

## Maryland Law Review

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Volume 78 | Issue 3

Article 9

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### Recommended Citation

78 Md. L. Rev. 691 (2019)

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## RAISING THE BAR: LAW CLERKS PAY TRIBUTE TO JUDGE ADKINS

MONICA BASCHE\* & MICHAEL COLLINS, JR.\*\*

Throughout her time on Maryland's trial and appellate courts, Judge Adkins has raised the bar for litigants and her fellow judges. Her decisions consistently show a diligence and thoroughness which, although one party must win, left all parties with the comfort of knowing that their arguments had been recognized, understood, and considered. Even in cases involving multiple issues, complicated or arcane legal doctrines, or nuanced facts, Judge Adkins' opinions demonstrate the thoroughness deserving of the diligent advocacy presented by the parties.

One opinion that demonstrates this thoroughness is *Kiriakos v. Phillips*.<sup>1</sup> In *Kiriakos*, the Court of Appeals of Maryland considered one of the most consequential tort law issues in the State's history: whether the doctrine of social host liability<sup>2</sup> could impose liability on parents who provide alcohol to minors.<sup>3</sup> Judge Adkins begins her analysis by setting forth the parties arguments.<sup>4</sup> From the jump, before any discussion of the merits of the claims, Judge Adkins has framed the issues as presented by the parties, with particular attention to the side which will, as the analysis will demonstrate, ultimately lose. Even in rejecting the arguments of the losing party, Judge Adkins discusses them at length, leaving the losing party with the

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1. 448 Md. 440, 139 A.3d 1006 (2016).

2. Social host liability imposes liability, either by statute or case law, on social hosts that serve alcohol to adults or minors. For a general discussion of this theory of liability, see Mary M. French et al., *Social Host Liability for the Negligent Acts of Intoxicated Guests*, 70 CORNELL L. REV. 1058 (1985).

3. *Kiriakos*, 448 Md. at 455–56, 139 A.3d at 1015–16.

4. *Id.* at 476, 139 A.3d at 1027–28 (“*Kiriakos* sues in common law negligence, asking us to apply ‘traditional negligence principles,’ and engage in an ordinary duty of care analysis . . . . Countering, Phillips avows: ‘labeling a theory that is *clearly* social host liability by a different name is still social host liability.’”).

understanding that the Court has considered the arguments and weighed them diligently.<sup>5</sup>

*Sugarman v. Liles*,<sup>6</sup> yet another case raising complicated issues of Maryland tort law, illustrates Judge Adkins' careful consideration of all the parties' arguments.<sup>7</sup> In *Sugarman*, the Court considered whether the plaintiff provided sufficient evidence to prove that exposure to lead paint caused his claimed cognitive defects.<sup>8</sup> Judge Adkins delves deeply into the scientific literature underlying the expert opinions offered in the case, which provides clarity and a deeper understanding regarding the issues of epidemiology, scientific study, and how both of these relate to causation. Much of Judge Adkins' opinion focuses on clarifying and applying the "analytical gap"<sup>9</sup> standard, but it is safe to say that the *Sugarman* opinion suffers from no such defective analysis. Her analysis and clear arguments shepherd the reader from point to point as a means of educating and also persuading. Part of the convincing nature of the analysis is her repeated referral to, and explanation of, the losing arguments in the case. At each turn in the discussion of her reasoning, Judge Adkins refers to the arguments the defendant-appellant *Sugarman* propounded. A reader can easily spot the numerous instances of "Sugarman maintains" or "Sugarman reasons," all indicating that his arguments have been noted and considered.<sup>10</sup>

From reading Judge Adkins' opinions, it is also apparent that she keeps one crucial idea in mind: how will this decision impact the citizens of the State of Maryland? Put another way, what is at stake? This idea is brought even more to the forefront in her dissents, where she points out the potentially troubling implications of the majority's decision while honing in on the flaws in its legal reasoning.

One dissent that masterfully illustrates Judge Adkins' skill at discussing the policy implications of a decision and taking the majority to task for its

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5. *Id.* at 484–86, 139 A.3d at 1032–33 ("But, Phillips argues, he cannot owe a duty to Kiriakos based on the concept of creating a risk because . . . . Neither are we persuaded by Phillips's assertion that . . .").

6. 460 Md. 396, 190 A.3d 344 (2018).

7. *Id.* at 401, 190 A.3d at 346–47 ("This case presents yet another opportunity for clarification of when epidemiological studies relied upon by an expert provide a sufficient factual basis for the expert's testimony. Specifically, we shall consider whether an expert's opinion on causation, relying on epidemiological studies, suffers from the same 'analytical gap' identified in [the Court's earlier jurisprudence].").

8. *Id.* at 401–02, 190 A.3d at 346–47.

9. *Id.* at 425, 190 A.3d at 361 ("As we explained in *Savage v. State*, 455 Md. 138, 163, 166 A.3d 183 (2017), the 'hallmark' of the analytical gap is 'the failure by the expert witness to bridge the gap between his or her opinion and the empirical foundation on which the opinion was derived.'").

10. *See, e.g., id.* at 413–14, 190 A.3d at 354 ("Sugarman urges us . . . . Sugarman maintains . . . . Sugarman reasons . . . .").

analysis is *Warr v. JMGM Group, LLC*,<sup>11</sup> a case in which the Maryland Court of Appeals declined to adopt dram shop liability.<sup>12</sup> Judge Adkins begins her dissent by telling the story of that particular case, in which a bar patron consumed “at least twenty-one alcoholic drinks, to the point of becoming violent and aggressive” over the course of six hours.<sup>13</sup> The patron then “drove down the road at eighty-eight to ninety-eight miles per hour, collided with another car, and killed an innocent ten-year-old child.”<sup>14</sup> Judge Adkins then zooms out to highlight how the facts of *Warr* are only a snapshot of a bigger problem: drunk driving in Maryland.<sup>15</sup> She does not mince words: “[A]n average of 220 people died annually as a result of impaired-driving-related crashes on Maryland roads. . . . This equates to 18 deaths a month or a death every 40 hours,”<sup>16</sup> with many of those drivers coming from “commercial vendors”—like the bar involved in *Warr*.<sup>17</sup> The practical—and legal—solution: dram shop liability.<sup>18</sup>

Deftly pulling the reader along, Judge Adkins pivots to the legal rationale for adopting dram shop liability. Although thirty-two years earlier the Court of Appeals had declined to adopt dram shop liability to allow the General Assembly to address the issue, the legislature’s time had run out.<sup>19</sup> Again, Judge Adkins reminds the reader what is at stake: “I urge that we no longer sit idly by, and refuse to help, as people continue to die at such a rate.”<sup>20</sup> She then weaves in the law: “I submit that we can save lives by recognizing dram shop liability and do so based on the well-established principles of our common law.”<sup>21</sup> Again, Judge Adkins does not mince words: “[T]he Majority . . . abandons the reasoning of this Court’s precedent,

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11. 433 Md. 170, 70 A.3d 347 (2013).

12. The term “dram shop liability” refers to liability imposed on commercial sellers of alcohol for negligently serving a patron who ultimately injures a third party. See *Dram-Shop Liability*, BLACK’S LAW DICTIONARY (10th ed. 2014).

13. *Warr*, 433 Md. at 199–200, 70 A.3d at 365 (Adkins, J., dissenting).

14. *Id.* at 200, 70 A.3d at 365.

15. *Id.*

16. *Id.* (alteration in original) (emphasis omitted) (quoting TASK FORCE TO COMBAT DRIVING UNDER THE INFLUENCE OF DRUGS AND ALCOHOL, FINDINGS AND RECOMMENDATIONS 1–2 (2008)).

17. *Id.*

18. *Id.* at 200–01, 70 A.3d at 365 (quoting Veda Rammohan et al., *Effects of Dram Shop Liability and Enhanced Overservice Law Enforcement Initiatives on Excessive Alcohol Consumption and Related Harms*, 41 AM. J. PREV. MED. 334, 340 (2011)). Judge Adkins notes “several studies ‘that assessed the effects of dram shop liability on alcohol-related motor vehicle fatalities found a median reduction of 6.4%.’” *Id.* at 201, 70 A.3d at 366 (quoting Rammohan et al., *supra*, at 339). “With 220 deaths caused by alcohol-related crashes each year in Maryland, a 6.4% reduction would save 14 lives every year.” *Id.*

19. *Id.* at 202, 70 A.3d at 366.

20. *Id.*

21. *Id.*

which was based on proximate cause, and instead, creates its own duty-of-care analysis.”<sup>22</sup>

By the end of Judge Adkins’ dissent, even if the reader does not understand the legal analysis she sets forth, the reader understands that drunk driving deaths are a preventable problem and that there is a legal solution. The reader also understands what is at stake for Maryland citizens because the Court declined to adopt dram shop liability.

Judge Adkins took the same two-pronged approach in *People’s Insurance Counsel Division v. State Farm Fire & Casualty Co.*,<sup>23</sup> a case that the majority dismissed as improvidently granted.<sup>24</sup> *People’s Insurance Counsel Division* involved the interpretation of a homeowner’s insurance contract provision.<sup>25</sup> The insureds’ carport had collapsed during a blizzard, and their insurance company denied coverage because the carport was not a “building” within the meaning of the contract.<sup>26</sup>

First, Judge Adkins points out the policy implications for dismissing the case as improvidently granted: unfairness to the litigants and waste of judicial resources (and the attendant injury to the Court’s reputation).<sup>27</sup> Second, Judge Adkins notes, dismissing the case as improvidently granted was contrary to Maryland law.<sup>28</sup> The majority could not conclude that there was “no issue of public importance, that the issue was not preserved, or that there is an inadequate record by which to render useful guidance.”<sup>29</sup> Judge Adkins then returns the focus to what is most important: dismissing the case as improvidently granted impacts Maryland citizens.<sup>30</sup> She concludes: “[U]nfortunately, the litigants and public are left in the dark again, in a case that could impact thousands of Maryland homeowners.”<sup>31</sup>

Like in *Warr*, even if the reader does not understand the legal analysis, the reader understands that the litigants in this case are left without an answer to their question, after expending time, energy, and resources briefing the case and presenting oral argument.<sup>32</sup> The reader also understands that the

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22. *Id.*

23. 442 Md. 55, 109 A.3d 1208 (2015) (per curiam).

24. *Id.* at 56, 109 A.3d at 1209.

25. *Id.* (Adkins, J., dissenting).

26. *Id.* at 56–57, 109 A.3d at 1209.

27. *Id.* at 56, 109 A.3d at 1209 (“Because I think that this Court should act with great restraint when choosing to dismiss a case as improvidently granted, both because it is unfair to the parties and a waste of judicial resources, I dissent.”).

28. *Id.* at 58–64, 109 A.3d at 1210–13.

29. *Id.* at 58, 109 A.3d at 1210.

30. *Id.* at 64, 109 A.3d at 1213.

31. *Id.*

32. *See id.* (“Our decision to avoid these questions does nothing to clarify or advance the law. And it gives short shrift to the litigants before us after they have performed the onerous work of preparing briefs and record extracts, as well as preparing and conducting oral arguments.”).

litigants, as well as thousands of other Maryland citizens, are now potentially without insurance coverage for damage to their property as a result of a blizzard.<sup>33</sup> Quoting Chief Judge Bell, Judge Adkins closes by invoking the Court's "mandate[] to serve" the people of the State of Maryland and asserting that the Court has not justified to the people its reason for dismissing the case as improvidently granted.<sup>34</sup>

While these are only two of Judge Adkins' dissents, you can see that it is her mission to serve the citizens of Maryland. From surveying Judge Adkins' opinions, a reader can readily discern that she strives to hold the Court to the highest standards. What the reader does not know, however, is that behind the scenes Judge Adkins held her law clerks to high professional standards. Throughout Maryland and the greater United States, her legacy will continue to impact the legal profession—not only through the thousands of pages of jurisprudence she has authored, but in the dozens of lawyers she has mentored. For many of her law clerks, clerking for Judge Adkins was their first real opportunity to apply legal analysis and reasoning. Working with Judge Adkins at such an early stage in one's career presents an opportunity to not only learn from one of the best, but also to adopt good habits that form the basis of a successful legal career. Whether it be as a legal writer, mentor, or professional, Judge Adkins provided a terrific example for the young lawyers that had the privilege of working with her during her time on the bench. Ultimately, it is for this opportunity that the authors of this tribute, speaking for all of Judge Adkins' law clerks, say this: thank you!

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33. *See id.* ("We owe the parties and the people of the State due consideration of the issues properly presented. Here, unfortunately, the litigants and public are left in the dark again, in a case that could impact thousands of Maryland homeowners.").

34. *Id.* (quoting *Koenig v. State*, 368 Md. 150, 159, 792 A.2d 1124, 1130 (2002) (per curiam)).