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## Liens--Priority of Common Law Liens and Secured Interests in West Virginia

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## LIENS—PRIORITY OF COMMON LAW LIENS AND SECURED INTERESTS IN WEST VIRGINIA

When the Uniform Commercial Code was adopted by the West Virginia legislature in 1963, the traditionally favored position in law of the laborer, artisan, and repairman was perpetuated in the priority of liens section of the Secured Transactions article.<sup>1</sup> However, where the lien is statutorily created and the statute expressly provides for the lien's subordination to previously perfected security interests, the priority of liens section creates an exception to the preference for repairman's liens. In a recent case, the West Virginia Supreme Court of Appeals construed the application of this section to repairman's liens<sup>2</sup> and held that the state's statutory improver's lien<sup>3</sup> "wholly supplanted" the common law repairman's lien, thus bringing the lien of a repairman within the subordinated category of liens in the Uniform Commercial Code.<sup>4</sup> This decision

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<sup>1</sup> W. VA. CODE ANN. § 46-9-310 (1966).

<sup>2</sup> *Fruehauf Corp. v. Huntington Moving and Storage Co.*, 217 S.E.2d 907 (W. Va. 1975) [hereinafter cited as *Fruehauf*]. A secured seller of a trailer brought suit seeking possession of the trailer or judgment for its value from an improver and the purchaser of the trailer at a distress sale conducted to satisfy the improver's possessory lien. This case was initially discussed in *Survey of Developments in West Virginia Law: 1975-1976*, 78 W. VA. L. REV. 537, 618 (1976).

<sup>3</sup> W. VA. CODE ANN. § 38-11-1 *et seq.* (1966). The section which creates the improver's lien, W. VA. CODE ANN. § 38-11-3 (1966), states:

A person who, while in possession thereof, makes, alters, repairs, stores, transports, or in any way enhances the value of an article of personal property . . . shall have a lien upon such article or animal while lawfully in the possession thereof. . . .

<sup>4</sup> W. VA. CODE ANN. § 46-9-310 (1966) declares the priority of the lien of persons furnishing services or materials with respect to goods in their possession. Whether such a lien is based upon common law or statute, § 46-9-310 gives it priority, with one exception, over a pre-existing security interest in the goods. The exception relates to a lien created by statute which expressly provides subordination of the lien.

West Virginia's statutory improver's lien, W. VA. CODE ANN. § 38-11-1 *et seq.* (1966), expressly subordinates the lien to previous secured parties. W. VA. CODE ANN. § 38-11-2 (1966) states:

Any lienor shall take such rights as a purchaser of the property deposited with him would take, and shall take subject to other titles, interests, liens or charges in the same manner that a purchaser would take. . . .

The *Fruehauf* court, by declaring that common law repairman's liens no longer existed, gave priority to the security interest by operation of the exception in § 46-9-310 and the express subordination provision in § 38-11-2.

represents an erosion of the favored legal position of the repairman, the artisan, and the laborer.

West Virginia first recognized the common law repairman's lien in the early decision of *Burrough v. Ely*.<sup>5</sup> At common law, a person who furnished services and materials on a chattel at the request of the owner acquired a lien for the value of such services and materials.<sup>6</sup> However, the lien gave no right of sale, and the repairman only had the right to retain possession of the property until he was paid.<sup>7</sup> Surrender of possession destroyed the lien because there was no right to retrieve the chattel once it was released.<sup>8</sup>

The only statutory enactment concerning the common law repairman's lien authorized the use of "distress" by one holding the lien.<sup>9</sup> Usually a landlord's remedy, distress allowed one claiming a common law repairman's lien to take possession of the chattel from the hands of the debtor. This statute strengthened the possessory rights of the repairman.

The Supreme Court of Appeals, as noted in *Fruehauf*,<sup>10</sup> later acknowledged this broadening of the common law repairman's lien.<sup>11</sup> Subsequently, the court held that although the statute "provide[d] a cumulative remedy for enforcing . . . [the common-law repairman's lien], [the statute did] not abrogate or change his common law right [of possession]."<sup>12</sup>

With the general recodification of all state statutes in 1930, the legislature enacted a statute entitled "Miscellaneous Liens and Pledges" which provided a lien for an improver of personal property "while lawfully in possession thereof."<sup>13</sup> Unlike the common

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<sup>5</sup> 54 W. Va. 118, 46 S.E. 371 (1903). See also, *Commercial Credit v. Oakley*, 103 W. Va. 270, 137 S.E. 13 (1927); *Waddell v. Trowbridge*, 94 W. Va. 482, 119 S.E. 290 (1923); *Scott v. Mercer Garage and Auto Sales Co.*, 88 W. Va. 92, 106 S.E. 425 (1921); and *Keystone Mfg. Co. v. Close*, 81 W. Va. 205, 94 S.E. 132 (1917).

<sup>6</sup> *Burrough v. Ely*, 54 W. Va. 118, 46 S.E. 371 (1903).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* See also 1 L. JONES ON LIENS § 731 (3d ed. 1914).

<sup>9</sup> Acts of the 29th W. Va. Leg. ch. 43, Reg. Sess. (1909).

<sup>10</sup> 217 S.E.2d at 911.

<sup>11</sup> *Keystone Mfg. Co. v. Close*, 81 W. Va. 205, 94 S.E. 132 (1917).

<sup>12</sup> *Stallard v. Stepp*, 91 W. Va. 60, 64, 112 S.E. 184, 186 (1922).

<sup>13</sup> W. VA. CODE ANN. § 38-11-1 *et seq.* (1966). See notes 1 and 3 *supra*. The revisor's note under this statute in the 1931 Code states that its principal effect is in accord with the view expressed in the case of *Waddell v. Trowbridge*, 94 W. Va.

law repairman's lien of possession, the statute allowed the improver to sell the personal property by auction should the beneficiary of his services or material fail to pay.<sup>14</sup> The statute neither expressly repealed nor even mentioned the common law repairman's lien but stated instead that the section allowing sale by auction did not preclude any other remedies allowed by law for the enforcement of a lien or pledge against personal property.<sup>15</sup>

The section granting the use of other remedies available by law is seemingly a codification of the court's decision in *Stallard v. Stepp*,<sup>16</sup> in that the legislature authorized a cumulative remedy—sale by auction—but in enacting the statutory improver's lien, did not abrogate or change the common law repairman's lien. Indeed, the court held in two decisions after the enactment of the statutory improver's lien that the common law repairman's lien was still in effect, giving to a repairman a lien for labor performed or material furnished by him in manufacturing or repairing goods delivered to him for that purpose and entitling him to retain possession of the property against the owner until the lien was discharged by payment.<sup>17</sup>

The West Virginia Constitution gives the legislature the power to alter or repudiate the common law.<sup>18</sup> In determining whether the statutory improver's lien replaced the common law repairman's lien, the *Fruehauf* court stated that "the common law is not to be deemed altered or abrogated by statute unless the Legislature's intent to do so be plainly manifested."<sup>19</sup> The principle case upon which the court relied for this rationale stated that an "ancient rule of the common law, based upon reason and supposed necessity

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482, 119 S.E. 290 (1923), which mentioned the common law repairman's lien only in requiring that a chattel be left for repairs by the owner or his agent, not a bailee, for the lien to be effective. This case does not discuss priority of liens.

<sup>14</sup> W. VA. CODE ANN. § 38-11-14 (1966) states:

The lienor or pledges shall give written notice to the person on whose account the goods are held. . . . In accordance with the terms of a notice or given, a sale of the goods by auction may be had to satisfy any valid claim of the lienor or pledgee for which he has a lien or pledge on the goods. . . .

<sup>15</sup> W. VA. CODE ANN. § 38-11-16 (1966).

<sup>16</sup> 91 W. Va. 60, 112 S.E. 184 (1922).

<sup>17</sup> *Kap-Tex, Inc. v. Romans*, 136 W. Va. 489, 67 S.E.2d 847 (1951); *Wellman v. Holston Hardwood Co.*, 110 W. Va. 544, 159 S.E. 561 (1931).

<sup>18</sup> W. VA. CONST. art. VIII, § 13.

<sup>19</sup> 217 S.E.2d at 911.

. . . should not be cast aside unless the legislative intent to do so is *clearly* manifested.”<sup>20</sup>

The Supreme Court of Appeals had previously enunciated principles concerning statutorily supplanting the common law. First, a fundamental and time honored principle of the common law is not to be deemed uprooted by mere implication.<sup>21</sup> Second, where the common law on a given subject has not been expressly repealed, displaced or altered, it remains in force.<sup>22</sup> Third, when statutes are in derogation of the common law, as the court in *Fruehauf* held the statutory improver's lien to be, they are to be strictly construed and should not be enlarged in their operation by a construction beyond what their terms express.<sup>23</sup>

In determining whether the statutory improver's lien supplanted the common law, the court in *Fruehauf* stated the general rule to be that:

[A] lien provided for by a statute which is merely declaratory of the common law must be interpreted in conformity with its principles, but where the legislature has enlarged and defined a common-law lien, its definition supercedes [that] of the courts, and thereafter the exercise of the powers of the courts with respect to such liens must be consistent with the legislative definition.<sup>24</sup>

A further reading of the source upon which the court relied reveals that common law liens are not generally considered abolished by a statute which merely enlarges upon such liens.<sup>25</sup> This source also adds that common law and statutory liens may exist together and operate in aid of each other.<sup>26</sup> Accordingly, numerous jurisdictions have held that the common law repairman's liens

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<sup>20</sup> *Shifflette v. Lilly*, 130 W. Va. 297, 304, 43 S.E.2d 289, 293 (1947) (emphasis added).

<sup>21</sup> *Poling v. Poling*, 116 W. Va. 187, 190, 179 S.E. 604, 606 (1935).

<sup>22</sup> *Harper v. Building Ass'n*, 55 W. Va. 149, 46 S.E. 817 (1904).

<sup>23</sup> *Shifflette v. Lilly*, 130 W. Va. 297, 303, 43 S.E.2d 289, 292 (1947).

<sup>24</sup> 217 S.E.2d at 911, *citing* 51 AM. JUR. 2d *Liens* § 38 (1970). There are only two jurisdictions cited in this section for this "general rule." *Akers v. Akers*, 233 Minn. 133, 46 N.W.2d 87 (1951); *Robinson v. Rogers*, 237 N.Y. 467, 143 N.E. 647 (1924).

<sup>25</sup> 51 AM. JUR. 2d *Liens* § 36 (1970), *citing* *Jackson v. Kusmer*, 411 S.W.2d 257 (Mo. 1967).

<sup>26</sup> 51 AM. JUR. 2d *Liens* § 20 (1970), *citing* *Hiltz v. Gould*, 99 N.H. 85, 105 A.2d 48 (1947).

survive enactment of statutory repairman's liens<sup>27</sup> and that a repairman should be able to rely on the common law lien even though he has not complied with statutory requirements or formalities.<sup>28</sup>

The *Fruehauf* court failed to mention that the United States District Court for the Southern District of West Virginia has held the provisions of the statutory improver's lien which provide for sale by auction to be in violation of the due process clause of the fourteenth amendment.<sup>29</sup> Since the Supreme Court of Appeals has held that once a statute declaratory of the common law is repealed the area of the common law is restored as before,<sup>30</sup> it logically follows that the common law repairman's lien should have been revived when the statutory improver's lien was declared unconstitutional. This seems especially true since it was the right of sale which violated the due process provisions, a right that did not exist at common law.

The clearest statement of intent of the West Virginia legislature concerning the existence of the common law repairman's lien

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<sup>27</sup> *Gale and Co. v. Hooper*, 323 S.W.2d 824 (Mo. App. 1959), *aff'd* 330 S.W.2d 826 (Mo. 1959); *North End Auto Park, Inc. v. Petringa Trucking Co., Inc.*, 337 Mass. 618, 150 N.E.2d 735 (1958); *Hiltz v. Gould*, 99 N.H. 85, 105 A.2d 48 (1954); *Braufmann v. Hart Publication*, 234 Minn. 343, 48 N.W.2d 546 (1951); *Williamson v. Winningham*, 199 Okla. 393, 186 P.2d 644 (1947); *Gruisin v. Stutz Motor Car Co. of Am.*, 206 Ind. 296, 187 N.E. 382 (1933); *Crosby v. Hill*, 121 Me. 432, 117 A. 585 (1922); *City Nat'l Bank of Wichita Falls v. Laughlin*, 210 S.W. 617 (Tex. Civ. App. 1919); *Towle v. Raymond*, 58 N.H. 64 (1877).

<sup>28</sup> *Slebbins v. Balfor*, 157 Minn. 135, 195 N.W. 773 (1923); *Bardasch v. Kalish*, 118 Misc. 119, 193 N.Y. Supp. 719 (1922); *Johnson v. Yates*, 183 N.C. 24, 110 S.E. 603 (1922); *City Nat'l Bank v. Laughlin*, 210 S.W. 617 (Tex. Civ. App. 1919); *Gardner v. First Nat'l Bank*, 122 Ark. 464, 184 S.W. 51 (1916); *Jesse A. Smith Auto Co. v. Kaestner*, 164 Wis. 205, 159 N.W. 738 (1916); *Garr v. Clements*, 4 N.D. 559, 62 N.W. 640 (1895). See also 2 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY § 33.2 (1965).

<sup>29</sup> *Straley v. Gassaway Motor Co., Inc.*, 359 F. Supp. 902 (S.D.W. Va. 1973). The court decided that because W. VA. CODE ANN. §§ 38-11-3, -14 (1966) authorized the automobile garage to give notice, to advertise, and to sell at auction without being required to make an affidavit, to arrange bond security, or to institute an action, the statutory improver's lien violated due process. It is not clear whether the court held the statutory improver's lien unconstitutional on its face or only when the court's requirements of affidavit, bond security, and action were not met. For the purposes of this argument, the statutory improver's lien allowing sale by auction will be presumed to be unconstitutional on its face.

<sup>30</sup> *State v. Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959); *State v. Mines*, 38 W. Va. 125, 18 S.E. 470 (1893).

is found in the article entitled "Liens and Encumbrances on Vehicles."<sup>31</sup> This article specifically states that its provisions "shall not be construed so as to require common law mechanic's liens or repairman's liens, or the lien of an improver or bailee as provided in . . . [§ 38-11-1 et seq.] . . . to be shown on the certificate of title in order to preserve such liens . . . ."<sup>32</sup> This section clearly demonstrates that the legislature saw the common law repairman's lien and the statutory improver's lien as separate, definable liens, and that the statutory improver's lien neither manifested nor supplanted the common law.

The official comment to the priority of liens section of the Uniform Commercial Code<sup>33</sup> states that this section was intended to give the lien of a repairman priority over previously recorded security interests, whether the repairman's lien be of common law origin or created by statute. Only when a statutory lien expressly provides subordination of the repairman's lien is the security interest to have priority. This section, however, is silent about the conflict that arises when a common law lien coexists with a statutory lien expressly subordinate to previously perfected security interests. This is the situation the court faced in *Fruehauf*.

In analyzing the cases of the many states which have adopted § 9-310 of the Uniform Commercial Code, hereinafter referred to as the UCC, numerous decisions exist which can be divided into several categories. First are those jurisdictions in which the common law lien has priority over previously perfected security interests through operation of UCC § 9-310 whether a statutory lien exists or not.<sup>34</sup> West Virginia ostensibly falls within this category.

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<sup>31</sup> W. VA. CODE ANN. § 17A-4A-1 et seq. (1974 Replacement Volume).

<sup>32</sup> W. VA. CODE ANN. § 17A-4A-12 (1974 Replacement Volume). It should be mentioned that W. VA. CODE ANN. § 17A-4A-5 (1974 Replacement Volume) states that liens shown upon the certificate of title are to have priority over any other liens against the vehicle. The enactment of the Uniform Commercial Code in 1963, however, alters that priority as it relates to the common law repairman's lien. The scope of this UCC article is applicable to § 17A-4A-1 et seq. as a secured transaction. W. VA. CODE ANN. § 46-9-102 (1966). Because the Uniform Commercial Code was enacted subsequent to § 17A-4A-1 et seq., the general repeal provision of the Uniform Commercial Code invalidates its priority in relation to the common law repairman's lien. W. VA. CODE ANN. § 46-10-103 (1966). Therefore, the common law repairman's lien should retain its priority through the operation of W. VA. CODE ANN. § 46-9-310 (1966).

<sup>33</sup> W. VA. CODE ANN. § 46-9-310 (1966) (Official Comment).

<sup>34</sup> *Ford Motor Credit Co. v. Howell Bros. Truck and Auto Repair*, 325 So. 2d 562 (Ala. 1975); *General Motors Acceptance Corp. v. Colwell Diesel Serv.* and

Second are those jurisdictions where the statutory lien is silent as to subordination and therefore has priority by operation of UCC § 9-310.<sup>35</sup> Third are the jurisdictions whose statutory liens expressly make themselves subordinate to previously perfected security interests.<sup>36</sup> Last are those jurisdictions which do not apply the code under these circumstances.<sup>37</sup>

Due to similar legal and factual settings, several cases speak strongly against the *Fruehauf* decision. In *General Motors Acceptance Corp. v. Colwell Diesell Service and Garage, Inc.*,<sup>38</sup> the court ruled that the statutory lien for repairs did not supercede or destroy the common law lien, but merely provided a new and additional remedy. Therefore, by operation of UCC §9-310, the common law lien had priority. In a separate case, the Court of Appeals of Alabama, construing UCC §9-310, recognized that a repairman claiming a common law lien would have priority over previously perfected security interests, even though the statutory lien was expressly subordinate to such interests, if the repairman maintained possession of the personal property in question.<sup>39</sup>

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Garage, Inc., 302 A.2d 595 (Me. 1973); *Nickell v. Lambrecht*, 29 Mich. App. 191, 185 N.W.2d 155 (1970); *Philadelphia Nat'l Bank v. K&G Speed Ass'n*, 43 Pa. D.&C.2d 241 (1967); *Manufacturers Acceptance Corp. v. Gibson*, 220 Tenn. 654, 422 S.W.2d 435 (1967); *Ferrante Equip. Co. v. Foley Mach.*, 49 N.J. 432, 231 A.2d 208 (1967).

<sup>35</sup> *Balzer Mach. Co. v. Kline Sand and Gravel Co.*, 537 P.2d 321 (Ore. 1975); *Gulf Coast State Bank v. Helms*, 525 S.W.2d 866 (Tex. 1975); *Mousel v. Doenger*, 190 Neb. 77, 206 N.W.2d 579 (1973); *Charlie Edison's Paint and Body Shop v. Commercial Credit Plan, Inc.*, 20 Ind. Dec. 2, 7 UCC Rept. Ser. 256 (1969); *Gables Lincoln-Mercury, Inc. v. First Bank and Trust Co.*, 219 So. 2d 90 (Fla. 1969); *Commerce Acceptance, Inc. v. Press*, 428 P.2d 213 (Okla. 1967); *Corbin Deposit Bank v. King*, 384 S.W.2d 302 (Ky. 1964).

<sup>36</sup> *Bond v. Dudley*, 244 Ark. 568, 426 S.W.2d 780 (1968); *Checkered Flag Motor Car Co., Inc. v. Grulke*, 209 Va. 427, 164 S.E.2d 660 (1968); *Pennington v. Alexander*, 103 Ill. App. 2d 145, 242 N.E.2d 788 (1968); *First Security Bank v. Crose*, 374 F.2d 17 (10th Cir. 1967) (Colorado law construed); *Decker v. Aurora Motors, Inc.*, 409 P.2d 603 (Alas. 1966). See note 3 *supra*.

<sup>37</sup> *Municipal Equip. Co. v. Butch and Son Deep Rock*, 185 N.W.2d 756 (Iowa 1971); *Commonwealth Loan Co. v. Berry*, 2 Ohio St. 2d 169, 207 N.E.2d 545 (1965).

<sup>38</sup> 302 A.2d 595 (Me. 1973). As in *Fruehauf*, both *General Motors Acceptance Corp. v. Colwell Diesel Service and Garage, Inc.* and *Ford Motor Credit Co. v. Howell Bros. Truck and Auto Repair*, 325 So. 2d 562 (Ala. 1975) (see text accompanying note 39) concerned the priority of a perfected security interest and a lien claimed by a repairman. Both cases dealt with a common law lien and a statutory lien expressly subordinate.

<sup>39</sup> *Ford Motor Credit Co. v. Howell Bros. Truck and Auto Repair* 325 So. 2d 562 (Ala. 1975). However, in this case the repairman released possession of the

Perhaps the decision whose issues are closest to *Fruehauf* is *Nickell v. Lambrecht*,<sup>40</sup> wherein the Michigan Court of Appeals considered the priority of plaintiff's perfected security interest, which was a title-retaining/conditional sales contract on a tractor, and defendant's repairman's liens based upon common law and statute. Although the statutory lien had been held subordinate to a duly recorded security interest in a previous case,<sup>41</sup> the court decided that the common law lien survived the statutory enactment, stating:

Now at a time well over 50 years after the enactment of these statutory provisions, we think it a sounder course to follow the lead of other jurisdictions, which in general have decided this question in favor of the continued viability of the common law lien, than ourselves to embark on a futile search for legislative intention.<sup>42</sup>

*Fruehauf* indicates some erosion in the once-favored legal position of the laborer. The conservative legislative restructuring of the mechanic's liens statutes after the court's liberal construction of the statutes in *Carolina Lumber Company v. Cunningham*,<sup>43</sup> might have made the court anticipate a similar legislative backlash if it had held for the continued existence of the common-law repairman's lien.

Although courts of chancery have commonly held it to be "clear equity" that a party who has enhanced the value of a chattel by incorporating therein his labor or material should have a security on the improved property,<sup>44</sup> there is a far more practical reason

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automobile and thus lost his common law lien and its priority.

<sup>40</sup> 29 Mich. App. 191, 185 N.W.2d 155 (1970).

<sup>41</sup> *Denison v. Shuler*, 47 Mich. 598 (1882).

<sup>42</sup> *Nickell v. Lambrecht*, 29 Mich. App. 191, 193, 185 N.W.2d 155, 158 (1970).

<sup>43</sup> 192 S.E.2d 722 (W. Va. 1972). The court stated, "All perfected mechanics' liens attach at the time of initial construction of the building commenced and take priority over all other intervening liens created by deeds, or otherwise, that are not recorded before construction begins." Priority was given to a mechanic who supplied labor and material after the date of construction and after deeds of trust which were recorded subsequent to the date of construction but prior to the work of the mechanic. This result is reached because the mechanic's lien was held to attach from the very first day of construction whether he worked on that day or not. In 1973 the legislature amended the statute, W. VA. CODE ANN. § 38-2-1 *et seq.* (Cum. Supp. 1975), to provide that a mechanic can claim priority only from the day that he individually begins work.

<sup>44</sup> *General Motors Acceptance Corp. v. Colwell Diesel Serv. and Garage, Inc.*, 302 A.2d 595 (Me. 1973), *citing* 8 AM. JUR. 2d *Bailments* § 229 (1970) and 38 AM.

for the continued existence of common law liens. The stated purpose of the Uniform Commercial Code is to simplify, clarify and modernize the law governing commercial transactions in order to permit the continued expansion of commercial practices.<sup>45</sup> Simply stated, the code seeks to foster the flow of commerce in our society. The quantity of litigation in this area shows that this conflicting lien-security interest situation is a fairly common problem.<sup>46</sup> Under *Fruehauf*, a repairman can never be certain that he will be paid for any work done on vehicles which are under perfected security interests. Since many newly purchased vehicles are acquired through credit transactions, *Fruehauf* means that the repairman, to insure payment, would have to obtain an agreement from the creditor before repairs would begin. This is certainly a dam against the flow of business.<sup>47</sup> The bias toward lenders in this decision does not coincide with the overall interests of commerce.

Considering the rules required for altering the common law, the past case history of the common law lien, the lack of express abolition of the common law lien in the statutory improver's lien statute, and the apparent legislative acknowledgement of the separate existence of the common law repairman's lien and the statutory improver's lien, it appears that the court was somewhat hasty in concluding that the common law repairman's lien no longer exists. Due to the effects on business that the decision will have, perhaps it is one that the court should reconsider in the future.

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JUR. 2d *Garage* § 38 (1970).

<sup>45</sup> W. VA. CODE ANN. § 46-1-102 (1966).

<sup>46</sup> See notes 32 thru 35 *supra*.

<sup>47</sup> It is somewhat ironic under the circumstances that standard security agreement forms creating security interests usually require the borrower to keep the chattel in "good repair." This of course protects the security interest in case of default and forces the borrower to seek out a repairman for the benefit of the creditor. It is interesting to note that the court in *Scott v. Mercer Garage and Auto Sales Co.*, 88 W. Va. 92, 106 S.E. 425 (1921), held that a common law repairman's lien has priority over a previously perfected security interest when the instrument creating the security interest expressly or impliedly required the debtor to keep the property in repair.