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## Case Comments *L. Indemnity Imwa Equities Ix Co. V. Wbc Associates*

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After affirming summary judgment for both hospitals, the Fourth Circuit found it axiomatic that the parent corporations of the hospitals were not liable, and it affirmed summary judgment in their favor.

The decision of the Fourth Circuit in *Baber* is in accord with the decisions of other jurisdictions.<sup>515</sup> The court's holding further strengthens current case law by declining to judicially expand the Act's protections and instead promoting a strict adherence to the statutory language of the Emergency Medical Treatment and Active Labor Act.

#### L. INDEMNITY

##### *IMWA Equities IX Co. v. WBC Associates*

961 F.2d 480 (4th Cir. 1992)

The longstanding general rule developed at common law is that until the business of a partnership is wound up and the accounts are finally settled, an action on a claim arising out of the partnership transactions will not lie.<sup>516</sup> This rule applies even after dissolution of the partnership.<sup>517</sup> Subject to well-recognized exceptions, the general rule is, however, far from abso-

515. See *supra* note 500 and accompanying text (giving cases from other jurisdictions in accord with *Baber*). The *Baber* court notes one disparity between these opinions in footnote 8 of its opinion. *Baber v. Hospital Corp. of Am.*, 977 F.2d 872, 880 n.8 (4th Cir. 1992). Specifically, the D.C. Circuit in *Gatewood* would impose liability on a hospital for any disparate treatment of patients with similar symptoms, while the 6th Circuit would impose such liability only where the hospital evidenced a bad motive in providing such disparate treatment. *Id.*; see *Gatewood v. Washington Healthcare Corp.*, 933 F.2d 1037, 1041 (D.C. Cir. 1991); *Cleland v. Bronson Healthcare Group, Inc.*, 917 F.2d 266, 272 (6th Cir. 1990); see also *Brooker v. Desert Hosp. Corp.*, 947 F.2d 412 (9th Cir. 1991) (applying EMTALA to all patients, not just those with insufficient resources); *Deberry v. Sherman Hosp. Assoc.*, 769 F. Supp. 1030 (N.D. Ill. 1991), *appeal denied*, *Deberry v. Sherman Hosp. Assoc.*, 775 F. Supp. 1159 (N.D. Ill. 1991) (requiring actual knowledge of emergency medical condition, or failure to conduct appropriate medical screening in order to impose liability on hospital); *Evitt v. University Heights Hosp.*, 727 F. Supp. 495 (S.D. Ind. 1989) (dismissing claim of patient who failed to show that he was turned away for economic reasons).

516. *Friedman v. Golden Arrow Films, Inc.*, 442 F.2d 1099, 1107-08 (2d Cir. 1971); *Knapp v. First Nat'l Bank & Trust Co.*, 154 F.2d 395, 398 (10th Cir. 1946); *Ebker v. Tan Jay Int'l Ltd.*, 741 F. Supp. 448, 467 (S.D.N.Y. 1990), *aff'd*, 930 F.2d 909 (2d Cir.), *cert. denied*, 112 S. Ct. 161 (1991); *Michelsen v. Brush*, 224 F. Supp. 951 (E.D.N.Y. 1963); *Summerson v. Donovan*, 66 S.E. 822, 822 (Va. 1910); see also K.A. Drechsler, Annotation, *Actions at Law Between Partners and Partnerships*, 168 A.L.R. 1088, 1091 (1947) (stating that rule prohibiting partner from suing partner based on partnership agreement before winding up and settlement of accounts is "universally accepted"); cf. *Sertich v. Moorman*, 783 P.2d 1199, 1205 (Ariz. 1989) (eliminating requirement of final accounting as condition precedent to action at law between partners or partner and partnership); *Dupuis v. Becnel Co.*, 535 So. 2d 375, 377-78 (La. 1988) (overruling prior cases that required final accounting or settlement prior to suit between partners).

517. See *Burch v. Ashburn*, 368 S.E.2d 82, 85 (S.C. Ct. App. 1988) (holding that rule that copartners cannot sue each other at law for matters arising out of partnership transactions until after an accounting applies though dissolution has occurred); *Wright v. Armwood*, 107 A.2d 702, 703 (D.C. 1954) (stating that until after settlement of partnership accounts, one partner cannot bring action at law against another partner even if partnership has already dissolved).

lute.<sup>518</sup> A partnership agreement may, for example, form the basis of an action at law where the transaction demonstrates that the partners have agreed upon the specific sum each owes the other.<sup>519</sup> In *Wright v. Armwood*,<sup>520</sup> the Municipal Court of Appeals for the District of Columbia held that hearing a partner's claim without a formal prior accounting was proper because the claim was for a definite amount of money and was evidenced by a single promissory note of the partnership.<sup>521</sup> Therefore, the court reasoned that determining the respective rights and obligations of the parties with regard to the agreement would be relatively easy.<sup>522</sup> In *Gilbert v. Fontaine*,<sup>523</sup> the United States Court of Appeals for the Eighth Circuit delineated another exception, stating that where the partnership articles contain an express stipulation which one partner has violated, an action at law will lie against that partner.<sup>524</sup> In *IMWA Equities IX Co. v. WBC Associates*,<sup>525</sup> the United States Court of Appeals for the Fourth Circuit considered whether Virginia law forbids a partner's suit to enforce an indemnity provision in a partnership agreement against another partner prior to dissolution, winding up, and settlement of the accounts.

*IMWA Equities* involved a provision in a partnership agreement requiring one partner to indemnify another upon the occurrence of certain events. The question before the Fourth Circuit was whether the partner seeking enforcement of the indemnification clause could sue once the

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518. See *Gilbert v. Fontaine*, 22 F.2d 657, 662 (8th Cir. 1927) (recognizing that general rule prohibiting partners from suing based on partnership transactions prior to winding up and settlement of partnership accounts is "by no means universal, even in ordinary partnerships."); see also *Pilch v. Milikin*, 19 Cal. Rptr. 334, 339 (Ct. App. 1962) (holding that general rule that partners cannot sue based on partnership agreement prior to winding up and final accounting of partnership is not inflexible); *Wright*, 107 A.2d at 703 (reaffirming that general rule barring partner's suit against other partner arising out of partnership transactions until after winding up and final accounting, is subject to well-recognized exceptions).

519. *Summerson*, 66 S.E. at 822; see also *Pilch*, 19 Cal. Rptr. at 340 (holding that where no complex accounting involving variety of partnership transactions is necessary, partner may maintain action at law against another partner though winding up and final accounting are still forthcoming).

520. 107 A.2d 702 (D.C. 1954).

521. *Id.* at 703; see also *Giblin v. Anesthesiology Assocs.*, 567 N.Y.S.2d 775, 776 (App. Div. 1991) (recognizing that although partnership has not undergone final accounting, partner may maintain action at law against partnership when doing so requires no complex accounting); *Warren v. Warren*, 784 S.W.2d 247, 252 (Mo. Ct. App. 1989) (recognizing that final accounting is not prerequisite to action at law between partners where items sued on are few and simple of solution); *Hanes v. Giambrone*, 471 N.E.2d 801, 807 (Ohio Ct. App. 1984) (holding that prior final accounting is unnecessary for maintenance of action at law between partners based on partnership transactions where facts are such that no complex accounting is necessary); *Pilch*, 19 Cal. Rptr. at 340 (holding that where no complex accounting involving variety of partnership transactions is necessary, partner may maintain action at law against another partner though winding up and final accounting are still forthcoming).

522. *Wright v. Armwood*, 107 A.2d 702, 703 (D.C. 1954).

523. 22 F.2d 657 (8th Cir. 1927).

524. *Gilbert v. Fontaine*, 22 F.2d 657, 662 (8th Cir. 1927).

525. 961 F.2d 480 (4th Cir. 1992).

specified circumstances were present, even though the partners had not yet dissolved the partnership, wound up its business, or settled its accounts. Specifically, the Fourth Circuit considered whether the indemnity provision of the partnership agreement constituted an express stipulation, enforceable despite the failure of the partners to dissolve, wind up, and settle the accounts of the partnership.<sup>526</sup>

In *IMWA Equities*, WBC Associates Limited Partnership (WBC) and Porten Sullivan Corporation (PSC) co-owned Beacon Hill Farm Associates II Limited Partnership (Beacon Hill). WBC was a Beacon Hill limited partner, and PSC was both a general partner and a limited partner of Beacon Hill. The general partners of WBC were James M. Wordsworth and Harvey Borkin. After purchasing a piece of property, Beacon Hill needed additional financing to develop the land. Consequently, it recruited IMWA Equities IX Company, Limited Partnership (IMWA) to become its third partner and to provide further security to Beacon Hill's lender, United Savings Bank (USB). IMWA provided USB with a six million dollar irrevocable letter of credit that Beacon Hill used as collateral to obtain five and one-half million dollars in loans from USB. A provision in the amended partnership agreement stated that any draws by Beacon Hill against the letter of credit would become loans from IMWA to Beacon Hill. Wordsworth and Borkin agreed to indemnify IMWA in the partnership agreement, as protection for IMWA, PSC, and WBC.

Three years later, Beacon Hill and PSC both filed voluntary bankruptcy petitions under Chapter 11 of the United States Bankruptcy Code. USB then demanded immediate payment from IMWA on the six million dollar letter of credit. IMWA honored USB's demand, converting the letter of credit to a loan that then became due and payable to IMWA according to the partnership agreement. However, as Beacon Hill was in bankruptcy, it did not repay IMWA. Moreover, WBC, Wordsworth, and Borkin subsequently refused to indemnify IMWA for any portion of the loan.

IMWA brought suit against WBC, Wordsworth, and Borkin in the United States District Court for the Eastern District of Virginia, alleging breach of the partnership agreement's covenant to indemnify. The defendants filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), and the district court granted the motion, dismissing the case without prejudice. The district court reasoned that because the covenant to indemnify created individual obligations within the partnership agreement, it was not a separate undertaking from the partnership agreement and was therefore unenforceable absent a dissolution, an accounting, and a winding up of the affairs of the partnership. The district court denied IMWA's motion to vacate the judgment filed pursuant to Federal Rule of Civil Procedure 59(e).

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526. See *Gilbert*, 22 F.2d at 662 (establishing that where partnership agreement contains "express stipulation," general rule prohibiting suits between partners arising out of partnership agreement prior to winding up and final accounting of firm does not apply).

IMWA then appealed to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit initially noted that neither the Virginia Revised Uniform Limited Partnership Act<sup>527</sup> nor the Virginia Uniform Partnership Act<sup>528</sup> speaks to the question of whether prior to a partnership's dissolution, winding up, and final accounting, one partner may sue another for breaching an indemnity provision in the partnership agreement. In the absence of any such statutory guidance, the court concluded that the rules of equity and law should govern the case.<sup>529</sup> The court then recognized that according to *Summerson v. Donovan*,<sup>530</sup> the general common law rule is that a partner cannot maintain an action at law on a claim growing out of the partnership transactions until after a winding up and a final accounting.<sup>531</sup> The court also acknowledged, however, that the rule is not absolute, citing *Summerson* for the proposition that a partnership agreement may form the basis of an action at law where the transaction demonstrates that the partners have agreed upon the specific sum each owes the other.<sup>532</sup> Accordingly, the Fourth Circuit reasoned that the *Summerson* opinion both reaffirmed the general common law rule—that a partner cannot sue another partner based on the partnership transactions until the partnership is wound up and the accounts are settled—and opened the door for exceptions to it.

The Fourth Circuit also relied on an early opinion of the United States Court of Appeals for the Eighth Circuit, *Gilbert v. Fontaine*,<sup>533</sup> in which the court qualified the general rule, calling it “by no means universal.”<sup>534</sup> *Gilbert* involved a mining partnership agreement which provided for the periodic settlement of expenses among the partners.<sup>535</sup> In *Gilbert*, the Eighth Circuit determined that hearing one partner's claims prior to the dissolution, winding up, and accounting of the partnership was proper where another partner had violated an express stipulation in the partnership articles.<sup>536</sup>

The Fourth Circuit drew an analogy between the provision for periodic settlement of expenses in the mining partnership agreement in *Gilbert* and the language of the indemnification provision at issue in *IMWA Equities*. The latter, the Fourth Circuit opined, stipulated certain occurrences and

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527. VA. CODE ANN. §§ 50-73.1 to -77 (Michie 1989 & Supp. 1992).

528. VA. CODE ANN. §§ 50-1 to -43 (Michie 1989 & Supp. 1992).

529. *IMWA Equities IX Co. v. WBC Assocs.*, 961 F.2d 480, 482 (4th Cir. 1992) (citing VA. CODE ANN. § 50-5 (Michie 1989 & Supp. 1991)).

530. 66 S.E. 822 (Va. 1910).

531. *Summerson v. Donovan*, 66 S.E. 822, 822 (Va. 1910).

532. *See id.* (holding that in cases where partnership agreements are clear as to sum partners owe each other, general rule forbidding suits between copartners arising out of partnership transactions before winding up and final settlement of accounts does not apply).

533. 22 F.2d 657 (8th Cir. 1927).

534. *Gilbert v. Fontaine*, 22 F.2d 657, 662 (8th Cir. 1927); *see also* *Wright v. Armwood*, 107 A.2d 702, 703 (D.C. 1954) (reaffirming court's position that general rule against partner suing another partner based on partnership transactions before winding up and final accounting is subject to well-recognized exceptions).

535. *Gilbert*, 22 F.2d at 662.

536. *Id.*

circumstances which would give rise to IMWA's right to indemnification. The court then concluded that because the partnership agreement expressly indicated that upon Beacon Hill's default on an IMWA loan, WBC, Wordsworth, and Borkin would indemnify IMWA for certain prescribed amounts, Beacon Hill's partners had agreed that IMWA's right to indemnification would accrue prior to dissolution of the partnership. Holding that IMWA did have an enforceable cause of action against its former partners, the Fourth Circuit reversed the district court's decision.

The decision in *IMWA Equities* does not represent a significant departure from the views of most other courts that have passed upon similar cases.<sup>537</sup> In *IMWA Equities*, the Fourth Circuit recognized the universally accepted general common law rule that requires dissolution, winding up, and final accounting of a partnership's affairs before an action between partners based on the partnership agreement will lie. In so doing, the Fourth Circuit was in accordance with earlier decisions of the United States Courts of Appeals for the Tenth Circuit,<sup>538</sup> the Second Circuit,<sup>539</sup> and the Eighth Circuit.<sup>540</sup> While two states, Louisiana and Arizona, have in recent years repudiated the common law rule barring copartners' actions at law arising out of the partnership agreement until after a final settlement of partnership accounts,<sup>541</sup> most state courts and the courts of the District of Columbia continue to apply the rule.<sup>542</sup>

The Fourth Circuit's acknowledgment that the rule is subject to exception also renders it consistent with the law in other jurisdictions.<sup>543</sup> Thus,

537. *Friedman v. Golden Arrow Films, Inc.*, 442 F.2d 1099, 1107-08 (2d Cir. 1971); *Knapp v. First Nat'l Bank & Trust Co.*, 154 F.2d 395, 398 (10th Cir. 1946); *Ebker v. Tan Jay Int'l Ltd.*, 741 F. Supp. 448, 467 (S.D.N.Y. 1990), *aff'd*, 930 F.2d 909 (2d Cir.), *cert. denied*, 112 S. Ct. 161 (1991); *Michelsen v. Brush*, 224 F. Supp. 951, 953 (E.D.N.Y. 1963); *Wright*, 107 A.2d at 703; *Gilbert*, 22 F.2d at 662; *Summerson v. Donovan*, 66 S.E. 822, 822 (Va. 1910). *But see Sertich v. Moorman*, 783 P.2d 1199, 1205 (Ariz. 1989) (eliminating requirement of final accounting as condition precedent to action at law between partners or partner and partnership); *Dupuis v. Becnel Co.*, 535 So. 2d 375, 377-78 (La. 1988) (overruling prior cases that required final accounting or settlement prior to suit between partners).

538. *Knapp*, 154 F.2d at 395.

539. *Friedman*, 442 F.2d at 1107-08.

540. *Gilbert v. Fontaine*, 22 F.2d 657 (8th Cir. 1927).

541. *Sertich*, 783 P.2d at 1199; *Dupuis*, 535 So. 2d at 377-78.

542. *See, e.g., Broadmoor Realty, Inc. v. First Nationwide Bank*, 568 So. 2d 779, 782-83 (Ala. 1990) (holding that partner must seek accounting before commencing action against copartner on matters growing out of partnership); *Lawrence Street Partners, Ltd. v. Lawrence Street Venturers*, 786 P.2d 508, 510 (Colo. Ct. App. 1989) (same); *Beckman v. Farmer*, 579 A.2d 618, 649 (D.C. 1990) (same); *RBC I, Inc. v. AJAR I, Inc.*, 519 So. 2d 743, 744 (Fla. Dist. Ct. App. 1988) (same); *Leonard v. Smieja*, 366 N.W.2d 372, 375 (Minn. Ct. App. 1985) (same); *Bright v. Angle*, 833 S.W.2d 12, 14 (Mo. Ct. App. 1992) (same); *Thomas v. Marvin E. Jewell & Co.*, 440 N.W.2d 437, 444 (Neb. 1989) (same); *Related-Falls Bridge Ltd. Partnership v. Falls Bridge Plaza Assocs.*, 575 N.Y.S.2d 852, 853 (App. Div. 1991) (same); *Fireman's Fund Ins. Co. v. Cozad Const. Co.*, 745 P.2d 432, 434 (Or. App. 1987) (same); *Burch v. Ashburn*, 368 S.E.2d 82, 85 (S.C. 1988) (same); *Biggs v. First Nat'l Bank*, 808 S.W.2d 232, 236 (Tex. Ct. App. 1991) (same).

543. *See Giblin v. Anesthesiology Assocs.*, 567 N.Y.S.2d 775, 776 (App. Div. 1991) (rec-