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When the urge to win in litigation translates into a losing strategy. **10A**

Rallying support

Baltimore's development chief courting allies for expanding city's aging convention center. **4A**

THE DAILY RECORD

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COUNTIES CAST WARY EYE AT KIRWAN COSTS

By Bryan P. Sears

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OCEAN CITY — County leaders from around the state are being encouraged to support an education plan billed as transformative but aren't yet being told what their costs will be or how to pay for them.

An hour-long panel discussion at the Maryland Association of Counties annual summer conference at times sounded more like an attempt to buoy enthusiasm for recommendations that once fully implemented will cost a minimum of $4 billion annually. And one county executive said the 10 year phase-in might have to be lengthened significantly in order to make it more palatable for many of the state's 24 political subdivisions.

"We're still nibbling around the edges (of funding formulas)," said Harford County Executive Barry Glassman, a Republican who is also a member of a task force that will make funding recommendations to the full Kirwan Commission, possibly in September.

Glassman said the proposed decade-long implementation period might have to be extended.

"I'm thinking 15 or 20 years," Glassman said.

The Kirwan Commission recommen-

SEE KIRWAN 3A

SALVAGING THE SUPERBLOCK

Baltimore economic development officials say they have received eight proposals for revitalizing parts of the blighted section of town that once was part of the Superblock project. See story on 3A. THE DAILY RECORD/FILE PHOTO

GBMC files for $105.2 million addition

Project would double size of patient rooms, create more space for emergency unit

By Tim Curtis

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Greater Baltimore Medical Center has filed an application to build an addition to the hospital to modernize and expand patient rooms and create more space for the emergency department.

The hospital will not be adding any new beds, but the $105.2 million project will allow it to essentially double the size of its rooms.

"This is really the first key step to creating some initial capacity in higher standard rooms so we can go back and retrofit our existing rooms to provide a better experience for our patients," said Keith R. Poisson, GBMC's executive vice president and chief oper-

SEE GBMC 9A

HORD COPLAN MACHT

GBMC has filed an application with the state regulatory agency for approval to build this addition.

Parties debate judge's right to limit access to court audio

By Heather Cobun

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A Baltimore woman is asking a judge to declare that the Baltimore City Circuit Court administrative judge exceeded his authority when he issued a broad order in April revoking the public's general right to obtain audio recordings of court proceedings.

The Maryland Rules allow individuals to request audio recordings of hearings and trials and provide that the custodian of the recordings "shall make a copy" on written request. However, an exception to the rules provides that a request may be denied "as ordered by the court."

Administrative Judge W. Michel Pierson issued an administrative order April 24 prohibiting the custodian from making copies available to anyone except parties to the case and their attorneys.

Justine Barron, a local reporter and blogger, filed suit in May after she was told that an administrative order prevented the court reporter from giving her an audio CD she had requested.

Attorneys for Barron argued at a hearing Thursday that the Maryland Rules conferred a right of access statewide and that Pierson cannot revoke the right indiscriminately. Attorneys for the defendants, who include Pierson and the court reporter, claim the administrative order falls under the "as ordered by the court" exception.

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When the urge to win is a losing strategy

JEFF TRUEMAN
Commentary

Litigation arouses competition, an urge to win. Some lawyers have a hard time dialing it down even when the parties want to settle. Many lawyers overemphasize their role as zealous advocate at the expense of other, equally important roles – adviser and problem-solver. Lawyers are not the only ones who possess the urge to win. Many parties allow themselves to get mad enough to elevate "principles" over rationality. They fail to heed warnings from experienced counsel.

Granted, when a problem has no other potential solutions, litigation is the only option. But "failures" in mediation may be false when lawyers and parties don't negotiate enough to know whether good outcomes were within reach. Often, there is no plan for the mediation -- other than to react negatively to their opponent's proposals on the basis that movement was not generous enough or came too late. Some participants in mediation don't know when they're close to getting a good deal. They fail to use their mediator.

As a result, some plaintiffs receive less in mediation than defendants are willing to pay and some defendants and insurance carriers pay more than they need to in order to resolve a case (usually on the eve of trial after spending a significant sum in costs or by way of a jury verdict). The spread can reach six figures or more. This is not supposed to happen, of course. Parties spend significant resources in litigation aimed at maximizing their economic positions (at least in theory). Nonetheless, parties fall short more frequently than they, their lawyers and insurance carriers realize.

In fairness, there are times when parties and counsel need to take a tough stance at the table. Some clients need to know that counsel will not sell them short. Some parties want their demand or offer to "rattle the other side's cage," but they will move if and when the other side reciprocates. Some lawyers and carriers fail to evaluate a case accurately, but they give themselves "room" to bargain (perhaps too much room when it fails to motivate the other side to make meaningful moves). Plaintiffs are deeply invested in the outcome of personal injury disputes, whereas insurance carriers and institutional defendants are usually driven by the economics of prior cases. "It takes two to tango," as they say. Both sides need to have the same intention to "talk turkey," otherwise mediation will waste time and money and may frustrate efforts to resolve the case later on. Good mediators will look into this issue and do something about it before the mediation.

In my view, these dynamics are part and parcel of mediating most conflicts. The urge to win, however, is rooted in the professional identities of lawyers and insurance adjusters. It also manifests in many parties. It's tricky because it affects how we perceive information. Many participants in mediation reject evidence that contradicts what they want to believe. "Motivated" reasoning is common. When we encounter evidence that supports our belief, we ask ourselves, "Can I believe this?" The answer is usually, "Yes!" But when contradictory information is presented, we change the question into, "Must I believe this?" That answer is usually, "No, look at what supports my belief instead." Litigation teams act in ways similar to individuals. They often create echo chambers for themselves where groupthink ignores or rejects information that counters what they want to believe.

Participants make overly confident predictions of litigated outcomes in just about every single case. Many mediators do it too. Unfortunately, the process is often reduced to a narrow but lively power struggle over outcome predictions. In my view, no one really knows and, more important, it doesn't matter. The deeper question is whether participants want their predictions to be "right" or accurate. Most people want to be right. They want their story validated by a judge or a jury. Accurate predictions, however, require diverse perspectives, internal dynamics that encourage contrary points of view and a plan that avoids dangerous outlier outcomes.

Of course, lawyers need to have an urge to win. But it can be dangerous when overplayed. It is a self-serving bias that hijacks the ability to identify and manage risk. In my view, zealous advocacy has its limitations when trial outcomes are compared to what was achievable at the table. I don't think clients are well-served by subjective assessments of risk. Parties, lawyers and insurance adjusters should seek diverse perspectives and ask themselves, "How can this go wrong?" In plenty of cases, the urge to win backfired and the "justice" that was within reach was lost.

Jeff Trueman is a private mediator and can be reached at jt@jefftrueman.com.

A Trojan horse for Md.

MANDY GUNASEKARA
Commentary

Maryland legislators recently passed the Clean Energy Jobs Act of 2019 with the goal of increasing the amount of energy from renewable energy sources.

What some Marylanders may find surprising is that embedded among the traditional list of renewables that generate power from the wind and the sun is another type of "renewable" source that derives its energy from trash. Strategically referred to as "waste-to-energy," the concept to turn trash into a clean, usable form of energy is well-intentioned but in practice is far from true.

Trash incinerators have been around for a long time. Most were built in the 1970s and 1980s and are now dealing with the question of how to prolong their end-of-life reality. Instead of investing in new technologies, trash incinerators have invested more in a brand-new image. Millions of dollars later, the media and lobbyist have been coached to no longer refer to incinerators with their old, honest name, but a new, more enlightened one: waste-to-energy.

The Maryland legislators have taken the bait to a whole new level. Maryland is the only state where trash incinerators are categorized as a renewable energy source of the highest caliber. Referred to as "Tier 1" in the state's clean energy laws, incinerators enjoy a bevy of benefits, including high-dollar renewable energy credits.

This ratepayer subsidy might be justified if incinerators came with an equal amount of local economic productivity and job creation, but incinerators lag in this category as well. According to a study by the Institute for Local Reliance, for every 10,000 tons of waste sent to an incinerator only 1.2 jobs are created compared to 4.1 full-time jobs at composting facilities and 2.1 full-time jobs at landfills, where some use advanced technologies to turn captured methane gas into energy.

Premium costs

Speaking of costs, burning trash for energy comes at a premium. One megawatt-hour of power generated from trash costs $8.33 compared to only $4.25 for pulverized coal and $2.04 for nuclear. It also comes at a premium in terms of environmental costs, of which low-income, minority communities are all too familiar.

Eight in 10 incinerators are near impoverished areas that politicians have historically found easy to ignore. Despite pollution control requirements, residents in close proximity to incinerators are exposed to higher levels of air pollutants. One analysis found incineration facilities in Maryland emit nearly six times more mercury per unit of energy generated than coal plants in the state.

There is more recent concern that incinerators are also releasing Per- and Polyfluoroalkyl Substances, more commonly referred to as PFAS. Amid growing public concern the U.S. Environmental Protection Agency has developed an action plan to address them, but until those requirements are fully in place trash incinerators will not be required to have the same level of pollution control capabilities for PFAS as they do other air pollutants.

Thanks to sophisticated PR campaigns and highly persuadable politicians, trash incinerators are finding new life. Their clean energy status and affiliated special treatment in the marketplace is undermining other waste management industries that may be less flashy but certainly are more environmentally and economy friendly. One such area is American-based recycling.

Marylanders no doubt are looking to improve the trajectory of clean energy sources that comport with their modern-day expectations. Keeping trash incinerators not only undermines the credibility of those goals but is also prolonging an aged-out waste management process to the detriment of the communities they are located in, ratepayers, and other more honest alternatives.

Mandy Gunasekara is the founder of Energy45, a Jackson, Mississippi-based nonprofit dedicated to informing the public about the energy, environmental and economic gains made under the Trump Administration. She is the former principal deputy assistant administrator for the Office of Air and Radiation at the U.S. Environmental Protection Agency and also served as majority counsel on the U.S. Senate Environment and Public Works Committee.