Maryland Law Review

Volume 25 | Issue 1 Article 10

Recent Decisions

Recent Decisions

Constitutional Law — Counsel For Indigent Defendant Entitled To Compensation Under The Fifth Amendment. *Dillon v. United States,* 230 F. Supp. 487 (D. Ore. 1964). Petitioner, a court-appointed counsel, represented an indigent defendant in a proceeding seeking to set aside a conviction. 28 U.S.C. § 2255 (1958). At the conclusion of the case and at the invitation of the court, counsel submitted a petition for reasonable compensation for services performed and expenses incurred. The court ordered the Attorney General of the United States to show cause why petitioner should not receive such compensation. After the hearing on the order, the court concluded that the appointment of petitioner as counsel for the indigent defendant was a taking for a public use of the petitioner's work product, facilities, time, skill and expertise and that such a taking was compensable under the fifth amendment. The court set just payment at the rate of $35 per hour plus incidental expenses; total payment to petitioner was $3,804.54.

The court, in finding a compensable taking, relied upon *Armstrong v. United States,* 364 U.S. 40 (1960), in which the Supreme Court allowed compensation under the fifth amendment for materialmen's liens lost when a boat was seized by the government for default on a boat building contract. The claim in *Armstrong,* as in the present case, was predicated upon the "premise of a judicial implementation of the self-executing exigencies of the fifth amendment itself." 230 F. Supp. at 492. The court also referred to those cases in which compensation claims were predicated upon a theory of implied contract. *United States v. Berdan Fire-Arms Mfg. Co.,* 156 U.S. 552 (1895); *United States v. Palmer,* 128 U.S. 262 (1888). See also *United States v. Lynah,* 188 U.S. 445 (1903). The court stated that petitioner should not have to bear alone society's obligation to provide due process to an indigent defendant. *Cf. State v. Henley,* 98 Tenn. 665, 41 S.W. 352 (1897).

Shortly after this decision Congress passed the Criminal Justice Act of 1964, 78 Stat. 552 (1964). Under the provisions of the Act, court appointed counsel in federal cases will receive up to $15 per hour for in-court time and up to $10 per hour for reasonable out-of-court time. A maximum payment of $300 for misdemeanors and $500 for felonies is also established for both trial and appellate levels; however, under extraordinary circumstances, trial counsel's fee may be raised. A provision is also made to reimburse counsel for expenses reasonably incurred.

Courts in Maryland appoint trial counsel under Rule 719 of the Maryland Rules of Procedure, MD. CODE ANN. Rule 719 (Vol. 9B, Supp. 1964). Payment of such counsel is the duty of the county officer in the county of the forum. MD. CODE ANN. art. 26, § 12 (1957); *County Comm. of Worcester Co. v. Melvin,* 89 Md. 37, 42 Atl. 910

(1899). Provision is made for appointment of counsel in post-conviction proceedings by the Maryland Post-Conviction Procedure Act, MD. CODE ANN. art. 27, §§ 645A–S (Supp. 1964), and Rules BK 40–48 of the Maryland Rules of Procedure, MD. CODE ANN. Rules BK40–48 (Vol. 9B, Supp. 1964). See particularly Rule BK 42. Typical fees for trial counsel in all but the most serious cases are $50 to $75 and $200 for services on appeal; the usual fee for an appeal in a post-conviction proceeding is $50 to $75. Brumbaugh & Ester, Indigent Accused Persons' Project — Maryland, Oct. 1963 (unpublished report for the American Bar Foundation in University of Maryland Law Library).

Copyrights — Loudspeaker Broadcasts Of Records By Merchandise Mart Considered Public Performance For Profit. *Chappell & Co. v. Middletown Farmers Market & Auction Co.*, 334 F.2d 303 (3d Cir. 1964). The plaintiffs, copyright owners of certain musical compositions, brought separate actions in the district court against the defendant, a Pennsylvania corporation operating a merchandise mart. The plaintiffs charged specifically that defendant had violated section 1(e) of the Copyright Act which gives copyright owners exclusive rights to reproduce their musical compositions by mechanical means and to perform their copyrighted works publicly for profit. 17 U.S.C. § 1(e) (1958). While stipulating that the records were played over its loudspeaker system, the defendant contended that such renditions were permissible because they were directed toward the sales promotion of the records, thus benefitting the copyright owners. Without deciding whether the record broadcasts were connected with the defendant's sales promotions, the trial judge rendered judgment for the plaintiffs holding that said musical compositions were "publicly performed for profit . . . for the entertainment and amusement of patrons attending such place and to make such place of business an attractive place for the patronage of the general public." 334 F.2d at 305–06.

In affirming the decision of the lower court, the Third Circuit Court of Appeals considered the term "for profit" within the context of the statute and concluded that there was sufficient basis for the trial court's finding that the performance amounted to a public performance for profit. The word profit was employed in the sense of commercial, as opposed to purely philanthropic, use rather than direct pecuniary benefit. *Remick v. American Auto. Accessories Co.*, 5 F.2d 411, 412 (6th Cir. 1925), citing, *Herbert v. Shanley*, 242 U.S. 591 (1917). See also LATMAN, HOWELL'S COPYRIGHT LAW 142–47 (4th ed. 1962). Note, *Public Performance for Profit Through the Medium of Copyrighted Musical Compositions*, 25 MISS. L.J. 295, 299–302 (1964). The court pointed out that authorization had been given by the copyright owners to record the musical compositions and to sell the recordings, and therefore the exclusive right to reproduce by mechanical means had been released. However, the right to use the records in a public performance for profit was not automatically released thereby and remained exclusively reserved to the copyright owners. *Irving Berlin, Inc. v. Daigle*, 31 F.2d 832 (5th Cir. 1929).

Furthermore, the court stated that sections 1(e) and 27 did not authorize such performances even in connection with sales promotions of the records themselves. 17 U.S.C. §§ 1(e), 27 (1958). The court stated that the advertising value to the copyright owner of the broadcast of the musical composition is no defense to a suit for infringement of copyright. *M. Witmark & Sons v. L. Bamberger & Co.*, 291 Fed. 776, 779–80 (D. N.J. 1923).

Criminal Law — Non-Disclosure Of Evidence Favorable To The Accused Violates Due Process. *Barbee v. Warden*, 331 F.2d 842 (4th Cir. 1964). Petitioner Barbee was convicted in a Maryland court of unauthorized use of a motor vehicle and shooting a police officer. At the trial, the prosecution produced three eyewitnesses to the shooting, all of whom identified the petitioner. The prosecution also produced, for identification, a .32 caliber pistol found on the petitioner when he was arrested. Unknown to either the defense or the court, the police had made fingerprint and ballistics checks of the pistol which tended to exculpate the petitioner since they were negative. There was doubt as to the prosecutor's knowledge of the tests, but, in any case, they were not introduced into evidence at the trial. Petitioner was convicted. About a year after his conviction, he sought relief under the Maryland Post-Conviction Procedure Act, MD. CODE ANN. art. 27, § 645A (1957); however, the application was denied. *Barbee v. Warden*, 220 Md. 647, 151 A.2d 167 (1959). Petitioner then applied for federal habeas corpus relief, alleging a denial of due process on the basis of the non-disclosure of the possibly exculpatory evidence; his application was denied by the district court.

The Court of Appeals for the Fourth Circuit reversed, holding that introduction of the gun and withholding results of the tests was a denial of due process. It based the decision on the statement of the Supreme Court in *Brady v. Maryland*, 373 U.S. 83, 87 (1963): "The suppression by the prosecution of evidence favorable to an accused . . . violates due process." In the *Brady* case, however, the prosecutor had had knowledge of the undisclosed evidence. See Annot., 33 A.L.R.2d 1421 (1954). In this case the court took the next step and eliminated the requirement that the prosecutor be aware of the exculpatory evidence. The court admitted that it was possible that the state could still have secured a conviction; however, the court refused to speculate about the influence of the evidence upon the fact finder. See *Fahy v. Connecticut*, 375 U.S. 85 (1963).

Some states have reached a similar result where there has been suppression of evidence without knowledge on the part of the prosecutor. See *People v. Hoffner*, 208 Misc. 117, 129 N.Y.S.2d 833 (Queens County Ct. 1952). This is, however, the first federal case exactly on point. See *United States ex rel. Thompson v. Dye*, 221 F.2d 763 (3d Cir. 1955) and *Napue v. Illinois*, 360 U.S. 264 (1958). Other states, which have not treated the instant problem, reason that it is the prosecutor's duty, as a public official, to ensure the justice of the trial, and misconduct on his part which is prejudicial to the defendant requires

reversal of a conviction. See *State v. Hild,* 240 Iowa 1119, 39 N.W.2d 139 (1949); *State v. Kassabian,* 69 Nev. 146, 243 P.2d 264 (1952). See also *United States ex rel. Almeida v. Baldi,* 195 F.2d 815 (3d Cir.), *cert. denied,* 309 U.S. 904 (1952). For further reference see Note, *Duty of Prosecutor to Disclose Exculpatory Evidence,* 60 COLUM. L. REV. 858 (1960).

Sales — Uniform Commercial Code-Warranty Extends To "Buyer" Employee. *Yentzer v. Taylor Wine Co.,* 414 Pa. 272, 199 A.2d 463 (1964). Plaintiff, employed as manager of a hotel, personally purchased on behalf of his employer, four bottles of champagne, produced and bottled by the defendant-corporation, for use and consumption by guests of the hotel. While plaintiff was preparing to serve the wine, a cap from one of the bottles suddenly ejected and hit plaintiff in the eye. Plaintiff brought suit under the UNIFORM COMMERCIAL CODE § 2–314, PA. STAT. ANN. tit. 12A, § 2–314(2)(c), (e) (1954), alleging breach of implied warranty of merchantability. In an earlier case, *Hochgertel v. Canada Dry Corp.,* 409 Pa. 610, 187 A.2d 575 (1963), the Supreme Court of Pennsylvania held that U.C.C. § 2–318, PA. STAT. ANN. tit. 12A, § 2–318 (1954), which extends the seller's warranty to a buyer's family or guests, did not extend the warranty of merchantability to an employee of the purchaser. However, in *Hochgertel* the court acknowledged that they had abandoned the strict privity requirements in food cases and now permitted the extension of the warranty of merchantability to sub-purchasers in the distributive chain. The court differentiated the principal case from *Hochgertel* on the grounds that plaintiff was a "buyer" as defined in Section 2–103 of the U.C.C., 12 PA. STAT. ANN. tit. 12A, § 2–103 (1954), and therefore was included in the distributive chain. The court, treating the principal case as a "food case", ruled that *Hochgertel* did not foreclose the inclusion of the *actual purchaser* even though he be an employee of the party to whom title to the product passed and therefore he should not be excluded from the benefits of the warranty. The dissenting opinion stated that under the principles of agency, title and complete interest passed to the employer as the legal and real *purchaser* within the definition of U.C.C. § 1–201(32), (33), PA. STAT. ANN. tit. 12A, § 1–201(32), (33) (1954). *Cf. Jakubowski v. Minnesota Mining & Mfg.,* 80 N.J. Super. 184, 193 A.2d 275, 282 (1963); 24 MD. L. REV. 220 (1964).

In cases decided prior to the enactment of the U.C.C., the Maryland Court of Appeals had consistently denied recovery on the theory of implied warranty where there was no privity of contract. *Vaccarino v. Cozzubo,* 181 Md. 614, 31 A.2d 316 (1943); *Poplar v. Hochschild, Kohn & Co.,* 180 Md. 389, 24 A.2d 783 (1942); *Flaccomio v. Eysink,* 129 Md. 367, 100 Atl. 510 (1916). However, in *Vaccarino* the Maryland Court of Appeals in dictum stated that the requisite privity existed in members of the immediate family. 31 A.2d at 318. The dissenting opinion in the principal case also pointed out that the case was not a "food case", but was an action based upon the alleged inadequacy of

the package container. In a 1942 decision, the Maryland Court of Appeals cited with approval an Illinois case, *Crandall v. Stop and Shop, Inc.*, 288 Ill. App. 543, 6 N.E.2d 685 (1937), holding that the warranty of merchantability applies only to the contents and not to the container. *Poplar v. Hochschild, Kohn & Co.*, 180 Md. 389, 393–4, 24 A.2d 783 (1942). See *Atwell v. Pepsi-Cola Bottling Co.*, 152 A.2d 196 (D.C. 1959), applying Maryland law. However, under § 2–314 of the U.C.C., MD. CODE ANN. art. 95B, § 2–314(2)(e) (1957), "Goods to be merchantable must be . . . adequately contained, [and] packaged. . . ." For further reference see *Medallion Wine Corp. v. Legum*, 158 F.2d 428 (4th Cir. 1946); Note, 21 MD. L. REV. 247 (1961); 18 MD. L. REV. 268 (1958); Note, 7 MD. L. REV. 82 (1942).

Torts — Landlord Liable For Injuries Caused By The Natural Accumulation Of Ice And Snow On Common Walks And Passageways. *Langley Park Apartments, Inc. v. Lund*, 234 Md. 402, 199 A.2d 620 (1964). Plaintiff, tenant in a multiple housing development, was injured when she slipped and fell on a natural accumulation of snow on a common walkway providing access to her apartment. The action was brought against the owner and the manager as landlords for failure to remove the snow from walkways under their control. The Maryland Court of Appeals affirmed the judgment for the plaintiff, holding that a landlord of a multi-family apartment building may be liable for injuries sustained by tenants due to the natural accumulation of ice and snow on common walkways under his control, provided he knew or had reason to know of the dangerous condition and failed to protect against it. In reaching the decision, the court followed the principle set forth in *Elmar Gardens, Inc. v. Odell*, 227 Md. 454, 177 A.2d 263 (1961), *i.e.*, when a landlord retains control of passageways and stairways to be used in common by all tenants, he must exercise ordinary care to maintain those portions of the premises in a reasonably safe condition. See also *Ross v. Belzer*, 199 Md. 187, 85 A.2d 799 (1952); 5 M.L.E. *Landlord and Tenant* § 193 (1961), and cases cited therein.

In so holding the Maryland Court adhered to the view known as the "Connecticut Rule" which was first enunciated in *Reardon v. Shimelman*, 112 Conn. 383, 128 Atl. 705 (1925). See recent cases applying this rule: *Young v. Saroukos*, 185 A.2d 274, *aff'd*, 189 A.2d 437 (Del. 1963); *Fincher v. Fox*, 107 Ga. App. 695, 131 S.W.2d 651 (1963). The opposing view, the "Massachusetts Rule", was first expressed in *Woods v. Naumbeag Steam Cotton Co.*, 134 Mass. 357, 45 Am. Rep. 344 (1883), where it was held that a landlord was not liable for failure to remove a natural accumulation of ice and snow. The holding was based upon the principle that the landlord's only duty with respect to common passageways is to maintain them in the same condition of safety as they appeared to be when the tenancy commenced. *Smolesky v. Kotler*, 270 Mass. 32, 169 N.E. 486 (1930). However, the landlord may be held liable if there is an express or implied contract establishing this duty. See *Spack v. Longwood Apart-*

ments, Inc., 338 Mass. 518, 155 N.E.2d 873 (1959). The Massachusetts rule has been subjected to various criticisms. See *Massor v. Yates*, 137 Ore. 569, 3 P.2d 784 (1931); *United Shoe Mach. Corp. v. Paine*, 26 F.2d 594 (1st Cir. 1928). Writers have stressed the impracticability of requiring tenants in multi-family apartment complexes to remove the ice and snow themselves. 41 COLUM. L. REV. 349 (1941); see HARPER & JAMES, LAW OF TORTS § 27.17 (1956). For additional information see *Robinson v. Belmont-Buckingham Holding Co.*, 94 Colo. 534, 31 P.2d 918 (1934); PROSSER, LAW OF TORTS § 63 (3d ed. 1964); 29 TENN. L. REV. 307 (1962); 31 CHI.-KENT L. REV. 271 (1952–53). Cases are collected in Annot., 26 A.L.R.2d 610 (1952).

Trade Regulation—Non-Signer Provisions Of Fair Trade Legislation Violate State Constitution. *Olin Mathieson Chemical Corp. v. White Cross Stores, Inc.*, 414 Pa. 95, 199 A.2d 266 (1964). The Pennsylvania Fair Trade Act, PA. STAT. ANN. tit. 73, §§ 7–11 (1960), includes a nonsigner provision under which it is unfair competition for one who is not a party to, but has notice of, a fair trade contract to sell a product at less than the price stipulated for that product in the fair trade contract. PA. STAT. ANN. tit. 73, § 8 (1960). Plaintiff, the manufacturer of products distributed under the "Squibb" trademark, had established minimum retail prices for the products in Pennsylvania by means of fair trade contracts with certain Pennsylvania retailers. Defendants were not parties to these contracts, but they had knowledge of them. Plaintiff sought to enjoin defendants from retailing the products at prices less than the minimum prices stipulated in the fair trade contracts. The injunction was granted in the lower court. On appeal, the Supreme Court of Pennsylvania reversed, holding, the non-signer provisions of the Pennsylvania Fair Trade Act to be in violation of the Pennsylvania Constitution as an unlawful delegation to private persons of the legislative power of price regulation. PA. CONST. art. 11, § 1. In doing so, the court explicitly overruled, as erroneous, its previous finding of constitutionality of the non-signer provision in *Burche Co. v. General Electric Co.*, 382 Pa. 270, 115 A.2d 361 (1955).

The validity of non-signer provisions under the due process clause of the United States Constitution was established in *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U.S. 183 (1936). Although the non-signer provisions have been widely attacked on the basis of objections arising under state constitutions, prior to 1949 the courts of all states had held them to be valid. Note, *Fair Trade and the State Constitutions — A New Trend,* 10 VAND. L. REV. 415 (1957). However, since 1949, the majority of state courts in which the non-signer provisions have been tested, have found them to be in violation of state constitutional guarantees, resulting in a confusion of state decisions which are irreconcilable. Annot. 60 A.L.R. 2d 420 (1958).

State courts have held that non-signer provisions violate state constitutional guarantees of due process, *Olin Mathieson Chemical*

Corp. v. Francis, 134 Colo. 160, 301 P.2d 139 (1956); *contra, General Electric Co. v. Klein,* 34 Del. Ch. 491, 106 A.2d 206 (1954), and equal protection, *Liquor Store, Inc. v. Continental Distilling Corp.,* .. Fla. .., 40 So. 2d 371 (1949); but see, *Max Factor Co. v. Kunsman,* 5 Cal. 2d 446, 55 P.2d 177 (1936), and that such provisions are outside the scope of the state's police power. *Bulova Watch Co. v. Zale Jewelry Co.,* 274 Ala. 270, 147 So. 2d 797 (1962); *contra, Plough, Inc. v. Hague & Knott Super Market,* 211 Tenn. 480, 365 S.W.2d 884 (1963). For a case holding contrary to the principal case see *Ely Lilly & Co. v. Saunders,* 216 N.C. 163, 4 S.E.2d 528 (1939). For an up-to-date listing of the present status of state fair trade acts see 2 TRADE REG. REP. ¶ 6041 (1964).

In *Olin Mathieson Chemical Corp. v. Cohen,* 234 F. Supp. 80 (E.D. Pa. 1964), the court held that resale price maintenance provisions of fair trade agreements entered into pursuant to the Pennsylvania Fair Trade Act are valid and enforceable. The court stated that the court in the principal case did not determine by implication that the Fair Trade Act was unconstitutional as applied to these fair trade agreements.

The Maryland Court of Appeals has consistently upheld the constitutionality of the Maryland Fair Trade Act, MD. CODE ANN. art. 83, § 107 (1957). See *Home Utilities Co. v. Revere Copper and Brass, Inc.,* 209 Md. 610, 122 A.2d 109 (1956); see also *Goldsmith v. Mead Johnson & Co.,* 176 Md. 682, 7 A.2d 176 (1939). For further reference see Conant, *Resale Price Maintenance: Constitutionality of Non-Signer Clauses,* 109 U. PA. L. REV. 539 (1961); 5 M.L.E. *Constitutional Law* § 343 (1960).

Waste By Life Tenant — Applicability Of Statute Of Gloucester. *Worthington Motors v. Crouse,* .. Nev. .., 390 P.2d 229 (1964). The remaindermen sued the tenant *per autre vie* for waste. A statute of Nevada provides that the remedy for waste shall be treble damages. NEV. REV. STAT. § 40–150 (1957). The plaintiffs, however, contended that the Statute of Gloucester, 1278, 6 Edw. 1, c. 5 (repealed), which created a procedure, the writ of waste, and a remedy, treble damages and forfeiture of the thing wasted, was a part of the law of Nevada and that he was, therefore, entitled to forfeiture of the life estate as well as treble damages. The district court awarded plaintiffs $5,000 and forfeited the tenancy *per autre vie,* giving the plaintiffs immediate possession of the property as owners in fee simple. The Supreme Court of Nevada reversed the district court and *held* that Nevada had not adopted the Statute of Gloucester as a part of the common law and that forfeiture, as a remedy for waste, is not allowed in the absence of a permissible statute. See IV SIMES & SMITH, THE LAW OF FUTURE INTERESTS § 1658 (1956) and RESTATEMENT, PROPERTY § 198 (1936). The court took cognizance of the fact that the Statute of Gloucester was ignored for 300 years in England after its enactment was repealed in 1879. The court reasoned that its obsoles-

cence in England coupled with the severity of its remedy justified the position that the Statute was not automatically adopted as part of the common law because it was not adaptable to the new world conditions as they existed in the state of Nevada. See *Smith v. Smith,* 219 Ark. 304, 241 S.W.2d 113, 114 (1951).

The Statute of Gloucester is considered as a part of the common law in several states, and the remedy of forfeiture and treble damages is thus available in an action for waste. In other states, as in Nevada, these historic statutes exist in modified form as statutory remedies involving forfeiture and/or multiple damages. For a listing of each state and its available remedies for waste see 5 AMERICAN LAW OF PROPERTY § 20.18 (1952–54) and RESTATEMENT, PROPERTY §§ 198–9 (1936). The Statute became a part of the common law of Maryland. 1 ALEXANDER'S BRITISH STATUTES 112 (Coe's ed. 1912). See also Maryland's "reception" provision in the Declaration of Rights, art. 5. The reason for the adoption of the Statute was set forth in the early case of *Thurston v. Mustin,* 23 Fed. Cas. 1176, 1178–79 (No. 14,013) (C.C.D.C. 1828): "The Statute of Gloucester . . . is believed to have been by experience found applicable to the local and other circumstances of the inhabitants of Maryland." However, this Statute now appears to be obsolete, for action on the case in the nature of waste to recover for the "actual damage committed" is the usual procedure, *Dickinson v. Baltimore,* 48 Md. 583, 589, 30 Am. Rep. 492, 494 (1878). See also 1 POE, PLEADING AND PRACTICE § 164 (5th ed. 1925). *White v. Wagner,* 4 H. & J. 373, 392, 7 Am. Dec. 674, 678 (Md. 1818), indicates that the Statute may be used for the purposes of determining what persons are liable for waste. However, Section 93 of Article 16 of the Annotated Code of Maryland allows double damages if an injunction to stay waste is violated (Supp. 1964).

Workmen's Compensation — Rehabilitation And Subsequent Higher Wages Justify Suspension Of Compensation. *Symons v. National Electric Products, Inc.,* 414 Pa. 505, 200 A.2d 871 (1964). Claimant sustained an occupational injury compelling the amputation of both legs. Accordingly, the defendant agreed to compensate claimant for total disability. As the result of a successful rehabilitation program, claimant was able to resume work for defendant at wages in excess of those received by him at the time of the accident. Defendant, having paid the maximum compensation required for the loss of two legs, then petitioned the Workmen's Compensation Board to suspend further payments unless the disability was to be considered "total" under Section 306(c) of the Workmen's Compensation Act, 77 PA. STAT. ANN. § 513 (1952), as amended, 77 PA. STAT. ANN. § 513 (Supp. 1963). The Workmen's Compensation Board, on the basis of the rehabilitation and the re-employment at higher wages, found that the claimant was not "totally" disabled and ordered the suspension of payments. The Supreme Court of Pennsylvania affirmed the suspension and authorized the Board to "retain jurisdiction in the eventuality that there occurs a change in claimant's present status".

Generally, the legal consequences of rehabilitation, in reference to statutory re-opening provisions permitting the modification of an award, have not been exposed to judicial consideration. However, when considering the consequences of increased wages, there does exist a general rule stating that an award of compensation is not subject to modification as the wages of the employee vary. See 101 C.J.S. *Workmen's Compensation* § 854 (1958); 2 LARSON, WORKMEN'S COMPENSATION LAW §§ 57.20–57.66 (1961); Annot., 149 A.L.R. 413 (1944). For further reference see Riesenfeld, *Contemporary Trends in Compensation for Industrial Accidents Here and Abroad,* 42 CALIF. L. REV. 530, 553–56 (1954); 50 KY. L.J. 249 (1961).

The Maryland Workmen's Compensation Act, MD. CODE ANN. art. 101, § 40(b) (1957), authorizes the Commission to modify an award where aggravation, diminution or termination of the disability occurs. The Maryland Court of Appeals has not decided whether an employee's successful rehabilitation and subsequent increased earnings would justify suspension of payments in an action brought by an employer under section 40(b) of the Act. See *Albert F. Goetze, Inc. v. Pistorio,* 201 Md. 152, 92 A.2d 762 (1952), and *Jackson v. Bethlehem-Sparrows Point Shipyard, Inc.,* 189 Md. 583, 56 A.2d 702 (1948). The court, when considering wages in original proceedings, has apparently leaned in the direction of the general rule stated above. See *Belschner v. Anchor Post Products, Inc.,* 227 Md. 89, 175 A.2d 419 (1961), and *Baltimore Tube Co., Inc. v. Dove,* 164 Md. 87, 164 Atl. 161 (1933).

For further reference relating to the rehabilitation problem, see Allan, *The Economics of Rehabilitation,* 24 TENN. L. REV. 475 (1956); Horovitz, *Rehabilitation of Injured Workers — Its Legal and Administrative Problems,* 31 ROCKY MT. L. REV. 485 (1959); Leonard, *Legal Roadblocks to Rehabilitation,* A.B.A. SECT. INS. N. & CL. 229 (1963), and Sterner, *Rehabilitation of Injured Employees,* A.B.A. SECT. INS. N. & CL. 243 (1963).