MARYLAND

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I. MECHANIC'S LIEN BASICS

A. Requirements

Within 120 days after doing the work or furnishing the materials, a subcontractor must provide written notice of an intention to claim a lien as specified in MD. CODE ANN., Real PROP. § 9-104(a). The notice of intention to claim a lien must include the name of the subcontractor, a description of the work performed or material furnished, a description of the building or property where the work was performed or the material was furnished, the total amount earned to date under the subcontractor's undertaking, and the amount due and unpaid to the subcontractor.[1] Notice must be delivered in any one of the methods specified in the statute, including by registered or certified mail, return receipt requested, or by personal delivery to the owner by the Claimant or his agent.[2] If there is more than one owner, the subcontractor may comply with § 9-104 by giving notice to any of the owners.[3] If notice cannot be given on account of absence or other causes, the subcontractor or his agent, in the presence of a competent witness and within 120 days, may place the notice on the door or other front part of the building.[4] Notice by posting according to this method is sufficient in all cases where the owner of the property has died and his successors in title do not appear on the public records of the county.[5]

Proceedings to establish and enforce a mechanic's lien must be filed in the Circuit Court for the county where the land or any part of the land is located within 180 days after the work has been finished or the materials furnished.[6] The petition must include: the name and address of the petitioner; the name and address of the owner; the nature or kind of work done and amount of materials furnished; the time when the work was done or materials furnished; the name of the person for whom the work was done or to whom the materials were furnished; the amount or sum claimed to be due, less any credit recognized by the petitioner; and a description of the land, including a statement whether part of the land is located in another county and a description adequate to identify the building.[7] If the petitioner is a subcontractor, the petitioner must also set forth facts showing that the notice required in § 9-104 was properly mailed or served upon the owner or, if so authorized, posted on the building.[8] In either case, whether contractor or subcontractor, the petitioner must supply an affidavit setting forth the facts upon which the petitioner claims entitlement to the lien and copies of the documents which constitute the basis for the lien claim.[9] Upon the filing of the Mechanic's Lien Petition, the clerk shall docket the

proceedings as an action in equity, and all process shall issue out of and all pleadings shall be filed in the one action.[10] If after a review of the pleadings and supporting documents the court determines that the lien should attach, it shall pass an order that directs the owner to show cause within 15 days from the date of service on the owner of a copy of the order, together with copies of the pleadings and documents on file, why a lien upon the land or building and for the amount described in the petition should not attach.[11]

B. Enforcement and Foreclosure

The property is sold pursuant to normal foreclosure rules.[12] All liens and encumbrances on the property shall be satisfied in accordance with their priority.[13] In the event that a mechanic's lien is established on the property and the proceeds of the sale are insufficient to satisfy all of the liens on the property, then all of the proceeds available to satisfy each lien shall be treated as one fund and the money produced as a proceed of the foreclosure sale shall be distributed to each mechanic's lien holder in a *pro rata* ratio, without regard to seniority.[14]

C. Ability to Waive and Limitations on Lien Rights

Under Maryland law, there are two types of agreements which will waive the right to file a mechanic's lien: an express agreement[15] or an agreement which is inconsistent with the existence of a lien.[16] In some unique circumstances, an agreement may have the effect of waiving the priority of a mechanic's lien, while not waiving the right to file and enforce the lien itself.[17] A contract between a contractor and a subcontractor that is related to the construction, alteration, or repair of a building, structure, or improvement may not waive or require the subcontractor to waive the right to claim a mechanic's lien or sue on a contractor's bond.[18] Similarly, a "pay if paid" or "pay when paid" clause in the contract between a contractor and a subcontractor that is related to construction, alteration, or repair of a building, structure, or improvement will also not act as a waiver of the subcontractor's right to claim a mechanic's lien or sue on a contractor's bond.[19] The right to file a mechanic's lien is individual to each potential lienholder, so it cannot be waived by a third party.[20]

MD. CODE. ANN., REAL PROP. § 9-109 and MD. RULE 12-305 provide that the right to enforce a mechanic's lien, once established, expires one year from the date on which the petition to establish the mechanic's lien was first filed. In practice, this requirement simply obligates the mechanic's lien petitioner to file a petition to enforce a mechanic's lien within the one-year period; it does not obligate the mechanic's lien petitioner to foreclose on the mechanic's lien so quickly.

Due to the sovereign immunity doctrine, suppliers and subcontractors do not have a lien on any public works or public-private partnership construction project.[21]

II. PUBLIC PROJECT CLAIMS

Maryland has codified statutory provisions, found in MD. CODE ANN., STATE FIN. & PROC. § 10A-101, *et seq*., addressing and promoting public-private partnerships for the purpose of bettering the State's public infrastructure. Under the statutes, the Department of General

Services, the Maryland Department of Transportation, the Maryland Transportation Authority, and most of the public universities in Maryland are expressly permitted to enter into public-private partnerships.[22] Each of those public entities is required to adopt its own regulations for the process of developing, soliciting, selecting, and implementing a public-private partnership.[23]

A. State and Local Public Work

State and local public construction projects are governed by the "Little Miller Act" found in MD. CODE ANN., STATE FIN. & PROC. § 17-101, *et seq*. Under the Act, public works bonds are required for certain state public works' and public-private partnership construction projects, including those of any public instrumentality or political subdivision of Maryland. In particular, the Act requires performance and payment bonds in contracts exceeding $100,000 and also provides for a required minimum payment bond amount.[24] The Act permits, but does not require, bonds for contracts worth between $25,000 and $100,000.[25] The purpose of the Act is to afford protection to material suppliers and subcontractors, who have no mechanic's lien remedy by reason of sovereign immunity.[26]

1. Notice and Enforcement

Under the Little Miller Act, if a supplier or subcontractors is not paid in full, they are permitted to make a claim on the performance or payment bonds within 90 days after the date of the day on which they last supplied materials or labor on the project.[27] This 90 day notice provision supplants the 120 day notice provision in Maryland's mechanic's lien statute.[28]

B. Claims to Public Funds

Contractors are permitted to make claims to the public funds which they are due under their contracts. Contractors must first make a claim to the governmental entity with which they entered into the contract.[29] Such claim must be submitted within 30 days of the date on which the basis of the claim becomes apparent, but the governmental entity may adopt regulations shortening this time period.[30] The governmental entity must review and address the claim within no more than 180 days, unless the parties agree to a longer time period.[31] The relevant statutory provisions also contain some limitations on the amount of damages that may be recovered by a contractor.[32]

If a contractor is aggrieved by the final decision of the governmental entity, they may appeal the decision to the Board of Contract Appeals.[33] For contract claims, such an appeal must be filed within 30 days of the final decision of the governmental entities.[34] However, for a claim relating to the formation of a contract, the appeal must be filed within 10 days of the final decision.[35] The Board must issue its decision within 180 days unless the parties otherwise agree.[36]

If a party is aggrieved by the decision of the Board, they are entitled to judicial review in Circuit Court in accordance with MD. CODE ANN., STATE GOV. § 10-222.[37]

III. STATUTES OF LIMITATION AND REPOSE

A. Statutes of Limitations and Limitations on Application of Statutes

(1) General tort and contract actions – three years.[38]

(2) Breach of implied warranties for improvements to realty – two years from the date the defect was discovered or should have been discovered.[39]

(3) Breach of UCC warranties - four years, but can be reduced by the terms of contract to not less than one year and cannot be extended by the contract.[40] A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.[41] A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance, the cause of action accrues when the breach is or should have been discovered.[42] The four year statute of limitations applies to actions for breach of warranty brought by third parties.[43]

B. Statutes of Repose and Limitations on Application of Statutes

MD. CODE ANN., CTS. & JUD. PROC. § 5-108(a) states:

> [N]o cause of action for damages accrues and a person may not seek contribution or indemnity for damages incurred when wrongful death, personal injury, or injury to real or personal property resulting from the defective and unsafe condition of an improvement to real property occurs more than 20 years after the date the entire improvement first becomes available for its intended use.

§ 5-108(b) goes on to state:

> [A] cause of action for damages does not accrue and a person may not seek contribution or indemnity from any architect, professional engineer, or contractor for damages incurred when wrongful death, personal injury, or injury to real or personal property, resulting from the defective and unsafe condition of an improvement to real property, occurs more than 10 years after the date the entire improvement first became available for its intended use.

The Maryland Statute of Repose for actions resulting from improvements to real property applies to both contractors and subcontractors[44] and to actions for contribution and indemnity.[45] A purely financial injury does not fall within the purview of the 20 year statute of repose.[46]

IV. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

There are no statutory requirements in Maryland for a claimant to provide pre-suit notice or the opportunity to cure with respect to improvements to realty. However, such requirements may be included in the contract documents. A thorough analysis of the contract documents should be performed in each case to determine whether a claimant is required to provide pre-suit notice or the opportunity to cure.

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues

Maryland courts interpret insurance policies like any other contracts.[47] In turn, courts construe the policy terms according to their sense and meaning.[48] Additionally, any ambiguities are resolved against the policy's drafter.[49]

Under a typical liability policy, an insurer has a duty to both provide the insured with a defense and to indemnify the insured for a judgment up to policy limits. The damages for breach of these contractual promises are the insured's defense expenses, including attorney fees, and the amount of an underlying tort judgment against the insured up to policy limits.[50]

In Maryland, a commercial general liability (CGL) policy is understood to cover bodily injury or damage to the property caused by goods, products, or work of the insured other than damage to the product or the completed work itself.[51] The policy does not cover the insured's economic loss stemming from contractual liability for defective workmanship.[52] In other words, when the product or completed work is not that for which the damaged person bargained, the insureds cannot recover subsequent liability through a CGL policy.[53]

B. Trigger of Coverage

Under an "occurrence" liability policy, property damage that is continuous over the course of several policy periods triggers coverage under all policies in effect during those periods, irrespective of when an actual claim is presented.[54] The insured bears the burden to show that property damage occurred within the coverage of any policy; and coverage may be triggered during a policy period earlier than discovery or manifestation.[55] A "claims made" or "discovery" policy covers liability inducing events if and when a claim is made during the policy term, irrespective of when the events occurred.[56]

C. Allocation Among Insurers

Maryland courts have rejected an "all sums" and "joint and several" approach when allocating responsibility among insurers under "occurrence" policies for damages arising from continued harm that spans the course of several policy periods.[57] Instead, courts have applied a *pro-rata* allocation based on each insurer's "time on the risk."[58] Essentially, each insurer is liable for that period of time it was on the risk compared to the entire period during which damages occurred.[59] Further, losses are prorated to the insured, unless a gap in coverage is due to the insured's inability to obtain insurance.[60]

D. Issues with Additional Insurance

In Maryland, if a subcontractor's insurance policy names the general contractor as an additional insured, the insurer must provide coverage to the general contractor for any claims asserted against the general contractor as long as the general contractor is alleged to be liable at least in part based on the actions of the subcontractor.[61] The insurer's duty to defend the general contractor is triggered by such allegations, regardless of if there is an additional allegation that the general contractor was independently negligent.[62] Importantly, however, coverage as an additional insured is generally not extended to the general contractor by means of a certificate of insurance, as such agreements normally do not involve the insurer itself and thus cannot alter the scope of coverage which the insurer agreed to provide.[63]

VI. CONTRACTUAL INDEMNIFICATION

MD. CODE ANN., CTS. & JUD. PROC. § 5-401 renders void as against public policy indemnity agreements in construction contracts purporting to indemnify the promisee against liability for damages arising out of bodily injury or property damage resulting from the sole negligence of the indemnitee. To fall within the scope of § 5-401, the damage or injury must have been caused solely by the party contracting for indemnification.[64]

In *Bethlehem Steel Corp. v. G.C. Zarnas & Co., Inc.*, the Maryland Court of Appeals held that it is the strong public policy of Maryland to void such indemnity clauses in contracts.[65] In that case, a Maryland corporation contracted with a Delaware corporation in Pennsylvania to perform painting services. The contract included an indemnification clause in which the contractor would indemnify the owner for all liability arising from the owner's sole or partial negligence.[66] The initial question before the Court was whether Maryland or Pennsylvania law should apply. The court held that under normal circumstances, the law of the state where the contract was made would control (in this case Pennsylvania). However, where the law of the foreign state contradicted the strong public policy of Maryland, Maryland law was controlling.[67] The court went on to state that the legislature made it clear in MD. CODE ANN., CTS. & JUD. PROC. § 5-305 (now codified in § 5-401) that it was the strong public policy of Maryland that the indemnification clause would be void.[68] The court, however, stated that only the portion of the indemnification clause relating to the sole liability of the owner was void and that to the extent that the contract clause discussed partial liability of the owner, it was not covered by § 5-305.[69]

In *Heat & Power Corp. v. Air Products & Chemicals, Inc.*,[70] the Maryland Court of Appeals considered an indemnification clause between a contractor and an owner that included a requirement that the contract provide insurance with respect to the liability covered in the indemnity clause.[71] Citing *Bethlehem Steel*, the court held that the indemnity clause would fall or stand under MD. CODE ANN., CTS. & JUD. PROC. § 5-305 (now § 5-401) independently of the insurance clause.[72] It then went on to hold that because the indemnity clause was not exclusively in reference to the owner's sole liability and was also too vague to be enforceable, it would not be voided.[73] It necessarily followed that because the clause was not covered by § 5-305, it did not purport to indemnify the owner for its own negligence.[74] Notably, the requirement that the contractor purchase insurance covering "such liability" did not include insurance for the owner's liability because the owner's liability was not included in the indemnity clause.[75]

VII. CONTINGENT PAYMENT AGREEMENTS

A. Enforceability

"Pay if paid" clauses are generally enforceable as a condition precedent to payment, provided that they are explicit.[76] "Pay when paid" clauses are interpreted to suggest a time period when the subcontractor should be paid, but they will not prevent compensation of the subcontractor, even if payment from an owner is never received.[77]

B. Requirements

Typically, the insolvency of an owner will not prevent the claim of a subcontractor against a contractor for non-payment.[78] However, if the "pay if paid" clause makes clear that payment by the owner is a condition precedent to payment of the subcontractor, it will be enforced, even if the parties have not specifically discussed the possibility of owner insolvency.[79] A clause that provides for the payment of a subcontractor *when* the general contractor is paid will not be interpreted as a condition precedent, so the general contractor will still owe the subcontractor for work performed regardless of whether or not the owner ever pays the contractor.[80] In any case, a contingent payment clause will not prevent the subcontractor from collecting from other sources, such as the contractor's bond or from the property owner himself.[81]

VIII. SCOPE OF DAMAGE RECOVERY

A. Personal Injury Damages vs. Construction Defect Damages

Section 11-108 of the Courts and Judicial Procedure Article of Maryland's Annotated Code applies a non-economic damages cap on any action for personal injury or wrongful death.[82] For construction defects, however, the measure of damages is the sum which would place the plaintiff in as good a position as that in which the plaintiff would have been, had the contract been performed.[83] This primarily includes the cost of repairing or remedying the defect.[84] It can also include expectation damages and gains lost, if they can be proven to a reasonable degree of certainty.[85] If repair is infeasible or impracticable, then the measure of damages is the loss in value of the property causes by the defect.[86]

B. Attorney's Fees Shifting and Limitations on Recovery

Under Maryland's common law, attorney's fees are not recoverable unless specifically included in the contract documents.[87] However, in a few instances, attorney's fees are recoverable by statute, including the Maryland Consumer Protection Act.[88] Attorney's fees are also allowed where the parties' contract provides such recovery.[89]

C. Consequential Damages

Consequential damages are those which the cause in question naturally but indirectly produces.[90] They can include various items such as direct costs, acceleration costs, or lost profits from delay in construction. Consequential damages are increasingly a subject of contract law; therefore, a thorough analysis of the contract documents should be performed in each case to determine whether a party is liable for, or has waived entitlement to, any consequential damages.

D. Delay and Disruption Damages

In Maryland, consequential damages may be recovered by the claimant upon proving a delay or disruption in its work on the project.[91] Types of owner-caused delays include defective plans and/or specifications.[92] In addition, liquidated damages for delay, as well as contractual provisions disclaiming delay damages, are generally enforceable in Maryland.[93]

E. Economic Loss Doctrine

Typically, in Maryland, there is no recovery in tort for economic losses.[94]

In delineating the "economic loss doctrine" for contractor liability cases, the Maryland Court of Special Appeals in *Heritage Harbour, LLC v. John J. Reynolds, Inc*.,[95] explained as follows:

> It is generally said that a contractor's liability for economic loss is fixed by the terms of his [or her] contract. Tort liability is in general limited to situations where the conduct of the builder causes an accident out of which physical harm occurs to some person or tangible thing other than the building itself that is under construction.[96]

Over the years, Maryland courts have established several exceptions to the economic loss doctrine. First, a tort duty for purely economic losses exists where the parties have contractual privity or its legal equivalent.[97] Second, recovery in tort is permitted when the product defect "creates a substantial and unreasonable risk of death or personal injury."[98] Third, physical injury to tangible property other than damage to the defective product itself is recoverable under a negligence cause of action.[99]

F. Interest

The post-judgment interest rate, as provided by statute, is ten percent per annum on the amount of the judgment.[100] This ten percent interest rate applies to post-judgment interest and not to pre-judgment obligations.[101] Absent statutory authority to the contrary, the legal rate of prejudgment interest is equal to the general legal rate of six percent as set by the Maryland Constitution.[102]

G. Punitive Damages

Maryland has an extremely high bar to punitive damages. Maryland courts have long held that punitive damages may not be recovered in breach of contract claims.[103] In cases of fraud or deceit, a plaintiff may not recover punitive damages merely by proving that a defendant's statements were made with reckless disregard or reckless indifference to the truth.[104] In order to establish the malice required to support a claim for punitive damages, a plaintiff must prove by clear and convincing evidence the defendant's actual knowledge of the falsity of his statements coupled with the intent to deceive the plaintiff.[105]

H. Liquidated Damages

Liquidated damages clauses are generally enforceable in Maryland.[106] However, the amount of the damages must not be so "grossly excessive and out of all proportion to the damages that might reasonably have been expected to result from such breach of the contract" so as to be considered an unenforceable contractual penalty.[107] To be enforceable, therefore, a liquidated damages clause must satisfy two elements: (1) the clause must provide a fair estimate of potential damages at the time the parties entered into the contract; and (2) the damages must have been incapable of estimation, or very difficult to estimate, at the time of contracting.[108]

IX. CASE LAW AND LEGISLATION UPDATE

In September 2020 the Maryland Court of Appeals addressed an issue of first impression in *Gables Construction, Inc. v. Red Coats, Inc*.[109] In *Red Coats*, an overnight fire caused millions of dollars in damage to new construction of a 139 unit apartment building that was nearing completion. The owner's insurance carrier claimed it paid more than $22 million as a result of the occurrence and brought suit against Red Coats a security and fire watch company hired by the general contractor. Red Coats settled the owner's suit for $14 million and sought contribution from the general contractor under Maryland's Uniform Contribution Among Joint Tortfeasors Act ("UCATA"). The Prime Contract between owner and general contractor contained a waiver of subrogation clause. As such, the general contractor asserted that it could not be liable to Red Coats in contribution because it could not be directly liable to the owner and joint liability is a prerequisite for a claim of contribution.

In 2019, the Court of Special Appeals (Maryland's second highest court) held that the waiver of subrogation between the owner and general contractor did not waive the general contractor's direct liability to Red Coats and thus could not serve as complete bar to its third-party action pursuant to the Uniform UCATA. The Court of Appeals reversed holding that in order to prevail on a statutory claim of contribution under the UCATA, the parties must be joint tortfeasors. The Court affirmed that there can be no claim for contribution where the injured party has no right of action against the third-party Defendant. Furthermore the Court saw no reason to treat waiver of subrogation differently than other defenses.

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[1] MD. CODE ANN., REAL PROP. § 9-104(b).
[2] *Id.* at § 9-104(c).
[3] *Id.* at § 9-104(d).

[4] *Id.* at § 9-104(e).
[5] *Id.*
[6] *Id.* at § 9-105(a).
[7] *Id.* at § 9-105(a)(1)(i)–(iv).
[8] *Id.* at § 9-105(a)(1)(v).
[9] *Id.* at § 9-105(a)(2)–(3).
[10] *Id.* at § 9-105(b).
[11] *Id.* at § 9-106(a).
[12] For the normal foreclosure rules, *see* Title 14 of the MARYLAND RULES.
[13] MD. CODE ANN., REAL PROP. § 9-108.
[14] *Id*.
[15] *Port City Const. Co. v. Adams & Douglass, Inc.*, 260 Md. 585, 273 A.2d 121 (1971)
[16] *Willison v. Douglass*, 66 Md. 99, 6 A. 530 (1886).
[17] *Perper v. Fayed*, 247 Md. 639, 642–43, 234 A.2d 144, 145–46 (1967).
[18] MD. CODE ANN., REAL PROP. §9-113 (a)
[19] MD. CODE ANN., REAL PROP. §9-113 (b)
[20] *Judd Fire Protection, Inc. v. Davidson*, 138 Md. App. 654, 665, 773 A.2d 573, 580 (2001).
[21] *Stauffer Constr. Co. v. Tate Eng'g, Inc.,* 44 Md. App. 240, 407 A.2d 1191, 1193 (Md. Ct. Spec. App. 1979).
[22] MD. CODE ANN., STATE FIN. & PROC. §§ 10A-103(a), 101(g).
[23] *Id.* at § 10A-103(b).
[24] MD. CODE ANN., STATE FIN. & PROC. § 17-103(a).
[25] *Id.* at § 17-103(b).
[26] *Stauffer Constr. Co. v. Tate Eng'g, Inc.,* 44 Md. App. 240, 407 A.2d 1191, 1193 (Md. Ct. Spec. App. 1979).
[27] MD. CODE ANN., STATE FIN. & PROC. § 17-108(b).
[28] *CTI/DC, Inc. v. Selective Ins. Co. of America*, 271 F. Supp. 2d, 758, 761 (D.Md. 2003).
[29] MD. CODE ANN., STATE FIN. & PROC. § 15-219(a).
[30] *Id.* at § 15-219(b).
[31] *Id.* at § 15-219(d).
[32] *Id.* at § 15-219(e).
[33] *Id.* at § 15-220(a).
[34] *Id.* at § 15-220(b)(2).
[35] *Id.* at § 15-220(b)(1).
[36] *Id.* at § 15-221(e).
[37] *Id.* at § 15-223.
[38] MD. CODE ANN., CTS. & JUD. PROC. §5-101.
[39] MD. CODE ANN., REAL PROP. § 10-204; *see also, Lumsden v. Design Tech Builders, Inc.*, 358 Md. 435, 749 A.2d 796 (2000).
[40] MD. CODE ANN., COM. LAW § 2-725(1).
[41] *Id*. at § 2-725(2).
[42] *Id*.
[43] *Shaw v. Brown Williamson Tobacco Corp.*, 973 F. Supp. 539 (D. Md. 1997).
[44] *Hartford Ins. Co. of Midwest v. American Automatic Sprinkler Systems, Inc.*, 23 F. Supp. 2d 623, *aff'd*, 201 F.3d 538 (1998).
[45] MD. CODE ANN., CTS. & JUD. PROC. § 5-108(a)–(b).
[46] *Carven v. Hickman*, 135 Md. App. 645, 763 A.2d 1207, *aff'd sub nom.*, 366 Md. 362, 784 A.2d 31 (2000).
[47] *U.S. Fid. & Guar. v. Nat'l Paving & Contract Co.*, 228 Md. 40, 50, 178 A.2d 872, 876–77 (1962).
[48] *Id.*
[49] *Id.*
[50] *Mesmer v. Maryland Auto. Ins. Fund*, 353 Md. 241, 266, 725 A.2d 1053, 1065 (1999).
[51] *Lerner Corp. v. Assurance Co. of Am.*, 120 Md. App. 525, 530–31, 707 A.2d 906, 909 (1998).
[52] *Id.*
[53] *Id.*
[54] *Harford Cty. v. Harford Mut. Ins. Co*., 327 Md. 418, 434–37, 610 A.2d 286, 294–95 (1992); *see also, Scottsdale Ins. Co. v. American Empire Surplus Lines Ins. Co.*, 811 F. Supp. 210 (D. Md. 1993).

[55] *Harford Cty. v. Harford Mut. Ins. Co.*, 327 Md. 418, 610 A.2d 286 (1992).
[56] *See Mut. Fire, Marine & Inland Ins. v. Vollmer*, 306 Md. 243, 252–55, 508 A.2d 130, 134–36 (1986).
[57] *Mayor & City Council of Balt. v. Utica Mut. Ins. Co*., 145 Md. App. 256, 313, 802 A.2d 1070, 1104 (2002).
[58] *Id*.
[59] *Id*.
[60] *Id*.
[61] *James G. Davis Const. Corp. v. Erie Ins. Exchg.*, 226 Md. App. 25, 40-41, 126 A.3d 753, 761-62 (2015).
[62] *Id.* at 43-45, 126 A.3d 763-65.
[63] *Id.* at 37-38, 126 A.3d 760.
[64] MD. CODE ANN., CTS. & JUD. PROC. § 5-401; *Bethlehem Steel Corp. v. G.C. Zarnas & Co., Inc.*, 304 Md. 183, 498 A.2d 605 (1985); *Ins. Co. of Am. v. Interstate Serv. Co., Inc.*, 118 Md. App. 126, 701 A.2d 1213 (1997).
[65] 304 Md. at 193, 498 A.2d at 610.
[66] *Id*. at 185–86, 498 A.2d at 605.
[67] *Id*. at 193; 498 A.2d at 610.
[68] *Id*.
[69] *Id*. at 195; 498 A.2d at 611.
[70] 320 Md. 584, 578 A.2d 1202 (1990).
[71] *Id*. at 588; 578 A.2d at 1204.
[72] *Id*. at 593–94; 578 A.2d 1207.
[73] *Id*.
[74] *Id*.
[75] *Id*. at 594; 578 A.2d at 1207.
[76] *Gilbane Bldg. Co. v. Brisk Waterproofing Co., Inc.*, 86 Md. App. 21, 25, 585 A.2d 248, 250 (1991).
[77] *Atlantic States Constr. Co. v. Drummond & Co., Inc.*, 251 Md. 77, 79–82, 246 A.2d 251, 252–54 (1968).
[78] *Id. See also Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc*., 165 Md. App. 262, 273, 885 A.2d 381, 388 (2005) ("Although no particular language is required to create a condition precedent, words and phrases such as 'if,' 'provided that,' 'when,' 'after,' 'as soon as' and 'subject to,' have commonly been associated with creating express conditions.") (citing *Gilbane* 86 Md. App. at 26–27).
[79] *Gilbane*, 86 Md. App. at 26, 585 A.2d at 250–51.
[80] *Id.*
[81] MD. CODE ANN., REAL PROP. §9-113.
[82] MD. CODE ANN., CTS. & JUD. PROC. § 11-108.
[83] *Beard v. S/E Joint Venture*, 321 Md. 126, 133, 581 A.2d 1275, 1278 (1990).
[84] *Gilbert Const. Co. v. Gross*, 212 Md. 402, 411, 128 A.2d 518, 522 (1957)
[85] *Beard*, 321 Md. at 133, 581 A.2d at 1278.
[86] *Gilbert Const. Co.*, 212 Md. at 411, 128 A.2d at 522.
[87] *Myers v. Kayhoe*, 391 Md. 188, 207, 892 A.2d 520, 532 (2006).
[88] *See, e.g.*, MD. CODE ANN., STATE FIN. & PROC. § 15-221.2 (providing that attorneys' fees are payable if state employees act in bad faith or without substantial justification); MD. CODE ANN., REAL PROP. § 9-303 (attorneys' fees may be awarded under Prompt Payment Act if proven the owner or contractor refused to pay undisputed amounts in bad faith); MD. CODE ANN., COM. LAW § 13-408(b) (providing that any person who brings an action to recover damages for injury or loss under the Maryland Consumer Protection Act and is awarded damages may also seek, and the court may award, reasonable attorneys' fees).
[89] *See Atlantic Contracting Mat'l Co. Inc. v. Ulico Cas. Co.*, 380 Md. 285, 844 A.2d 460 (2004).
[90] *Fowler v. Printers II, Inc*., 89 Md. App. 448, 598 A.2d 794 (1991).
[91] *Dewey Jordan, Inc. v. Md. Nat'l Capitol Park & Planning Comm'n.*, 258 Md. 490, 265 A.2d 892 (1970).
[92] Regarding defective plans, *see, e.g., Dewey Jordan, Inc*., 258 Md. 490, 265 A.2d 892 (holding that the owner, through the use of defective plans, commits a breach of its implied warranty in its contract that plans are fit for the purpose of building the project); regarding interference by the owner, *see, e.g., The Orange Alexandria & Manassas R.r. v. Placide*, 35 Md. 315 (1872); regarding denial of access to the site and suspension of the work*, see, e.g., Iron Clad Mfg. Co. v. Stanfield,* 112 Md. 360, 76 A. 854 (1910). These cases demonstrate that Maryland law recognizes that the contractor is entitled to be compensated if the owner, overtly or impliedly, stops the work.
[93] *Cowan v. Meyer*, 125 Md. 450, 94 A. 18 (1915).

[94] *Champion Billiards Cafe, Inc. v. Hall*, 112 Md. App. 560, 569, 685 A.2d 901, 906 (1996). *See also Morris v. Osmose Wood Preserving*, 340 Md. 519, 531, 667 A.2d 624, 631 (1995) (plaintiff cannot "recover in tort for losses in third category – purely economic losses"); *A. J. Decoster Co. v. Westinghouse Elec. Corp*., 333 Md. 245, 249–50, 634 A.2d 1330, 1332 (1994) (a purchaser suffering economic losses cannot maintain a negligence action; instead are limited to contract actions for breach of warranty or tort actions for fraud or deceit); *Council of Co-owners Atlantis Condo. v. Whiting-Turner Contracting Co.*, 308 Md. 18, 33, 517 A.2d 336, 344 (1986) ("[i]n products cases, liability in negligence for economic loss alone, unaccompanied by physical injury, is often denied regardless of privity"); *The Milton Co. v. Council of Unit Owners of Bentley Place Condo.*, 121 Md. App. 100, 115, 708 A.2d 1047, 1054 (1998) ("[t]ort recovery for purely economic losses is ordinarily not allowed in product defect cases").
[95] 143 Md. App. 698, 795 A.2d 806.
[96] 143 Md. App. at 707, 795 A.2d at 811 (quoting *Council of Co-owners Atlantis Condo.*, 308 Md. at 33, 517 A.2d at 344).
[97] *Jacques v. First Nat'l Bank*, 307 Md. 527, 537, 541, 515 A.2d 756, 761, 763 (1986); *Champion Billiards Cafe, Inc.*, 112 Md. App. at 567–71, 685 A.2d at 905–06.
[98] *US Gypsum Co. v. Mayor & City Council of Balt.*, 336 Md. 145, 156–57, 647 A.2d 405, 410 (1992); *Whiting-Turner*, 308 Md. at 35, 517 A.2d at 345; *Heritage Harbour LLC*, 143 Md. App. at 707–08, 795 A.2d at 811–12; *Morris*, 340 Md. at 535, 667 A.2d at 632. The Maryland Court of Appeals expanded this exception to the economic loss rule several years ago. In *Lloyd v. General Motors Corp*., 397 Md.108, 916 A.2d 251 (2007) the court held that a defect constitutes an unreasonable risk of death or serious injury if the defect is alleged to have caused death or serious injury in other cases. Economic loss is recoverable in tort to fix such a defect.
[99] *A. J. Decoster Co. v. Westinghouse Elec. Corp.*, 333 Md. 245, 254, 634 A.2d 1330, 1334 (1994).
[100] MD. CODE ANN., CTS. & JUD. PROC. § 11-107.
[101] *Crystal v. West & Callahan, Inc*., 328 Md. 318, 342, 614 A.2d 560, 572 (1992); *Travel Comm., Inc. v. Pan Am. World Airways, Inc*., 91 Md. App. 123, 189, 603 A.2d 1301, 1333, *cert. denied*, 327 Md. 525, 610 A.2d 797 (1992).
[102] MD. CONST. Art. III, § 57; *Crystal*, 328 Md. at 342, 614 A.2d. at 572.
[103] *Baltimore Cty. v. RTKL Associates. Inc*., 380 Md. 670, 677, 846 A.2d 433, 437 (2004); *Adams v. Coates*, 331 Md. 1, 13–14, 626 A.2d 36, 42–43 (1993).
[104] *Id.*
[105] *Id.*
[106] *Barrie Sch. v. Patch*, 401 Md. 497, 508, 933 A.2d 382, 388-89 (2007).
[107] *Id.* (quoting *Balto. Bridge Co. v. United Rys. & Electric Co.,* 125 Md. 208, 214 (1915)).
[108] *Id.* at 510, 933 A.2d at 390.
[109] 468 Md. 632, 228 A.3d 736 (2020).