IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.:
	:	
	:	
	:	
Defendant.	:	

PLAINTIFF'S TRIAL MEMORANDUM ON TREBLE DAMAGES UNDER THE MARYLAND WAGE PAYMENT AND COLLECTION LAW

Plaintiff by and through his undersigned counsel, hereby files this trial memorandum on treble damages under the Maryland Wage Payment and Collection Law:

The Maryland Wage Payment and Collection Law, Md. Code, Lab. & Empl. § 3-501 et seq., allows an employee to recover unpaid wages from his employer.   Section 3-507.1 provides that if the court finds that an employer withheld wages "not as a result of a bona fide dispute," the court may award the employee an amount not exceeding 3 times the wage, and reasonable counsel fees and other costs.

The existence of bona fide dispute is a matter for the jury. Medex v. McCabe, 372 Md. 28, 43, 811 A.2d 297 (2002); Admiral Mortgage, Inc. v. Cooper, 357 Md. 533, 540, 745 A.2d 1026, 1029 (2000). In Admiral Mortgage, the employer argued that it had been improper to submit the issue of bona fide dispute to the jury absent evidence of bad faith and that application of the provision was a matter for the judge, rather than the jury. The Court of Appeal rejected that argument.   The Court noted:

> All of the definitions articulated by the courts focus really on whether the party making or resisting the claim has a good faith basis for doing so, whether there is a legitimate

dispute over the validity of the claim or the amount that is owing. The issue is not whether a party acted fraudulently; fraud is certainly inconsistent with the notion of 'bona fide' or 'good faith,' but it is not required to establish an absence of good faith. The question, simply, is whether there was sufficient evidence adduced to permit a trier of fact to determine that [the employer] did not act in good faith when it refused to pay commissions to [the employee] on the five loans that closed after he terminated his employment. Id. at 543, 745 A.2d at 1031.

Any evidence tending "to question the employer's credibility in withholding wages" is relevant to the issue of whether a bona fide dispute exists. Medex, 372 Md. at 42-43

An employer may be liable for treble damages on only a portion of the amount claimed. In Medex, for example, the Court noted that the employer's withholding of one part of the employee's claimed wages "might itself be evidence of a lack of good faith" Id at 43. Likewise in, Baltimore Harbor Charters, Ltd. v. Ayd, 365 Md. 366, 397, 780 A.2d 303 (2001), the Court noted that the "bona fide dispute" provision of § 3-507.1 contains no language which would permit an employer to withhold amounts it concedes are owed to employee. According to the Court: "where an employer alleges the existence of a bona fide dispute as to the total amount of wages owed to an employee . . . yet concedes that a certain amount of wages are due. . . the employer acts at his or her peril in failing to pay the conceded amount." Id. In sum, the penalty provision in § 3-507.1 applies to any portion of the amount claim that is not subject to a good faith dispute.

Respectfully submitted,

THE RUBIN EMPLOYMENT LAW FIRM, P.C.

James E. Rubin
11 North Washington Street, Suite 520
Rockville, MD 20850
Telephone: (301) 760-7914
Facsimile: (301) 760-7234
jrubin@rubinemploymentlaw.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this __th day of November, 2007, a copy of the foregoing was sent by first class mail to:

_____

James E. Rubin