

## Property Owners Owe Duty of Reasonable Care to Neighbors in Maryland if Circumstances Create Hazard

In June of last year we reported an affirmance from the Maryland Court of Special Appeals holding that a property owner owes a duty of care to the owners and occupants of neighboring properties to use and maintain that property in a reasonably safe manner so as to avoid harm to neighboring properties. Where the particular use or condition of the premises is not inherently or unreasonably dangerous itself, the fact finder determines if the duty has been breached if there is evidence that the owner knew, or reasonably should have known, that a dangerous use or condition existed. The Maryland Court of Appeals has agreed with the intermediate appellate court's reasoning and affirmed the verdict that now exceeds \$1.5 million with costs and interest. The decision will be published and is precedential.

The 44-page, unanimous opinion by Judge Booth opens with the famous quote from Smokey Bear: "Only You Can Prevent Wildfires." A footnote explains that the Smokey Bear public information campaign by the U.S. Forestry Service is the longest running marketing campaign in U.S. history and the current slogan has been modified from the 1947 original: "Remember ... Only YOU Can Prevent Forest Fires."

The fire originated in a mulched strip of land along a fence bordering two properties. The defendant was a local union and the fire spread on a windy day to the adjacent property used as a storage yard. The fire started when an unknown person discarded a lit cigarette into the mulch. A representative of the union admitted that he saw cigarette butts in the mulch after the fire and was aware that a carelessly discarded cigarette could start a fire in the right situation. The union had no signs or a policy regarding the prohibition or regulation of smoking near the mulch and the fire marshal found hundreds of discarded cigarette butts in the mulch.

At trial, the jury found in favor of three subrogating insurers and the neighboring property owner for a verdict in excess of \$1.3 million. On appeal, the intermediate appellate court affirmed. The court acknowledged that no Maryland case had addressed the specific issues before it in the context of a fire caused by a condition (mulch) that is not itself inherently dangerous but rather is considered to be normal, absent extraordinary circumstances. The Court of Appeals agreed with the court's "well-reasoned analysis" and affirmed. In particular, the Court of Appeals stated:

We disagree with [the Union's] assertion that the Court [below] created a "new duty" to be imposed upon property owners. For at least the past 80 years, this Court has recognized that the ownership, operation and maintenance of property come with the common law responsibility to use reasonable care so as not to cause harm to the neighboring property owners. The duty recognized by this Court is not dependent upon the presence of a particular type of material, or the occurrence of a particular type of activity. Rather, a duty may arise when, viewing the totality of the circumstances, there exists a hazardous condition and the property owner was on notice of the hazardous condition.

While the presence of mulch itself was not a hazard, there was evidence at trial that hundreds of cigarettes were discarded in the mulch placing the Union on notice of a dangerous practice involving the disposal of cigarettes into combustible mulch.

The court also rejected the contention that expert testimony was required in the case. In the footnote referring to the Smokey Bear quote, the court noted that Smokey Bear has been warning the public for years not to throw smoking material into combustible materials such as brush or leaves. As such, it was within the common knowledge of ordinary people that discarding cigarettes into combustible mulch is a fire hazard.



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### Related Practice Areas

- Subrogation & Recovery

The lead attorney at trial and on appeal was Larry Walker of Cozen O'Connor.

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