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Recent Developments: Laboratory Corp. of America v. Hood: Where Injury to a Maryland Resident Results from an Erroneous Laboratory Report Provided by an out-of-State Laboratory, Maryland Substantive Law Will Apply Unless the State Where the Error Occurred Has Defined an Applicable Standard of Care

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RECENT DEVELOPMENT

LABORATORY CORP. OF AMERICA V. HOOD: WHERE INJURY TO A MARYLAND RESIDENT RESULTS FROM AN ERRONEOUS LABORATORY REPORT PROVIDED BY AN OUT-OF-STATE LABORATORY, MARYLAND SUBSTANTIVE LAW WILL APPLY UNLESS THE STATE WHERE THE ERROR OCCURRED HAS DEFINED AN APPLICABLE STANDARD OF CARE.

By: Gillian Flynn

In response to certified questions of law submitted by the United States District Court for the District of Maryland, the Court of Appeals of Maryland held that where injury to a Maryland resident results from an erroneous laboratory report provided by an out-of-state laboratory, Maryland will not apply the standard of care exception of section 380(2) of the Restatement (First) of Conflicts of Law, unless the state where the error occurred has, by statute or judicial decision, defined the applicable standard of care. *Lab. Corp. of Am. v. Hood*, 395 Md. 608, 911 A.2d 841 (2006). The Court also held that Maryland has strong public policy interests in permitting Maryland citizens to be able to recover for injuries resulting from the wrongful birth of a severely disabled child. *Id.* at 622, 911 A.2d at 849. Finally, the Court stated that it would recognize a duty of care to fathers in obstetric medical malpractice cases under certain circumstances. *Id.* at 625, 911 A.2d at 851.

Karen and Mr. Hood (“the Hoods”) are Maryland residents. In 1997, after Karen Hood gave birth to a child diagnosed with cystic fibrosis (“CF”), the Hoods discovered that they each carried the gene mutation that caused a severe form of CF. The Hoods decided to terminate any future pregnancy, if genetic testing indicated the fetus had CF. In 2001, after terminating an earlier pregnancy because of a positive test result for CF, Mrs. Hood became pregnant a third time. Mrs. Hood had an amniocentesis performed in Maryland by a Maryland obstetrician and a specimen was submitted to Laboratory Corporation of America (“LabCorp”) for testing at its North Carolina laboratory. Based upon LabCorp’s report of a negative test result, the Hoods continued the pregnancy. Three months after birth, the child

was diagnosed with CF. Subsequently, LabCorp issued a corrected lab report with a positive finding for CF and admitted that its analysts had misread the test results.

The Hoods brought an action for negligence against LabCorp in the United States District Court for the District of Maryland (“district court”). The district court, in reviewing this diversity case, submitted three certified questions to the Court of Appeals of Maryland regarding Maryland’s conflicts of law rules because, unlike Maryland, North Carolina does not recognize wrongful birth actions. The district court first asked whether Maryland would apply North Carolina substantive law under the standard of care exception of section 380(2) of the Restatement (First) of Conflicts of Law. The district court then asked if Maryland would decline to apply North Carolina law if it violated Maryland public policy. Finally, the district court asked if Maryland law would preclude a finding that LabCorp had a sufficient relationship with the father to create a duty of care to both parents.

The Court of Appeals of Maryland began its analysis by noting that Maryland continued to adhere to the doctrine of *lex loci delicti* of the Restatement (First) of Conflicts of Law (1934). *Hood*, 395 Md. at 613, 911 A.2d at 844. The Court explained that, generally, Maryland’s substantive law would apply, because Maryland is where the alleged wrongful birth took place. *Id.* at 613-16, 911 A.2d at 844-45 (citing RESTATEMENT (FIRST) OF CONFLICTS OF LAW § 377(providing that “the place where the last event required to give rise to the tort occurred” dictates which law will apply)). The Court noted, however, that section 380(2) of the Restatement (First) of Conflicts of Law created an exception when the state where the actor’s conduct occurred, in this case North Carolina, has defined by statute or judicial decision a standard of care. *Hood*, 395 Md. at 617-18, 911 A.2d at 846-47. The determination of whether or not conduct is negligent depends upon whether that standard of care has been breached. *Id.* Under the exception, Maryland, as the forum state, would apply that state’s standard of care even if Maryland’s own law, or the law of the place of the wrong, is different. *Id.*

In determining whether North Carolina had defined a standard of care in wrongful birth actions, the Court reviewed North Carolina law and found that its courts had not provided a judicial determination on the standard of care issue and that LabCorp had not directed the Court to any North Carolina statute on point. *Id.* at 619-20, 911 A.2d at 847-48 (citing *Azzolino v. Dingfelder*, 315 N.C. 103 (1985)).

Answering the district court's question regarding whether Maryland would apply a public policy exception to the *lex loci delicti* doctrine, the Court of Appeals of Maryland stated that although Maryland had never made an exception, it would do so in an appropriate case. *Hood*, 395 Md. at 620, 911 A.2d at 848. The Court held that if the application of a foreign law would deny Maryland residents the right to bring an action for the wrongful birth of a severely disabled child, it would be "contrary to clear, strong, and important Maryland public policy," and the Court would decline to apply the foreign law. *Id.* at 625, 911 A.2d at 851. The Court of Appeals of Maryland noted that the North Carolina Supreme Court, in *Azzolino*, had decided that the parents of a child born with severe disabilities did not suffer any legal injury. *Hood*, 395 Md. at 619-20, 911 A.2d at 847-48. The Court noted that Maryland had rejected this view, finding it contrary to Maryland public policy. *Id.* at 624-25, 911 A.2d at 850-51 (citing *Reed v. Campagnolo*, 332 Md. 226, 238, 630 A.2d 1145, 1151 (1993)).

The final question submitted to the Court was whether the Court would recognize a duty of care toward a father in a wrongful birth action. *Hood*, 395 Md. at 625, 911 A.2d at 851. Noting that a definitive finding would be based on issues of fact to be determined by the district court, the Court of Appeals of Maryland reviewed prior Maryland case law and determined that a special relationship sufficient to create a duty of care toward a father, even absent a doctor-patient relationship, could exist in certain limited circumstances and suggested that the present case might be one such circumstance. *Id.* at 626, 911 A.2d at 851 (citing *Dehn v. Edgcombe*, 384 Md. 606, 625, 865 A.2d 603, 614 (2005); *Doe v. Pharmacia*, 388 Md. 407, 420, 879 A.2d 1088, 1095 (2005)).

The findings of the Court of Appeals of Maryland in *Hood* are significant because, for the first time in a torts case, the Court recognized a public policy exception to the *lex loci delicti* doctrine of the Restatement (First) of Conflicts of Law (1934). While the Court did not announce that it was abandoning the doctrine and adopting the more popular "significant contacts" test of the Restatement (Second) of Conflicts of Law (1971), Maryland practitioners can now refer to an exception in a torts case. The Court is beginning to bring Maryland into harmony with the rest of the country by suggesting that Maryland may be ready to accept the "significant contacts" test. Further, the decision in *Hood* will permit practitioners to make more informed decisions about which forum would be most receptive to their clients'

cases. Corporations are now on notice that they cannot avoid liability by hiding behind antiquated conflicts of law rules when they are clearly responsible for an injury to a Maryland resident.