

ALEXANDER & CLEAVER

Professional Association

E-Business Advisory

Vol. 1, Issue 2

www.alexander-cleaver.com

May 2005

Attorneys

Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster

Government Relations Consultants

Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray

Our Offices

Ft. Washington, MD
301-292-3300

Annapolis, MD
410-974-9000

Cumberland, MD
301-724-9234

Waldorf, MD
301-934-4477

Alexandria, VA
703-548-7777

Contact Us

1-800-292-LAWS
acnews@alexander-cleaver.com

**Our Legal and Government Relations Team
are in the business community for you!**

Check out where we are...[page 6](#)

In This Issue

Recovery for unintentional age discrimination allowed under ADEA.

A ruling by the Supreme Court in late March granted employees the right to sue their employers for age discrimination regardless of the intent of the employer's action ...[page 2](#)

Does your commercial email comply with Federal law?

Congress passed the CAN-SPAM Act of 2003, which regulates commercial email. Find out if your commercial email complies with the law...[page 3](#)

Avoiding personal liability for corporate acts.

Most business owners incorporate their business in order to shield themselves from personal liability, but may overlook minor administrative details which could ultimately result in personal liability. Are you really protected? . . . [page 4](#)

Don't forget your personal legal needs.

Most people assume full insurance coverage means protection in all respects. Nothing could be further from the truth. Over the next few issues, we will address various aspects of automobile insurance policies so that you can determine what coverage you actually have. This month, **Understanding Uninsured Motorist Coverage** ...[page 5](#)

The E-Business Advisory is intended to provide business ideas and comments to our clients and friends. Topics in this business newsletter discuss the laws, opinions, and other developments on a wide variety of issues. The laws of each jurisdiction may be different. The articles are presented for general reading and should not be relied upon as legal opinion or legal advice. We would be happy to answer further questions or discuss particular factual situations or problems with you in more detail. The Law Offices of Alexander & Cleaver is a full-service law firm that represents clients in a wide range of legal matters, lobbying, procurement and government relations services and association management.



Alexander & Cleaver
Professional Association
Vol. 1, Issue 2
May 2005

Attorneys

Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster

Government Relations Consultants

Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray

Our Offices

Ft. Washington, MD
301-292-3300

Annapolis, MD
410-974-9000

Cumberland, MD
301-724-9234

Waldorf, MD
301-934-4477

Alexandria, VA
703-548-7777

Contact Us

1-800-292-LAWS
acnews@alexander-cleaver.com

E-Business Advisory

www.alexander-cleaver.com



Recovery for Unintentional Age Discrimination Allowed Under ADEA

On March 30, 2005, the Supreme Court decided in *Smith v. City of Jackson*, 541 U.S. ____ (2004) that workers are allowed to sue under the Age Discrimination in Employment Act of 1967 (ADEA) for age discrimination where an employer's policy, practice, action, etc. unintentionally discriminates against them. These so-called "disparate-impact" claims allow older employees to sue for age discrimination under the ADEA if they were deprived of employment opportunities or otherwise adversely affected by their employer because of their age, despite the employer's intent.

In *Smith*, a group of police officers contended that their raise in salary was discriminatory because the increase was less generous to officers over 40 years old. Police officers who had less than five years of tenure received a higher percentage increase in their salary as opposed to those officers with seniority. Despite allowing the older officers to sue, the Supreme Court denied relief for two reasons. First, the officers failed to isolate and identify the specific employment practice, as opposed to the general policy. Second, the employment plan was based on reasonable factors other than age. The employer's decision to grant a higher percentage raise to entry-level employees in order to bring salaries in line with surrounding areas was reasonable in furtherance of their goal to retain police officers.

Historically, such recovery was allowed under the ADEA, but more recently, various courts had foreclosed relief due to their interpretation of a subsequent Supreme Court case. In *Smith*, the Supreme Court clarified the situation and explicitly held that the ADEA does authorize recovery in "disparate-impact" cases, which involve employment practices that are facially neutral in their treatment of different groups but, in fact, fall more harshly on one group than another. Of course, employees may continue to recover under the ADEA for "disparate-treatment" claims where the employees allege the employers deliberately discriminated against them because of their age.

Similarly, unchanged is the right of aggrieved employees to sue their employer for age discrimination under Title VII of the Civil Rights Act of 1964 for either "disparate-impact" or "disparate-treatment" claims. The key difference between bringing a "disparate-impact" claim under the ADEA or Title VII is that the employer can avoid liability under the ADEA if the "adverse impact was attributable to a non-age factor that was reasonable."

COMMENT OF COUNSEL: Employers should consult their counsel when developing employee policies and action plans. Make sure you analyze and document the reasons for all of your employment actions and policies. Take the time to analyze the effects of your actions on older employees — in particular with respect to layoffs or reductions in benefits. As always, document the reasons the employment action is necessary and reasonable. For questions or comments contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com



Alexander & Cleaver
Professional Association
Vol. 1, Issue 2
May 2005

Attorneys

*Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster*

Government Relations Consultants

*Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray*

Our Offices

*Ft. Washington, MD
301-292-3300*

*Annapolis, MD
410-974-9000*

*Cumberland, MD
301-724-9234*

*Waldorf, MD
301-934-4477*

*Alexandria, VA
703-548-7777*

Contact Us

*1-800-292-LAWS
acnews@alexander-cleaver.com*

E-Business Advisory

www.alexander-cleaver.com



Does your Commercial Email Comply with Federal Law?

The Federal CAN-SPAM Act places conditions on the sending of unsolicited commercial email and places certain requirements on the sending of transactional or relational email. **Commercial email is defined as transmitting email with the primary purpose of advertising or promoting products or services.** Some examples of commercial email include newsletters, bulletins, informational pieces, marketing material, offers of services or products, and solicitations. Transactional or relational messages are emails that arise from current business relationships and contain content that involves a recent or ongoing transaction.

The CAN-SPAM Act makes it unlawful to send commercial, transactional or relational email where the header (the email address and domain name) is false or misleading. As well, the CAN-SPAM Act requires commercial email to contain the following:

- Clear and conspicuous notice in the subject line that the email is an advertisement and/or solicitation;
- Clear and conspicuous notice of an opt-out provision; and
- Valid physical postal address for sender.

If a recipient of the commercial message opts-out of receiving future messages, the business must cease such communication to the recipient within 10 days. Also, the business must not disclose the email addresses of the recipients who opted-out to any other party.

The law does not provide a private cause of action for violations. However, it does make it a criminal offense for a person to:

- Send spam with the intent to deceive receivers of the spam or the Internet service provider of the spam's origin from a computer of another used in intrastate or interstate communication;
- Falsify the source, destination, and routing information of the spam sent;
- Use a false identity to register for 15 or more email accounts or 2 or more domain names for the purpose of sending spam; or
- Falsely represent the right to use 5 or more IP addresses and send spam from those addresses.

COMMENT OF COUNSEL: In order to steer clear of hefty penalties for violations, businesses should create an email policy and/or template in order to comply with the CAN-SPAM Act. For assistance with creating such or for help with any other business need, contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.



Alexander & Cleaver
Professional Association
Vol. 1, Issue 2
May 2005

Attorneys

Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster

Government Relations Consultants

Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray

Our Offices

Ft. Washington, MD
301-292-3300

Annapolis, MD
410-974-9000

Cumberland, MD
301-724-9234

Waldorf, MD
301-934-4477

Alexandria, VA
703-548-7777

Contact Us

1-800-292-LAWS
acnews@alexander-cleaver.com

E-Business Advisory

www.alexander-cleaver.com

Avoiding Personal Liability for Corporate Acts: *The Devil is in the Details*

Most business owners incorporate their business in order to shield themselves from personal liability. While most corporate cautions are self-evident, business owners sometimes overlook minor administrative details which may ultimately result in personal liability, therefore, defeating the purpose of incorporating. Some hints to business owners for avoiding personal liability for corporate acts include:

- The precise corporate name should appear on all material used in your business, such as newsletters, bulletins, announcements, letterhead, envelopes, billing statements, professional cards, financial ledger cards, routing slips, appointment cards, and receipts. The precise corporate name should also be used in all telephone directories and similar listings.
- The precise corporate name should appear on all agreements (i.e., leases, contracts, purchase orders, invoices, etc.). Do not use an individual name on such documents. Further, in each instance, not only should the precise corporate name appear, but also, the respective title of the person signing for the corporation (i.e., By: Jane Doe, President).
- Before executing any document that would obligate the corporation, have the governing body (i.e. board of directors, manager, shareholders) authorize the transaction and your signature on behalf of the corporation. This should be done, at a minimum, in any circumstance wherein the obligation to the corporation would be significant. While Maryland law does not require a corporation to imprint its seal on documents, you should encourage its use as the raised seal is evidence that the execution was a corporate act.
- The precise corporate name should appear on all tax, governmental and administrative filings and all should be executed in the corporate name.
- A separate bank account should be opened and maintained in the corporate name. Personal funds should not be deposited or placed in the corporate account nor should withdrawals be made from the corporate account for personal needs. Similarly, corporate funds should not be placed or deposited into personal accounts and payment of corporate debts should only be made from the corporate account. All checks drafted should be drawn on the corporate account and executed in the corporate name. Records should be maintained separately for the corporate account(s).

COMMENT OF COUNSEL: While this article provides some hints on avoiding personal liability for corporate acts, there are a multitude of administrative details that, if not handled properly, could result in personal liability despite the fact that you have incorporated. To ensure you have maintained the proper corporate integrity to avoid personal liability you should have the administrative details of your corporate documents reviewed by counsel – remember, *the devil is in the details*. For questions or comments contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.



Alexander & Cleaver
Professional Association

Vol. 1, Issue 2
May 2005

Attorneys

*Gary R. Alexander
James A. Cleaver
Todd K. Pounds
Denise M. Bowman
Joseph P. Hart
Jason A. DeLoach
Chantel R. Ornstein
Jennifer S. Lancaster*

Government Relations Consultants

*Casper R. Taylor, Jr.
Robin F. Shaivitz
Lyle W. Fowlkes
J. Kenneth Battle, Jr.
Kelley Ray*

Our Offices

*Ft. Washington, MD
301-292-3300*

*Annapolis, MD
410-974-9000*

*Cumberland, MD
301-724-9234*

*Waldorf, MD
301-934-4477*

*Alexandria, VA
703-548-7777*

Contact Us

*1-800-292-LAWS
acnews@alexander-cleaver.com*

E-Business Advisory

www.alexander-cleaver.com

Understanding Uninsured Motorist Coverage

Have you ever stopped to think what would happen if you or a loved one was injured in an automobile accident caused by another driver who has little or no insurance?

There are many reasons why the other driver may have no insurance coverage or was refused coverage by an insurance company. The driver:

- may choose to intentionally violate the law and drive without any insurance;
- may have been cancelled for non-payment;
- may be an "excluded" driver. For example, insurance companies often exclude those convicted of drunk driving from coverage while at the same time continuing to insure others within the household. Often times, excluded drivers continue to operate vehicles for which they have no insurance coverage.

Other situations involving the driver at-fault might include:

- the vehicle involved in the accident may be stolen.
- the insurance companies may have a permissive use defense to providing coverage. The driver may know the owner, even live under the same roof, but not have permission, either express or implied, to use the vehicle.
- the other driver may be unidentified. He or she may cause an accident but speed away or run away on foot before being identified.
- the other driver may have insurance but the company may go bankrupt and thus be unable to pay your damages.

Fortunately, if you are ever involved in a collision with any of the above drivers, you have a remedy in uninsured motorist insurance. Uninsured motorist insurance provides protection for innocent victims of those who have no insurance. It is mandatory coverage, meaning that you cannot purchase automobile insurance in Maryland without obtaining uninsured motorist coverage.

But what if the other driver has insurance, just not enough to pay your reasonable damages?

By law, uninsured coverage in Maryland can be used to make an underinsured claim. If your uninsured insurance is more than the liability insurance of the at-fault driver or drivers, you are permitted to make an underinsured claim for up to the difference of the two policies.

The primary fact in either an uninsured or underinsured claim is that you can determine the limits of your recovery. By choosing to obtain uninsured coverage in excess of the legally required minimum of \$20,000 per person / \$40,000 per accident, you can protect yourself and your loved ones against financial disaster in the event of a serious motor vehicle accident.

Be careful before you select the different coverage and the limits of your insurance. Consider what you have to protect and how you will get along if you are disabled for any appreciable period of time. The amount of coverage and types of coverage may vary from state to state; therefore you should consult with your insurance agent or an attorney before setting up or upgrading your automobile insurance coverage. As with other matters in life, careful planning now will save you much aggravation later.



Alexander & Cleaver
 Professional Association
Vol. 1, Issue 2
May 2005

Attorneys

Gary R. Alexander
 James A. Cleaver
 Todd K. Pounds
 Denise M. Bowman
 Joseph P. Hart
 Jason A. DeLoach
 Chantel R. Ornstein
 Jennifer S. Lancaster

**Government Relations
 Consultants**

Casper R. Taylor, Jr.
 Robin F. Shaivitz
 Lyle W. Fowlkes
 J. Kenneth Battle, Jr.
 Kelley Ray

Our Offices

Ft. Washington, MD
 301-292-3300

Annapolis, MD
 410-974-9000

Cumberland, MD
 301-724-9234

Waldorf, MD
 301-934-4477

Alexandria, VA
 703-548-7777

Contact Us

1-800-292-LAWS
 acnews@alexander-cleaver.com

E-Business Advisory

www.alexander-cleaver.com

**The Alexander & Cleaver
 Legal and Government Relations Teams
 are in the Community**

**Our firm, along with individual attorneys and lobbyists,
 are members and leaders of many organizations throughout the state.
 When we attend events and meetings we represent you.**

Allegany County Chamber of Commerce, *Legislative Committee Chair*
 Annapolis and Anne Arundel County Chamber of Commerce, *Ambassador and
 Government Relations Committee Member*

Baltimore-Washington Corridor Chamber of Commerce
 Charles County Chamber of Commerce, *Legislative Committee Member*

Columbia Festival of the Arts, *Board Member*

Goucher College Committee of Visitors, *Board Member*

Greater Baltimore Committee Technology Council

Greater Cumberland Committee

Maryland CASA Association, *Board Member*

Maryland Chamber of Commerce

Maryland Heritage Tourism Authority, *Author*

Maryland House of Delegates Speaker's Society, *Founder and Member*

Maryland Life Magazine, *Editorial Board*

Maryland State Police Foundation

Network 2000, *Member*

"Our Networks"

Prince George's County Chamber of Commerce

Prince George's County Board of Trade, *Board Member*

Rocky Gap Foundation, *Founder*

Southern Prince George's Business Professional Women's Association

Western Maryland Health System

Women of Excellence, *Events Chair*

Alexander & Cleaver has licensed attorneys in Maryland, Washington D.C., Virginia, and Pennsylvania. For questions or comments contact our legal team at 301-292-3300 or email us at acnews@alexander-cleaver.com.

To sign up or remove yourself from this list please go to: lists.alexander-cleaver.net/mailman/listinfo/acnews. To ensure that the A&C E-Business Advisory is delivered properly to your inbox (not bulk, spam or junk folders), please add us to your Address Book or Safe List.