceable in the District of Columbia. For example, where a “no action” clause has not been complied with, no judgment has been rendered against the insured, and there has been no settlement to which the insurer consented, District of Columbia courts have found no coverage for the insured. I.J.G., Inc. v. Penn-America Ins. Co., 803 A.2d 430 (D.C. 2002) (holding that policy condition similar to a “no-action” clause barred coverage for consent judgment where there was no trial).

D. Statutes of Limitations

There is a three-year statute of limitations under District of Columbia law for causes of action based upon an express or implied contract. See D.C. Code Ann. § 12-301(7). The three-year limitations period governing actions
based on contracts begins to run from the date the contract is breached. See Bembery v. District of Columbia, 758 A.2d 518, 520 (D.C. 2000).

VIII. Trigger and Allocation Issues for Long-Tail Claims

A. Trigger of Coverage

Rather than adopting trigger theories, D.C. courts apply the facts of a particular case to the language in the relevant insurance policies. This approach recognizes that the insured and the insurer have a contract, limited by its terms, and that only by applying the policy terms to the particular facts at issue can trigger questions be resolved. In some instances, neither the wording of a particular policy nor the facts of the particular case provide an answer. See, e.g., Keene Corp. v. Insurance Co. of N. Am., 667 F.2d 1034, 1041 (D.C. Cir. 1981) (stating that neither case law nor policy terms determined the “trigger”).

B. Allocation Among Insurers

The District of Columbia adopts an “all sums” method of allocating liability among insurers, not the pro rata method common to other jurisdictions. The seminal all sums case, Keene Corp., 667 F.2d 1034 (D.C. Cir. 1981), held that each insurance policy was responsible (up to its limits) for the total amount of damage to the insured, and the policyholder could choose from which policy to recover. “All sums” allocation is frequently referred to as “joint and several” liability.

IX. Contribution Actions

A. Claim in Equity vs. Statutory

In the District of Columbia, contribution is an equitable remedy, see Paul v. Bier, 758 A.2d 40, 49 n.16 (D.C. 2000), that “has been established by case precedent rather than by statute.” District of Columbia v. Washington Hosp. Ctr., 722 A.2d 332, 336 (D.C. 1998) (en banc). It is well settled under District of Columbia law that there is a right of equal contribution among joint tortfeasors. Id.


A nonsettling defendant is entitled to a pro tanto credit for the amount paid by settling defendants who are not joint tortfeasors and a pro rata credit based on the nonsettling defendant’s right of contribution against a settling joint tortfeasor. Paul, 758 A.2d at 43.

B. Elements

According to District of Columbia case law, a right of contribution accrues when two or more parties are joint tortfeasors but is enforceable only after the one seeking it has been forced to pay. Paul, 758 A.2d at 47. Although the right to contribution does not accrue until the nonsettling defendant’s status as a joint tortfeasor is established, a cross-claim for contribution against a settling defendant must be asserted before the verdict is rendered. Id. All defendants are, therefore, required to file cross-claims for
contribution before the verdict in order to give notice to other defendants that they will be required to pay their fair share of damages to a joint tortfeasor in the event that they are found liable. Id. at 48.


X. Duty to Settle

A. In General

The District of Columbia has never expressly recognized or rejected a duty to settle a claim within policy limits. Nevertheless, insurers in the District of Columbia have a contractual duty to act in good faith in handling claims against their insureds. Choharis v. State Farm Fire & Cas. Co., 961 A.2d 1080, 1087 (D.C. 2008).

District of Columbia Courts generally consider Maryland to be a sister jurisdiction, and legal authority from Maryland is considered particularly persuasive authority. It is likely that the District of Columbia would adopt the Maryland rule that “[a]n insurer does not have an absolute duty to settle a claim within policy limits, although it may not refuse to do so in bad faith.” Allstate Ins. Co. v. Campbell, 334 Md. 381, 396, 639 A.2d 652, 659 (1994).