

**APPELLATE VICTORIES  
OF  
MARC FIEDLER**

- *Hechinger Co. v. Johnson*, 761 A.2d 15 (D.C. 2000).

The D.C. Court of Appeals affirmed a \$2,000,000 verdict for a hardware-store patron who had been assaulted by a store employee. Among other things, the court held that: (1) D.C. was not an inconvenient forum even though the wrongdoing and injury occurred in Maryland; (2) it was permissible in closing argument to suggest that the plaintiff's injuries might be worth various dollar amounts; (3) sufficient evidence was presented to prove the store vicariously liable for its employee's tortious assault; (4) the verdict cannot be impeached by evidence that jurors did not understand or follow instructions and were confused; and (5) the verdict was not excessive in light of the plaintiff's severe and permanent injuries.

- *Traudt v. Potomac Elec. Power Co.*, 692 A.2d 1326 (D.C. 1997).

The D.C. Court of Appeals reversed summary judgment for an electric utility in an action by an asbestos-abatement contractor's employee arising from burns sustained when he removed asbestos from 2,400-volt electric cables that the utility failed to de-energize. The court for the first time held that a contractee, such as the utility, owes its contractor's employees a duty under the peculiar-risk doctrine to provide in the contract or otherwise that the contractor take special precautions. The court further held that the utility owed the plaintiff a statutory duty to provide a safe place of employment, even though the utility was not his direct employer.

- *Fry v. Diamond Constr., Inc.*, 659 A.2d 241 (D.C. 1995).

The D.C. Court of Appeals reversed summary judgment for a general contractor in an action by a subcontractor's employee seeking damages for catastrophic injuries sustained when he fell off a ladder that had been placed on a scaffold. The court recognized two new theories of liability: (1) a contractee, such as the defendant in this case, is subject to direct liability for injuries caused by its contractor's conduct in obedience to the contractee's negligent directions; and (2) a contractee is subject to direct liability for injuries caused by a contractor that the contractee knew or should have known was incompetent or improperly equipped. The court also held that the defendant was subject to vicarious liability for the subcontractor's negligence because the work was inherently dangerous.

- *Cope v. Scott*, 45 F.3d 445 (D.C. Cir. 1995).

The U.S. Court of Appeals for the D.C. Circuit reversed in part summary judgment for the U.S. government in a Federal Tort Claims Act suit by a motorist injured in an automotive collision in Rock Creek Park. The court held that the government's decision as to where and what type of warning sign to post about dangerous road conditions was not immune from liability under the FTCA's discretionary-function exception.

- *Burns v. Director, Office of Workers' Compensation Programs*, 41 F.3d 1555

(D.C. Cir. 1994).

The D.C. Circuit reversed administrative orders denying a claimant workers' compensation benefits under the Longshore and Harbor Workers' Compensation Act. Substantial evidence supported the conclusion that the claimant's on-the-job stroke was caused by his exposure to propane gas at his work site.

- *Madison v. Washington Metro. Area Transit Auth.*, 993 F.2d 228 (4<sup>th</sup> Cir. 1993) (unpublished opinion).

The U.S. Court of Appeals for the Fourth Circuit affirmed a judgment entered on a jury verdict in favor of the widow of a blind man who had fallen onto Metrorail subway tracks while trying to board a train and was killed when the train pulled away from the station. The court rejected Metro's argument that, when he entered the track bed without authorization, the decedent lost his status as an invitee and became a trespasser to whom Metro owed a lesser duty of care.

- *Williams v. Washington Hosp. Ctr.*, 601 A.2d 28 (D.C. 1991).

The D.C. Court of Appeals reversed a judgment entered on a verdict for a hospital in a medical-malpractice action by a patient alleging that a doctor at the hospital negligently failed to discover a foreign object in his eye, resulting in blindness. The trial judge erred by failing to give an adverse-inference instruction where the defendant had misplaced crucial evidence.

- *Capital Hilton Hotel v. District of Columbia Dep't of Employment Servs.*, 565 A.2d 981 (D.C. 1989).

The D.C. Court of Appeals affirmed an award of workers' compensation to a banquet houseman who suffered the rupture of an aneurysm in his brain while he carried heavy tables at work. The court held that the fact that he suffered from a pre-existing arterial disorder did not require him to prove an unusual exertion in order to establish a causal connection between his work-related activity and his injury.

- *Meiggs v. Associated Builders, Inc.*, 545 A.2d 631 (D.C. 1988), *cert. denied*, 490 U.S. 1116 (1989).

In this landmark case, the D.C. Court of Appeals held that subcontractors' injured employees who receive workers' compensation from the subcontractors may sue general contractors for tort damages. In concluding that general contractors are not entitled to statutory immunity under the D.C. Workers' Compensation Act, the court expressly rejected the U.S. Supreme Court's contrary interpretation of the identical language in the Act's predecessor statute.

- *Coleman v. Parkline Corp.*, 844 F.2d 863 (D.C. Cir. 1988).

The D.C. Circuit affirmed a judgment on the verdict for a construction worker who, while unloading 500-pound elevator ceilings from a truck, was seriously injured when one of them fell on her. The trial judge properly admitted the testimony of the plaintiff's safety engineer, even though he had no experience with loading elevator ceilings.

- *Bechtel Assocs., P.C. v. Sweeney*, 834 F.2d 1029 (D.C. Cir. 1987).

The D.C. Circuit affirmed the award of workers' compensation benefits to the claimant under the Longshore and Harbor Workers' Compensation Act. The claimant's work-related pulmonary disease had combined with his pre-existing nonwork-related stomach cancer to create a compensable disability.

- *Washington Metro. Area Transit Auth. v. District of Columbia Dep't of Employment Servs.*, 515 A.2d 740 (D.C. 1986).

The D.C. Court of Appeals affirmed the award of workers' compensation to the claimant. The court held that the computation of workers' compensation benefits should be based not solely on the income from the employer whose work occasioned the injury, but rather on the wages from all the jobs held by the worker at the time of the on-the-job accident. The court further held that the benefits calculation may include income not originally reported in the claimant's income-tax return.