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Schmerling v. Injured Worker's Ins. Fund:

Monitoring and Recording Devices In Telephones are Not Considered "Telephone Equipment" for the Purposes of the Maryland Wiretap Act's Telephone Exemption, Unless They Enhance Communication or Advance the Efficient Use of Telecommunication

By: Megan M. Bramble

The Court of Appeals of Maryland held monitoring and recording devices in telephones are not considered "telephone equipment" for the purpose of the Maryland Wiretap Act's telephone exemption, unless they enhance communication or advance the efficient use of telecommunication. *Schmerling v. Injured Worker's Ins. Fund*, 368 Md. 434, 438, 795 A.2d 715, 717 (2002). In a case of first impression, the court also examined the functional utility of the device and its ability to further the use of the telecommunication system as the proper measure of the applicability of the exemption. *Id.*

The Injured Worker's Insurance Fund ("IWIF") is an independent insurance company that provides worker's compensation to Maryland businesses. *Id.* at 439, 795 A.2d at 717. In 1996, the company upgraded its telecommunications system by adding a new Meridian telephone system with monitoring capabilities that were designed by Racal ("Racal device"). *Id.* The monitoring system recorded the voices of IWIF employees, as well as any other party on the line, in order to evaluate and improve IWIF customer service. *Id.*

Jack J. Schmerling alleged

IWIF's monitoring and recording of business calls without the prior consent of other parties was a violation of the Maryland Wiretapping and Electronic Surveillance Act § 10-401, and thus filed a class action suit against IWIF. *Id.* The Wiretap Act prohibits the willful interception of, "any wire, oral, or electronic communications." *Schmerling*, 368 Md. at 445, 795 A.2d at 721. Schmerling specifically alleged the monitoring and recording of business calls through the Racal device was unlawful. *Id.* at 439, 795 A.2d at 718.

The Circuit Court for Baltimore County granted summary judgment in favor of the IWIF, ruling that the monitoring system did qualify as "telephone equipment" and that it was used for valid business purposes. *Id.* at 441, 795 A.2d at 719. The Court of Special Appeals of Maryland affirmed the lower court's decision. *Id.* Schmerling petitioned for writ of certiorari to the Court of Appeals of Maryland. *Id.* The court reversed the court of special appeals decision with regard to the Wiretap Act, holding the add-on Racal device was not "telephone equipment" within the meaning of the telephone exemption. *Id.* at 456, 795 A.2d

at 727.

The court began its analysis by interpreting the statutory language of the Wiretap Act. "Telephone equipment" is not defined in the Wiretap Act, so in interpreting the meaning of the language the court focused on the natural and ordinary meaning of the language, the express and implied purpose of the statute, and common sense. *Schmerling*, 368 Md. at 444, 795 A.2d at 720. To qualify for exemption from these prohibitions, the Racal device needed to meet the dual-pronged criteria of being "telephone equipment (or a component thereof) used in the ordinary course of business." *Id.* at 446, 795 A.2d at 722. The issue under debate was whether the Racal device counted as an "electronic, mechanical, or other device" under the Wiretap Act, which made its use for interception of communications illegal. *Id.* at 445, 795 A.2d at 721. To determine legislative intent, the court compared the language of the statute with the statute's overall purpose. *Id.* at 445, 795 A.2d at 721. The Wiretap Act was modeled after

the federal law, Title III of the Omnibus Crime Control and Safe Streets Act ("Title III"), 18 U.S.C.S. §§ 2510-2522 (2000); therefore, the court re-viewed federal cases to ascertain the legislative history of the section. *Id.* (citing *Miles v. State*, 365 Md. 488, 507, 781 A.2d 787, 798 (2001)).

The Federal Electronic Communications Privacy Act amendments to Title III provided insight into whether the Racal device qualified as a component of the "telephone equipment" in order to fall within the Wiretap Act's exemption. *Schmerling*, 368 Md. at 445, 795 A.2d at 721. In the wake of new technology, the amendments satisfied the need to extend its protection of privacy. *Id.* at 449, 795 A.2d at 723. Along the same lines, the Maryland bill brought the Wiretap Act up to par with the level of privacy risks new technology created. *Id.*

Neither Congress nor the Maryland General Assembly intended the scope of the amendments to expand the meaning of "telephone equipment." *Id.* at 450, 795 A.2d at 724. If anything, it was meant to provide a more restrictive definition. *Id.* The court expressed dissatisfaction with other jurisdictions' methodology in defining the term "telephone equipment." *Id.* at 453, 795 A.2d at 725. The court rejected the reliance on factors such as who designed or sold the product, and the degree of integration of

the system. *Schmerling*, 368 Md. at 453, 795 A.2d at 725. Instead, the court chose a functional approach that required the device have some relation to the enhancement of the communication system, such as a positive impact on efficiency, cost, or some other measurable effect. *Id.* at 454, 795 A.2d at 726.

Since the Racal device's use was specifically for recording purposes, the court ultimately found the use of the device could be regulated. *Id.* at 454, 795 A.2d at 726. This was the case because its attachment to the IWIF telephones was intended. *Id.* Although the Racal device may have increased effectiveness of employee training, it did not increase the effectiveness of the telecommunications equipment itself. *Id.* at 455, 795 A.2d at 727. Thus, the Racal device did not enhance telecommunication. The court concluded even if the system was a component of the phone, it should not be considered "telephone equipment" because it was only capable of monitoring. *Id.*

Although the Wiretap Act ultimately poses a hardship to those businesses that rely on recording devices for quality assurance, the ultimate legislative goal of protection of privacy is achieved through the Wiretap Act. As a result, companies may find themselves precluded from using monitoring equipment in certain circumstances, even when it would behoove both the company and the general public to use such devices. Nevertheless, the ruling in this case guarantees Maryland citizens the protection of private information.

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