THE WESTERN PENNSYLVANIA TRIAL LAWYERS ASSOCIATION'S

THE ADVOCATE

THE ADVOCATE

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WESTERN PENNSYLVANIA TRIAL LAWYERS ASSOCIATION

ASSOCIATION OFFICE:
909 MOUNT ROYAL BLVD, STE 102
PITTSBURGH, PA 15223-1030
412-487-7644
LAURIE@WPTLA.ORG
WWW.WPTLA.ORG

PRESIDENT'S MESSAGE

I am so excited to serve my term as the President of Western Pennsylvania Trial Lawyers Association. WPTLA is a wonderful organization that I have been fortunate to be a part of for the last 15 years. I have served on the Board of Governors for at least the past ten years. I would like to think that, during my tenure with the organization, I learned everything there is to know about WPTLA. But, guess what? I never really knew when WPTLA was created and why. When I thought about writing my first message, I wanted to know the history and the "mission statement". I thought it was important to look back and learn about it and, potentially, educate the readers of this article.

Western Pennsylvania Trial Lawyers Association was incorporated in 1992, but the organization has been around since the 1960s as part of the Pennsylvania Trial Lawyers Association (PaTLA), which was state-wide. PaTLA was created when two attorneys from Western PA met with attorneys from Philadelphia and decided we needed an organization for not just trial lawyers, but those lawyers that represent injured plaintiffs. For years and years there was a statewide organization but the need for a more local-based trial lawyers association was needed. Hence, WPTLA was created and since that time PaTLA has morphed into the Pennsylvania Association for Justice (PAJ). PAJ works closely with WPTLA and several WPTLA Presidents have served as PAJ Presidents. Both organizations work tirelessly and closely together to preserve the rights of injured plaintiffs.

So, what's the "mission statement"? The long-standing purpose of WPTLA and its predecessors has been to promote, improve and advance the common interest of all members in the causes of trial advocacy, trial by jury and in encouraging fellowship and understanding between the members of the bar and the members of the judiciary. We, as members, strive to be a voice for injured victims and to uphold and defend their rights, specifically the right for trial by jury. We work hard to advance trial advocacy through education, training and helping others. We have generated a great camaraderie among our members.

At the board meetings and events, I look around and think how fortunate I am to be surrounded by real trial attorneys that are brilliant in the courtroom - attorneys that I have met through WPTLA and know that I can reach out to anytime for advice and assistance. Attorneys that have become my friends over the years. WPTLA has so much to offer its members, but I think this camaraderie is the biggest asset.

What else does WPTLA offer? The first thing that comes to mind is our amazing CLE programs. They are always interesting and aim to make us better trial attorneys. I really enjoy our "war stories" programs where we get to hear from attorneys that were successful at obtaining high verdicts. Also, we now have the capability to attend CLE programs in person or remotely through zoom. I would encourage you to check out our website and the CLE program offerings.

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PRESIDENT'S MESSAGE ... (FROM PAGE 1)

WPTLA also offers a newly developed listserv where plaintiff's attorneys can reach out for help with questions and to seek guidance. I am also appreciative of the database we have created to aid attorneys with drafting pleadings/discovery and deposition and trial strategy. These are things that make us all better attorneys. If you haven't logged in and checked out the database, I would encourage you to do so. I would also encourage you to reach out and join the listserv.

The organization also strives to help others in the community. We do pro bono work through our Wills Clinic where we assist low income individuals with Estate planned. We do many other things, but I am most proud of the fact that we have supported the Pittsburgh Steelwheelers for 23 years. The Steelwheelers are an independent organization that provides opportunities so that people with disabilities can compete in competitive sports. Every year, in the fall, we host a 5K walk/run event in North Park. The event is so much fun. I encourage all of our members to attend and bring your family and pets. Over the past 23 years we have raised over $642,000.00! Check out our website for details on the event.

> ***"The . . . purpose of WPTLA [is] to promote, improve and advance the common interest of all members in the causes of trial advocacy, trial by jury and in encouraging fellowship and understanding between the members of the bar and the members of the judiciary."***

Beyond the 5K, WPTLA hosts a variety of other events. When our Board of Governors meet, we work tirelessly to ensure that our events are fun and less time consuming for busy attorneys. As always, we will have our Comeback Award Dinner in November and our Judiciary Dinner and Golf outing in May. I am also happy to report that we will be helping out animal rescues this year. We will have a donation drive in December and fun outing in June. Check out our website for more details to come.

In closing, WPTLA offers so much to its members, but I think the best thing is that you are part of an organization that allows you to surround yourself with great attorneys. I believe I have become a better attorney from meeting those attorneys (who I call friends) through WPTLA and I am proud to serve as this term's leader. As president, I am calling on all members to look within their own law firms for non-members. Maybe you have some young associates and law clerks that would benefit from becoming members. Encourage them to join. There is always strength in numbers. The more plaintiff attorneys we can rally for our cause, the better! I look forward to seeing everyone, and some new members, at the upcoming events.

By: *Katie A. Killion, Esq. of*

Kontos Mengine Killion & Hassen

kkillion@kontosmengine.com

COMEBACK DINNER PREVIEW

WPTLA's Annual Comeback Award Dinner will be held this year on November 13, 2024 at The Duquesne Club in Pittsburgh. As one of WPTLA's signature events, the Comeback Award Dinner is always well-attended by fellow WPTLA members, our business partners, and past winners of the Award. The dinner is an annual reminder of just how important our roles are as Plaintiffs' attorneys and the impact that not only we have on our clients' lives, but the impact our clients' success stories have on us.

The Comeback Award Committee is in the process of selecting this year's winner from a pool of very inspiring candidates. Once the winner is selected, the winner will have the opportunity to select a charity of his or her choosing and WPTLA will make a donation to said charity. Members of the charity of choice will also attend the Award Dinner adding yet another layer of inspiration to the evening.

We look forward to seeing everyone at this year's Comeback Award Dinner.

By: *Brittani R. Hassen, Esq. of*

Kontos Mengine Killion & Hassen

bhassen@kontosmengine.com

Comeback Award Dinner

to honor WPTLA's Comeback Client of the Year

Wednesday, November 13, 2024

The Duquesne Club, Pittsburgh, PA

SPECIAL NEEDS POTPOURRI

How Directed Trusts in Pennsylvania Benefit Injured Clients

In July, 2024 Pennsylvania Governor Josh Shapiro signed the Pennsylvania Directed Trust Act, Senate Bill 1231 (now part of Act No. 64 of 2024 sponsored by Senator Lisa Baker) into law making Pennsylvania the 20th state to adopt a directed trust act following the Uniform Directed Trust Act published by the Uniform Law Commission in 2017.

Directed trusts allow the powers traditionally held by a trustee to be bifurcated and shared with another person or entity known as a "trust director" who directs the "directed trustee" on certain administrative matters.

Many Pennsylvania practitioners have been drafting what are essentially directed trusteeship provisions into trusts for years without any clear statutory law allowing such directed trusteeships or clarifying the parties' roles and responsibilities in court adjudications.

This bifurcation of the traditional trustee role is often used to name as a "trust director":

- a trusted third party to oversee and direct the trustee as to the administration of closely held business or other unique trust assets that traditional trustee may not be equipped or efficiently able to handle;
- an investment advisor to direct the trustee as to the investment management of the trust portfolio;
- a trusted friend or family member to oversee and direct the trustee as to the distributions of trust for the beneficiaries; or
- an independent third party better equipped in certain administrative nuances (such as tax elections, legal compliance, trust modifications, public benefits, or other matters) to direct the trustee for cost or other administrative efficiencies.

Directed Trusts have recently played a vital role on settlement planning nationwide by affording injured parties and their advocates broader selection of trustees and trust advisors to better serve their needs.

For instance, Pennsylvania Rules of Civil Procedure 2039 and 2064, respectively, require a Corporate Trustee when settlement proceeds are placed in trust for a minor or incapacitated plaintiff, and Special Needs Trusts are often used to preserve public benefits such disabled minor or incapacitated clients with extensive special needs.

Our Rules of Civil Procedure require a Corporate Trustee when a Court approves a Special Needs Trust for minor or disabled clients. While the Rules don't govern or require a Corporate Trustee when such a Special Needs Trust is created for an incapacitated adult, our Pennsylvania State Medicaid Agency general prefers and in some instances may demand that a Corporate Trustee administer larger Special Needs Trust unless the Individual Trustee named is bonded.

The administration of these Special Needs Trust is often much more nuanced than a more traditional trust used for estate or tax planning given the complex medical, familial and public benefit needs of the disabled beneficiaries. While well versed in

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traditional trust administration and asset management, many Corporate Trustees are not equipped to efficiently or effectively administer such Special Needs Trusts and some banks even decline to do so unless a trusted family, friend or third-party advisor is involved.

Enter the roles of the Trust Director and Directed Trustee. A Directed Trust arrangement allows each a Corporate Trustee to be named to comply with Rules of Court and to provide all the benefits of sound investment management and a Trust Director to be named to ensure the interests of trust beneficiary clients are protected. The Trust Director Directs the Corporate Trustee to afford broader, and often better and more efficient, options for trust administration.

In these instances a Trust Director may be third-party entity specializing in Special Needs Trust administration or a trusted family, friend or professional. A Trust Director might also be a client's preferred financial advisor. Conversely, a Directed Trust might name such a trusted family, friend or professional as the Directed Trustee and a financial advisor as Trust Director.

"The administration of these Special Needs Trust is often much more nuanced than a more traditional trust used for estate or tax planning."

Pennsylvania's adoption of its Directed Trust Act expressly allows a trustee's powers to be bifurcated or shared thereby statutory condoning directed trusts and providing a framework for their interpretation and judicial enforcement. The Act clarifies the directed trustee and trust director relationships by defining their responsibilities and liability and confirming that fiduciary duty follows the bifurcated task absent "willful misconduct" which is "intentional conduct that is malicious, designed to defraud or unconscionable," and excludes "mere negligence, gross negligence or recklessness."

For example, a trust director of a trust's investments would have the fiduciary responsibility to manage the trust's investments and the directed trustee would not be liable for following the trust director's investment management mandate absent willful misconduct, such as fraud.

Pennsylvania's Directed Trust Act modernizes Pennsylvania law to facilitate and encourage the selection of appropriate trustees in Pennsylvania, with the goal of making Pennsylvania a competitive home for trusts and their administration.

Pennsylvania's Directed Trust Act was a collaborative effort by both the Pennsylvania Joint State Government Commission's Advisory Committee on Decedents' Estates Laws and the Pennsylvania Bankers Association.

Nora Gieg Chatha is an Estates, Trusts and Fiduciary Attorney who Chairs Tucker Arensberg's Fiduciary Services and Estates/Trusts Practice Groups. Nora is also a fellow of the esteemed American College of Trust and Estate Counsel (ACTEC) and a Certified Elder Law Attorney by the National Elder Law Foundation.

By: *Nora Gieg Chatha, Esq. of Tucker Arensburg*

nchatha@tuckerlaw.com

THE ADVOCATE

ARTICLE DEADLINES and PUBLICATION DATES VOLUME 37, 2024-2025

Vol 37	ARTICLE DEADLINE DATE	TARGETED PUBLICATION
Winter 2024	Dec 1	Dec 20
Spring 2024	Feb 21	Mar 7
Summer 2024	May 16	May 30

The Editor of The Advocate is always open to and looking for substantive articles. Please send ideas and content to er@ainsmanlevine.com

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Judicial Discretion in Attempt to Set Aside Notice of Compensation Payable

The Commonwealth Court has addressed what type of discretion a Judge has in determining whether an insurance carrier can set aside a previously issued Notice of Compensation Payable amidst a joinder of a second carrier alleging that carrier is properly responsible.

A panel of the Commonwealth Court recently decided *Reading Anthracite Company, Petitioner v. Molly Oxenrider, West Spring Energy LLC, Rockwood Casualty Insurance Company, and State Workers' Insurance Fund,*120 C.D. 2023 121 C.D. 2023 126 C.D. 2023 170 C.D. 2023. The case involved Andrew Oxenrider's employment relationship with West Spring Energy LLC and Reading Anthracite Company, related entities. West Spring was insured by Rockwood Casualty and Reading was insured by the State Workers' Insurance Fund. The companies conducted coal mining operations. Oxenrider was employed as an equipment operator by West Spring but was going to be laid off due to lack of work. Reading needed someone with Oxenrider's skills for a project of its own. Oxenrider was directed to report to Reading on July 13, 2017. On July 25, 2017, Oxenrider was run over by a bulldozer and killed.

Rockwood, the insurer for West Spring, issued a Notice of Temporary Compensation Payable on September 12, 2017. On October 24, 2017, the Bureau of Workers' Compensation issued a Notice of Conversion of Temporary Compensation Payable to Compensation Payable. Therefore, Rockwood became officially liable as of that date.

In February 2018, SWIF, the insurer for Reading, filed a Notice of Compensation Denial. It issued a second Notice of Denial later that month noting that Oxenrider was not an employee of the insured.

Rockwood entered into an Agreement for Compensation with Oxenrider's widow acknowledging fatal injuries. This occurred on December 12, 2019.

In February 2020, the United States Secretary of Labor filed a Motion to Approve Settlement between the Mine Safety and Health Administration and Reading. Reading accepted responsibility for civil penalties regarding violation of federal law in connection with Oxenrider's death. Settlement indicated that the Decedent was employed by Reading at the time of death.

In July 2020, West Spring and SWIF filed Joinder and Review Petitions alleging that Reading and SWIF were the responsible parties for the case. Litigation commenced before the Workers' Compensation Judge.

The Judge considered evidence from multiple witnesses and ultimately determined that West Spring and Rockwood failed to meet the burden of proof. Specifically, the Judge concluded that West Spring failed to show either a material mistake of fact at the time of issuance of the NCP, nor that there was insufficient time to investigate the claim. Appeals followed to the Workers' Compensation Appeal Board would sustain the Judge. Appeals were then taken to the Commonwealth Court.

As an aside, we have come a long way in the case law since the seminal cases of this area – *Barna v. WCAB (Jones & Laughlin Steel Corporation)*, 522 A.2d 22 (Pa. 1987), and *Beissel v. WCAB (John Wanamaker, Inc.)*, 465 A.2d 969 (Pa. 1983). There have been multiple cases since that time defining the evidence necessary to set aside a previously issued NCP.

The Commonwealth Court provides an educational summary of the case law that has come down in the intervening years. In its Decision, it addresses *Sunset Golf Course v. WCAB (Department of Public Welfare)*, 595 A.2d 213 (Pa. 1981), *Birmingham Fire Insurance Company v. WCAB (Kennedy),*657 A.2d 96 (Pa. Cmwlth. 1995), and *The PMA Group v. WCAB (Nickles)*, 768 A.2d 917 (Pa. Cmwlth. 2001). Those cases ultimately stood for the proposition that a Judge need not consider the timeliness or the manner in which the employer or insurer handled the claim. However, in the instant case, the Court made a crucial distinction by noting that the prior case law does not *prohibit* a Judge from considering whether an insurer properly and timely investigated the claim.

The Judge concluded in his initial Decision the following:

> "The issue of who employed Decedent at the time of death was identifiedand vetted by the Rockwood Claims Adjuster during the time the Notice of Temporary Compensation Payable was issued and the date the Conversion Notice was issued. There was communication with Muntone who identified the Decedent as an employee of West Spring. Then, more than two years after the accident, i.e., on December 12, 2019, the Claims Representative from Rockwood, on behalf of its insured West Spring, entered into the Agreement. This document was signed by both the Rockwood Claims Representative

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and the Widow of Decedent. In addition, the evidence presented in this dispute, which was accepted as credible by this WCJ, supports a finding that Decedent remained on the payroll of West Spring up to the date of death…"

The Commonwealth Court determined that the Judge could take into consideration the efforts made by the carrier to properly investigate his liability. Therefore, in the instant case, the carrier failed to meet its burden of proof.

This writer suggests that the insurance industry's insistence upon the changes to the Act producing the Notice of Temporary Compensation Payable makes its burden here harder than previously noted. Given the extended period of time that carriers now have before they become ultimately liable in the case through the issuance of a Notice of Temporary Compensation Payable, they will have a much or difficult time convincing a judge to set an NCP aside. Previously, when a carrier had 21 days to accept or deny the claim, they may have had a good argument regarding failure to properly investigate. That will be much harder now that the time period has been extended significantly.

By: Tom Baumann, Esq. of

Abes Baumann, P.C.

tcb@abesbaumann.com

Save The Date

Thursday, December 5, 2024

Shackled to Our Screens: How Technology Has Imprisoned the Legal Profession

1.5 Ethics Credits

Presented by Laurie Besden,

Executive Director of Lawyers Concerned for Lawyers of Pennsylvania

Rivers Club, Pittsburgh

1:00 - 2:30pm

Available live and in-person, or live via Zoom.

JOIN US!!!

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Sat, Sep 21, 2024

at the North Park Boathouse

Benefits the Steelwheelers

How can you participate?

1. **Register for the event**. Online registration is available through RunSignup.com.
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to buy 50/50 tickets

Have you renewed your WPTLA membership yet?

If not, you'll want to take care of that now. Email access, as well as entry to the member section of our website, will cease for nonmembers, as of Oct 1. An extension was given this year, due to renewal questions. If you lose access the member section, you'll lose access to The Advocate, the plaintiff only database, and your access to our listserv will expire.

To renew your membership, go to https://wptla.org/renew-wptla/. Click the green Member Login button, and you'll be asked to enter your username and password. If you have not yet created your own password, you can do that now at the bottom of the white box where it says Forgot Password? Click here.

You can create your own password, then come back to this page to sign in.

After you've signed in, you can see your member account page, where you can renew.

Contact our Executive Director at admin@wptla.org or 412-487-7644 with questions.

Kramer v. Nationwide Insurance, 313 A.3d 1031 (Pa. 2024)

Pennsylvania Supreme Court upholds carrier's denial of coverage under a homeowner's policy in a drug overdose case.

This case arises out of a fatal drug overdose at a private residence. On the evening of September 4, 2018, Plaintiff's decedent was with Defendant, Adam Kramer, at his parents' home. Kramer's parents were out of town. Defendant, Kramer was a known user and distributor of narcotics. At some point during the evening, the decedent ingested a lethal combination of fentanyl, heroin, and benzodiazepines and was later found unresponsive by paramedics who'd been called to the home.

As a result of this incident, Plaintiff decedent's mother filed a wrongful death lawsuit against Defendant, Kramer and his parents. Plaintiff alleged that the parents negligently entrusted their home to Defendant, Kramer when they knew he distributed narcotics. Defendant, Parents turned the claim over to their homeowners insurance, Nationwide. Coverage for this incident was subsequently denied by Nationwide on the basis of a controlled substances exclusion, which barred coverage for bodily injury or property damage resulting from the use, sale, manufacture, delivery or possession of controlled substances.

A dec action followed where the trial court granted summary judgment in favor of Defendant Parents and ordered Nationwide to provide them with a defense for the underlying lawsuit. Nationwide appealed to the Superior Court who affirmed on alternative grounds in a published opinion. *See Kramer v. Nationwide Prop. & Cas. Ins. Co*., 271 A.3d 431 (Pa. Super. 2021). Specifically, the Superior Court construed the policy to cover the alleged emotional distress claims of Plaintiff Decedent's mother thereby triggering Nationwide's duty to defend.

> ***"[W]hen an expert's conclusions are sufficiently supported by the record, a trial court 'cannot sua sponte assail them in an order and opinion granting summary judgment.'"***

The Supreme Court granted allocatur to determine whether the Superior Court had incorrectly ruled that damages for emotional distress were covered under an insurance policy providing liability coverage for bodily injury only, where the policy language explicitly excludes emotional distress from the definition of bodily injury. The Court determined that Nationwide had no duty to defend the underlying lawsuit because emotional and mental distress damages in the wrongful death claim were not "bodily injuries" as defined by the policy language.

> Reduced to its essence, as relevant to this appeal, Nationwide's obligation arises only when there is an occurrence. An occurrence requires a bodily injury. A bodily injury, by definition under the Policy, does not include emotional distress or similar injury unless the direct result of bodily harm. The Superior Court's determination that mother did not suffer a bodily injury as defined in the Policy for purposes of the wrongful death claim requires a conclusion that there is no coverage for the wrongful death claim. Therefore, the Superior Court's interpretation that Nationwide was potentially required to pay out for mother's emotional and mental distress damages for that wrongful death claim is contrary to the unambiguous provisions of the Policy and erroneous as a matter of law.

Azaravich v. Wilkes-Barre Hospital Company, LLC, 2024 PA Super 116 (Pa. Super. 2024)

Superior Court reverses summary judgment in medical malpractice case arising out of a suicide.

In this case, the Plaintiff decedent called 911 and reported having suicidal thoughts, specifically hanging himself. Police transported him to Wilkes-Barre General Hospital where the decedent checked himself into the emergency room. He underwent evaluations by a number of different medical providers over the course of several hours. In some of these evaluations, the decedent was found to be at "high risk" for suicide. While in others, the decedent indicated that he did not have any intent to harm himself and that he wanted outpatient treatment. Ultimately, the on-call psychiatrist approved the release of the Plaintiff decedent based on incomplete reporting from these evaluations and an inability to independently review the medical records. Unfortunately, two (2) days later, the Plaintiff decedent committed suicide by hanging.

The decedent's estate filed claims for medical negligence against the hospital and the physicians involved in his care. Following discovery, the trial court granted a summary judgment motion in favor of the Defendant Hospital and Physicians, dismissing all of Plaintiff's claims with prejudice.

On appeal to the Superior Court, Plaintiff argued that the trial court had erred by repeatedly failing to view the evidence in a light most favorable to them as the non-moving party. Specifically, Plaintiff claimed that the trial court had accepted the Defendants factual history of the case and determined that the conclusions of Plaintiff's experts were not supported by the record.

After review, the Superior Court disagreed with the trial court, finding that when the record was reviewed

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in a light most favorable to Plaintiff as the non-moving party, the evidence had established genuine issues of material fact regarding whether Defendants had grossly deviated from the standard of care. The Court specifically held that when an expert's conclusions are sufficiently supported by the record, a trial court "cannot *sua sponte* assail them in an order and opinion granting summary judgment" because a dispute over the applicable standard of care goes to the expert's weight and credibility, which is not a proper consideration at the summary judgment level. The Superior Court reversed the grant of summary judgment and returned the case back to the trial court for further proceedings.

Turner v. Lower Merion School District, 315 A.3d 280 (Pa. Cmwlth. 2024)

Commonwealth Court affirms trial court's decision to dismiss a sports-related personal injury action against a school district based on governmental immunity.

This case arises out of an injury to a high school student in the Lower Merion School District. While attending gym class, Plaintiff was directed to participate in a kickball game by his teachers. Notably, school staff utilized temporary bases for the game, which were not affixed to the ground. While participating, Plaintiff ran to a base, which slid out from under him. Plaintiff subsequently suffered a Salter-Harris type II fracture with a permanent decrease in functional mobility, stiffness, pain, weakness, and physical discomfort.

Plaintiff and his parents filed a Complaint against the school district alleging it was negligent in failing to safely maintain the field used during the kickball game. Specifically, Plaintiffs alleged the school district did not install and use a hook, clip or type of fastener to the real estate in order to affix the bases to the ground. The Defendant school district filed a motion for judgment on the pleadings contending it was immune to this lawsuit because the bases used during the kickball game were personalty, not real property. As such, the exception to immunity under Section 8542(b)(3) for the negligent care, custody or control of real property did not apply. The trial court granted Defendant's motion.

On appeal, the Commonwealth Court affirmed the trial court's decision. The Court determined that Plaintiffs' Complaint did not point to an unsafe condition of the real property but to a way that the school district could have changed the real property to make personalty safer, i.e., installing fasteners for kickball bases to the ground. The Court concluded that Plaintiffs' argument lacked support in case law, which "centers on the cause of the injury, rather than the nature of the remedy that should have been provided." The Court also found the Plaintiff's position contravened the Supreme Court's directive that "exceptions to governmental immunity must be narrowly construed." Finally, the Court found no abuse of discretion in the trial court's decision to dismiss the Complaint with prejudice because any Amended Complaint would continue to depend on an injury caused by personalty, i.e., the unattached base.

Dwyer v. Ameriprise Financial, No. 2 WAP 2023 (Pa. April 25, 2024)

Supreme Court finds that a plaintiff can obtain treble damages under the UTPCPL even if they have already received an award of punitive damages for related common law claims.

This case involved husband and wife Plaintiffs who sued Ameriprise Financial for negligent and fraudulent misrepresentation relative to a life insurance policy, which they purchased in 1985. In their Complaint, Plaintiffs alleged that Ameriprise had misrepresented to them that their quarterly premium payments would remain the same for the life of the policy. In reality, if the Plaintiffs' premium payment had remained the same, the policy would have lapsed for insufficient funds in 2020 as opposed to 2051 as they were told. The Plaintiff's complaint raised common-law claims of negligent and fraudulent misrepresentation, as well as a statutory claim arising from a violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("CPL").

"[T]he availability of treble damages is wholly independent of any entitlement to punitive damages and must be considered by the trial court without regard to a punitive damages award on related common-law claims."

Following trial, a jury returned a verdict in favor of the Plaintiffs and against Defendant, Ameriprise on the common-law claims of negligent and fraudulent misrepresentation. The jury found Ameriprise's conduct to have been so outrageous, that Plaintiffs were also entitled to punitive damages in the amount of $75,000.

Following the verdict, the trial court was tasked with determining the merits of the CPL claim. The court found in favor of the Plaintiffs, awarding $45,570 in compensatory damages, plus interest. However, the trial court declined to treble the damages under Section 9.2 of the CPL or to provide any other additional relief, believing that the compensatory award plus 6% interest; the $75,000 in punitive damages awarded by the jury; and $123,603 in attorneys' fees were sufficient to compensate Plaintiffs for their losses and to punish and deter Ameriprise from similar future conduct.

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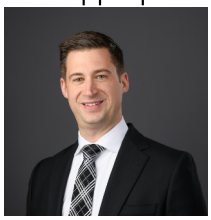
Plaintiffs filed a motion for post-trial relief arguing that the trial court erred by not awarding treble damages under the CPL. The trial court denied this motion and separately granted a motion from Ameriprise, holding, in part, that the Plaintiffs could not receive both punitive damages and treble damages because the two types of damages were duplicative.

On appeal,the Superior Court affirmed, viewing the trial court's decision as a permissible exercise of its discretion. The Supreme Court granted review in order to decide two issues. First, whether the Superior Court erred by affirming the denial of treble damages under the CPL because of the award of punitive damages and of attorneys' fees. The second, was whether the Superior Court erred by applying an abuse of discretion standard of review instead of a de novo standard of review to resolve the first issue.

The Supreme Court found that the lower courts had erred as a matter of law by relying upon the jury's common-law punitive damages award to limit the availability of treble damages under the CPL. Rather than being interchangeable with punitive damages, treble damages under the CPL were found to be a separate remedy available to Plaintiffs. As such, the Supreme Court held that the availability of treble damages is wholly independent of any entitlement to punitive damages and must be considered by the trial court without regard to a punitive damages award on related common-law claims. The Supreme Court also found that nullifying the availability of a statutory award because of a common-law award is not a permissible exercise of a trial court's discretion. Based on the foregoing, the Supreme Court reversed the order of the Superior Court and remanded the case back to the trial court with instructions for reconsideration of the appropriate amount of damages under the CPL.



By: Shawn D. Kressley, Esq. of

DelVecchio & Miller, LLC

shawn@dmlawpgh.com

UPCOMING EVENTS

Sat, Sep 21, 2024 - 5K Run/Walk/Wheel
North Park Boathouse, Allison Park

Wed, Nov 13, 2024 - Comeback Dinner
Duquesne Club, Pittsburgh

Nov, 2024 – Donation Drive
Angel Ridge Animal Rescue

Thu, Dec 5, 2024 – 1.5 Ethics Credit CLE
Rivers Club, Pittsburgh

Jan, 2025 *– Junior Member Meet & Greet*
The Foundry Table & Tap, Pittsburgh

Wed, Jan 15, 2025 – Zoom Board Meeting

Feb 25, 2025 - Zoom CLE w/ Dr. Rao, of Pain & Spine Specialists

Mar, 2025 *– event TBA*

Apr, 2025 *- Membership Dinner + Elections*
Carmody's Grille, Pittsburgh

Fri, May 2, 2025 - Annual Judiciary Dinner Acrisure Stadium, Pittsburgh

Fri, May 23, 2025 – Ethics and Golf
Shannopin Country Club, Pittsburgh

Jun, 2024 *– Community Service Day*
Angel Ridge Animal Rescue, Meadowlands

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Anthony Mastriano
216-469-0609
amastriano@partnerwithsynergy.com

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YOU HAVE THE RIGHT:
You Should Insist on Attending Oral Neuropsychological Testing

If you have a client who suffers from cognitive deficits due to trauma, you have probably had a defense attorney insist on scheduling a defense exam that you are not permitted to attend? Don't accept that. Do not abandon your client! Do not agree to send your client to such a farce. If necessary make the defense attorney file a motion and contest it.

Although defense attorneys make it sound as if this is a formulaic system and that the doctor (usually a PhD neuropsychologist – or worse their assistant) merely records the score, the truth is that the scoring of this testing is highly subjective and how the test administrator records it is often debatable. The doctors then say that the client failed the validation questions so they must be malingering. There is nothing you can do about this unless you know what the question is and what the answer was. A review of the literature from the neuropsychologists opposed to attorney presence makes it very clear that they are afraid that attorneys will cross-examine them on why certain answers were deemed invalid.

When you insist on attending such an exam, the Rules of Civil Procedure and a well reasoned opinion support your right to attend. (More appropriately, it is your client's right to have you present that you are vindicating.)

Rule 4010 Provides a Right to Counsel and No exception exists

The starting point for analysis of the issue of whether a neuropsychological examinee may have counsel present is the plain language of Pennsylvania Rule of Civil procedure, Section (a)(4) of which provides:

> **(4) (i)** The person to be examined shall have the right to have counsel or other representative present during the examination. The examiner's oral interrogation of the person to be examined shall be limited to matters specifically relevant to the scope of the examination.
>
> *Note:* Ordinarily, the facts giving rise to liability are not germane to an examination and the information which the examiner seeks should be limited to facts of liability germane to the issue of damages.
>
> **(ii)** Subdivision (a)(4)(i) shall not apply to actions for custody, partial custody and visitation of minor children.

Pa. R.C.P. No. 4010. [1]

Existing Caselaw Offers Divergent Positions

Although, Plaintiff's counsel is aware that trial courts addressing this issue have taken a variety of approaches, the best analysis favors a straightforward reading of Rule 4010 to permit the presence of counsel, notwithstanding the issues raised in opposition to counsel's presence.[2] Indeed, the most thorough analysis of this issue may be found in Rotunda v. Petruska, 18 Pa. D. & C.5th 422 (Allegheny County 2010)(Wettick, Judge). There, Judge Wettick traced the history of Rule 4010 and specifically elucidated that when Rule 4010 was amended to allow an exam by a psychologist, the provision allowing for the presence of counsel was added. See also Ackley v. Johns, No. CV 2017-1757 (Nothumberland County 2020).

The Guidelines Usually Cited by Defendants Are Not the Exclusive Guidelines on the Subject

Although Defendants will inevitably rely on a Statement By The American Board of Neuropsychology, there is a countervailing set of standards issued by the American Psychological Association that better account for the fact that the interests of the adversarial nature of our judicial system are supreme over the opinion of a group of practitioners.

The aforementioned guidelines specifically make allowance for the accommodations that Plaintiff's counsel has made available in this case including minimizing the intrusion by allowing counsel to listen outside of the exam room (with appropriate arrangements made to safeguard privacy) or the less affected methods of examination (such as written exam).

The Standardized Result Argument Is Internally Inconsistent

It appears that the primary argument for the exclusion of third party observers from neuropsychological testing is that the test results must be compared to normalized or

---

[1] It should be noted that the importance of the inclusion of subsection (ii) above is that as a principle of interpretation, the presence of enumerated exceptions is to the exclusion of others.

[2] Defense counsel may cite to Shearer v. Hafer, 2016 PA Super 61, 135 A.3d 637 vacated, 644 Pa. 571, 177 A.3d 850 (2018) in support of its position. However, that case does not constitute binding authority as it was vacated by the Pennsylvania Supreme Court (on the basis of jurisdiction rending the lower court decision a nullity.)

(Continued on Page 14)

standardized results and that the presence of an observer is a variable that is not accounted for. This argument is illogical since the profession has not come forth with any evidence or data that the standardization or normalization of data based on clinical patients can be extrapolated to the forensic contest.

In the forensic, or litigation context, especially in the case of a defense medical exam, the examiner is adverse to the litigant, or at least may be perceived as such. Nonetheless, the profession is willing to merely assume that this does not affect the validity of the results?

The undersigned has reviewed additional literature in the field and there seems to be an additional underlying motivation by the neuropsychologists, that is a disdain for cross examination and a reluctance to admit that the oral answers to the questioning is subjectively evaluated by the person administering the test. In this context, to preclude the presence of an attorney is to essential delegate the fact finding role (as opposed to opinion offering role) to the examiners. Counsel is certainly entitled to explore such.

PENNSYLVANIA SUPREME COURT BLOCKS DEFENSE COUNSEL FROM CIRCUMVENTION RULE 4003.6

In Mertis v. Dong-Joon Oh, 317 A.3d 529 (Pa. 2024) held that defense counsel could not have ex parte communications with a treating physician and circumvent the rules of Civil Procedure by agreeing to represent the non-Defendant treating physician in a deposition.

In Mertis, the underlying malpractice arose out of the negligent administration of a nerve block resulting in a femoral nerve injury during knee surgery. During litigation of the case, the plaintiff's attorney subpoenaed the surgeon who performed the operation on the knee. That doctor was not a named defendant. Upon receipt of the subpoena, the surgeon asked his carrier to assign an attorney n the same firm that represented the defendant anesthesiologist. The carrier obliged and the surgeon signed a waiver of the potential conflict.

Upon learning of the representation, Plaintiff's counsel raised the conflict and a motion seeking disqualification. The trial court denied the disqualification and the Superior Court reversed. The Pennsylvania Supreme Court affirmed the Superior Court.

In doing so, the Supreme Court in an opinion authored by Justice Mundy, relied heavily on Rule 4003.6 which provides:

> Discover of Treating Physician Information may be obtained from the treating physician of a party only upon written consent of that party or through a method of discovery authorized by this chapter. This rule shall not prevent an attorney from obtaining information from
>
> **(1)** the attorney's client,
>
> **(2)** an employee of the attorney's client, or
>
> **(3)** an ostensible employee of the attorney's client

Pa. R.C.P. No. 4003.6

In further analyzing the issue, the Court offered an extensive analysis of Rule 4003.6. Thereafter the Court recognized that information obtained by one member of a firm is imputed to others. In this case, it was noted that there was no screen in place.

Thereafter the Court recognized the danger in creating a loophole. Justic Mundy explained:

> Ultimately, if we conclude Rule 4003.6 permits the conduct in this case, such interpretation would turn Rule 4003.6(1) into a loophole for one attorney in a law firm to represent a defendant doctor and another attorney in the same law firm to represent a plaintiff's treating physician concurrently. Such reading would undermine the rule and allow attorneys in law firms to have unrestricted access to information from the treating physician. As related to this case, there would be nothing preventing a medical malpractice insurance carrier from sending all the plaintiff-patient's treating physicians for representation to the same law firm representing a defendant physician to circumvent Rule 4003.6. When the same law firm represents the defendant treating physician and other treating physicians, the concern that one or more of the physicians may be improperly influenced or dissuaded from testifying is heightened. *See* Marek, 733 A.2d at 1270.

Mertis v. Dong-Joon Oh, 317 A.3d 529, 544-45 (Pa. 2024) citing Marek v. Ketyer, 1999 PA Super 116, 733 A.2d 1268.

(Continued on Page 15)

MEMBER PICTURES & PROFILES

Name: Holly L. Deihl

Firm: SWMW Law

Years in practice: 20

Bar admissions: PA, WV, MO, IL

Special area of practice/interest, if any: I specialize in plaintiff asbestos litigation.

Tell us something about your practice that we might not know: There is a latency period with asbestos exposures that can span decades which makes my job trying to figure out what products my client was exposed to extremely difficult. I spend my days looking for the needles in the proverbial haystack.

Most memorable court moment: I was very pregnant and had walked to the City-County building for Motions Court. I was changing my sneakers for a more professional pair of shoes when Judge Della Vecchia came into the courtroom to speak with this tip staff. He asked what I was doing and then insisted that I keep my comfortable sneakers on for court that day.

Most embarrassing (but printable) court moment: In my first trial I was responsible for putting the widow and daughter on the stand. When working through the questioning of the widow, we were discussing her 50-year marriage to her husband, and she started to cry. And then I started to cry. And continued my questioning through tears. Not how I envisioned my first trial experience, but the jurors later said it was moment that resonated with them.

Most memorable WPTLA moment: My first 5K Race for the Steelwheelers. It meant so much to me to meet members of that organization and their families. To sit and chat with them and share stories was truly memorable.

What advice would you give yourself as a new attorney just passing the bar?: Work hard and do not be afraid to ask questions.And always, always stand up for yourself. You will be your greatest advocate.

Secret Vice: I curse.. a lot.

People might be surprised to know that: I read the last chapter of every book before diving into the story. I like to try and figure out how the story will get to the end.

Last book read for pleasure, not as research for a brief or opening/closing: The Housemaid

My refrigerator always contains: Ben & Jerry's chocolate chip cookie dough ice-cream.

My favorite beverage is: Diet Coke

My favorite restaurant is: Mad Mex

If I wasn't a lawyer, I'd be: an actress

BY THE RULES ... FROM PAGE 14

Justice Donohue concurred, emphasizing the interplay with the Rules of Professional Conduct in preventing such representation.

Mertis is significant not only for the fact situation presented, but also as strong precedent against any other types of attempts to circumvent Rule 4003.6.

By: Mark E. Milsop, Esq. of

Berger and Green

mmilsop@bergerandgreen.com

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LEGISLATIVE MEET & GREET RECAP

On September 12, 2024, WPTLA hosted a fun evening of appetizers, drinks, and conversation at Revel & Roost . For those who aren't familiar with the Legislative Meet & Greet, members of WPTLA gather and meet various local and state level government representatives. It is a great event to meet some of those in the legislature that represent us and a chance to do a little lobbying on behalf of our clients.

This year's event brought 40 members and 5 business partners. LexisNexis made a strong showing sending three of those business partners – Steve Dubusky, Patrick McQuiggan, and Joshua Weiner. Also in attendance were two of our regular supporters: Jayme Hartnett from Pain and Spine Specialists and Dave Kassekert from Keystone Engineering.

Six legislators were in attendance: three senators and three house representatives. The senators present were Jay Costa (43rd District), Wayne Fontana (42nd District), and Devlin Robinson (37th District), all of Allegheny County. The house representatives present were Dan Miller (42nd District; Majority Whip) and Joe McAndrew (32nd District), both of Allegheny County, and Robert Matzie (16th District), of Beaver County.

I had the opportunity to spend a few minutes speaking with Mr. McAndrew one-on-one. He currently serves on the Transportation committee, and, just last week, hosted the Transportation Secretary on a tour of our area advocating for infrastructure/roadway improvements. Another area of his focus is advocating for children with special needs through his role on the Children & Youth committee.

Thanks go out to Laurie and Joanna for putting together this great event, and also to PAJ for sponsoring the bar. This is a biennial event so, if you weren't able to make it this year, don't miss it in 2 years! It is a great opportunity to get some one-on-one face time with our state politicians to put the concerns for our clients directly in front of them.

By: Drew W. Rummel, Esq. of

The Rummel Firm

drummel@therummelfirm.com

Pictured below, from L to R: Board of Governors Member Sara Watkins, Board of Governors Member Mike Gianantonio, Pete Giglione, Immediate Past President Greg Unatin, and Past President Carl Shiffman. And from the firm of Kontos Mengine Killion & Hassen: Chris Inman, Taylor Martucci, Caitlin McDonough, Board of Governors Member Brittani Hassen, George Kontos and Tony Mengine.

See Page 18 for more photos from the event.

Legislative Meet & Greet

Sept 12, 2024

Revel & Roost, Pittsburgh

Pictured above, from L to R:

In #1: Chad Shannon, Past President Liz Chiappetta, Board of Governors Member Karesa Rovnan.

In #2: Board of Governors Member Drew Rummel, Secretary Shawn Kressley, Dan Schiffman, Board of Governors Member Jason Schiffman.

In #3: Nick DiNardo, Board of Governors Member Gina Zumpella, Vice President Jennifer Webster, Past President Jason Matzus.

In #4: Young Lawyers Abby Hukock, Mac Ference and Ben Wilt.

In #5: Past President and Board of Governors Member Chad Bowers, PAJ Chief Lobbyist Eric Mock, Past President Larry Kelly, Business Partner Dave Kassekert, of Keystone Engineering Consultants , and Board of Governors Member Gianna Kelly.

In #6: Caroline Huber, Alicia Nocera, Board of Governors Member Matt Logue, President-Elect James Tallman, and Business Partner Jayme Hartnett, with Pain & Spine Specialists.

TRIVIA CONTEST

Enter for a Chance to Win a $100 Visa Gift Card

Trivia Question #41

What literary work inspired Pink Floyd's "Chapter 24" song?

Please submit all responses to Laurie at admin@wptla.org with "Trivia Question" in the subject line. Responses must be received by December 6, 2024. Prize for this contest is a $100 Visa gift card. Winner will be drawn the following week. The correct answer to Trivia Question #41 will be published in the next edition of The Advocate.

Rules:

- ·Members only!
- ·One entry per member, per contest
- ·Members must be current on their dues for the entry to count
- ·E-mail responses must be submitted to admin@wptla.org and be received by the date specified in the issue (each issue will include a deadline)
- ·Winner will be randomly drawn from all entries and winner will be notified by e-mail regarding delivery of prize
- ·Prize may change, at the discretion of the Executive Board and will be announced in each issue
- ·All entries will be considered if submitting member's dues are current (i.e., you don't have to get the question correct to win – e-mail a response even if you aren't sure of your answer or have no clue!)
- ·There is no limit to the number of times you can win. Keep entering!

The correct answer to each trivia question will be published in the subsequent issue of The Advocate along with the name of the winner of the contest. If you have any questions about the contest, please contact Erin Rudert – er@ainsmanlevine.com.

Trivia Question #40 –**What is the only still-fortified city in North America?**

Answer: **Quebec City. It is the only North American city to have preserved its ramparts, together with the numerous bastions, gates and defensive works which still surround Old Québec.**

Congratulations to Josh Kirkpatrick, a Junior Member and 3L at the Thomas R. Kline School of Law at Duquesne University!

Above The Bar Marketing
Jim Hayes
734-709-5312
jim@abovethebarmarketing.com

Alliance Medical Legal Consulting
Varsha Desai
267-644-1000
vdesai@alliancemedicallegal.com

Finley Consulting & Investigations
Chris Finley
412-364-8034
cfinley@finleyinvestigations.com

Ford Office Technologies
Brad Borghetti
724-707-4668
bborghetti@fordtech.com

Hess Physical Therapy
Jessica Homer
412-709-4036
jessica@hesspt.com

Injured Workers' Pharmacy
Angela Witt
412-925-1200
awitt@ispharmacy.com

Keystone Engineering
Dave Kassekert
866-344-7606
dwkassekert@forensicexp.com

LexisNexis
Linda Coons
716-997-9214
linda.coons@lexisnexis.com
Patrick McQuiggan
412-652-7769
patrick.mcquiggan@lexisnexis.com

NFP Structured Settlements
Bill Goodman
412-263-2228
wgoodman@nfp.com

Pain and Spine Specialists
Laura Cossick
724-984-9167
lcossick@painandspinespecialists.com

Planet Depos
Charlie Georgi
888-433-3767
Charlie.georgi@planetdepos.com

Synergy Lien Resolution
Anthony Mastriano
216-469-0609
amastriano@partnerwithsynergy.com

Schulberg Mediation
Howie Schulberg
412-634-2686
howard@schulbergmediation.com

Thrivest Link
Andy Getz
267-538-1512
agetz@thrivestlink.com

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WPTLA's 2023 Scholarship Essay Contest drew 26 submissions from school districts across western Pennsylvania. The prompt for this year's contest asked "Should the test for whether a work is transformative, and therefore, a 'fair use' and not a copyright infringement, rest on whether it is "recognizably derived" from the original work?" A factual background was provided for them, as well as the suggestion to use any of the briefs or petitions cited in the Supreme Court case Vidal v. Elster, No. 22-704.

The winners of the contest were Lindsay Bush, of Kiski Area High School, Kevin Hutchinson, of Baldwin High School, and Lea Kasmer, of Greensburg Salem High School. Their winning essays will be published in this and the next 2 editions of The Advocate.

Pennsylvania Trial Lawyers Association's Scholarship Essay Contest

Beginning in 1789, the United States Constitution upheld freedom of speech as a fundamental human right. The First Amendment concludes that Congress may not make laws "abridging the freedom of speech"; however, as the United States has matured, so has the nuance of the concept of free speech. Particularly, in regards to trademark law, freedom of speech is often in question. In the case at hand - *Vidal* v. *Elster-,* the true question is whether the right to free political speech in trademarks outweighs the right to individual privacy. Although recently there has been a series of First Amendment violation cases upheld in the Supreme Court, ultimately the federal government does not violate the First Amendment by denying trademark registration of phrases including the names of public figures, essentially this proves that the freedom of speech protects trademark rights until the trademark violates the right to individual privacy.

A key principle of trademark law is the Lanham Act. The Lanham Act, also known as the Trademark Act of 1946, sets foundational provisions for trademarks on the federal level. Throughout the years, particular sections of the act have been contested. Among the provisions that have been challenged is Section 1052(c), barring any mark that identifies "a particular living individual except by his written consent." In *Vidal* v. *Elster,* the constitutionality of Section 1052(c) is being argued. The purpose of this section in the Lanham Act is to prevent consumers from source deceptions. In Elster's effort to trademark the phrase "Trump Too Small" with the United States Patent Office, he was met with a denial due to the restrictions of Section 1052(c). In regards to consumer protection, the purpose of this denial was to protect against the trademarking of character and reputation of any individual without their consent. From a consumer's perspective, a trademark is an official expression or sign. If a phrase attacking the credibility or character of anyone is trademarked against their will, it would be considered borderline defamation.

Steve Elster, an employment attorney based in California, had the hopes of registering the phrase "Trump Too Small" to print on shirts and sell in 2018. However, to Elster's surprise, he was refused a trademark by the U.S. Patent Office. Elster then claimed that the denial was an infringement of the First Amendment freedom of speech; particularly on the basis of viewpoint discrimination. This basis was quickly contradicted by the courts which provided that Section 1052(c) does not involve viewpoint discrimination and that the denial of the trademark does not actually prevent Elster from communicating his message. Elster has a decent option if this denial is upheld; he is able to move on from the idea of trademarking. In order to make and sell shirts with this phrase on them, there is no obligation for the phrase to be trademarked. Elster is free to use the phrase in commerce even after this denial. The only downside to this option is that Elster will not receive the ancillary benefits that come from trademarking such as providing avenues to legal actions. The laws regarding trademark registration can prevent certain speech in trademarks without infringing on First Amendment rights.

The petitioner in *Vidal* v. *Elster* is Katherine K. Vidal, the Under Secretary of Commerce for Intellectual Property and the Director of the United States Patent and Trademark Office. In contrast to the respondent's case, her defense presents that the Lanham Act does not involve viewpoint discrimination because Section 1052(c) will apply to the phrase regardless of the viewpoint. Instead, the petitioner would prefer to review the case as a condition of government benefit. Under this confinement, the heightened scrutiny that would be warranted by viewpoint discrimination would not be applied. In the petition for the Writ of Certiorari, the Supreme Court declared that the decision of the Court of Appeals to treat Section 1052(c) as a restriction of speech was wrong because it should be

treated as a condition of government benefit. So far in the case proceedings, the Supreme Court is using language consistent with that of the petitioner. Section 1052(c) of the Lanham Act describes a limitation of the U.S. Patent and Trademark Office, not a restriction of speech. Limitations in all government programs are a necessary part of protecting the rights of citizens.

There are two trademark cases referred to throughout *Vidal* v. *Elster* that were recently ruled on by the Supreme Court. The first of these cases, *Matal* v. *Tam,* involved the trademark of a band name including a racially derogatory term. The Patent and Trademark Office (PTO) denied the request in reference to the Disparaging Provision in Section 1052(a) of the Lanham Act, barring trademarks that may "disparage...or bring into contemp[t] or disrepute" any "persons, living or dead." The ruling of the PTO was appealed on the basis that the provision violates the free speech clause of the First Amendment, much like the appeal in *Vidal* v.*Elster.* When taken to the Supreme Court, the Disparaging Provision was deemed unconstitutional. The second case, *Iancu* v.*Brunetti,* the respondent registered to trademark the term "FUCT". The PTO denied the request to this trademark under Section 1052(a) of the Lanham Act which also bans the registration of trademarks that include "immoral or scandalous matter." The respondent appealed on the same basis as both *Vidal* v. *Elster* and *Matal* v. *Tam.* The Supreme Court ruled that Section 1052(a) was a violation of the First Amendment. The determination for the Supreme Court to review *Vidal* v. *Elster* was concluded by the previous decisions to review both *Matal* v. *Tam* and *Iancu* v. *Brunetti.* All three of these cases are in reference to provisions under Section 1052 of the Lanham Act; however, the key contrast found in 1052(c) as referenced in *Vidal* v. *Elster* is that it does not involve viewpoint discrimination. Section 1052(a), as referred to in *Matal* v. *Tam* and *Iancu* v. *Brunetti,* does involve viewpoint discrimination because it is restricting speech based on unfavorable content, unlike in *Vidal* v. *Elster.* While it is important to consult the law of precedent to determine potential rulings ,the trademark cases of *Matal* v. *Tam* and *Iancu* v. *Brunetti* are not consistent with the facts of *Vidal* v. *Elster;* therefore, the ruling of *Vidal* v. *Elster* must be held to a different consideration with respect to its expected outcome.

The respondent's preferred ruling of *Vidal* v. *Elster* is to hold that the denial of trademark protections towords and phrases containing the names of individual people without their consent is unconstitutional. Particularly, the respondent is concerned by the trademark limitations regarding the use of the name of a political or famous person. If this ruling were to be upheld in the Supreme Court, every United States citizen's protection of privacy would be at risk. In 2024, the definition of a famous or political person is less definitive than ever before. The ever-growing rise in social media use and popularity means that anybody could be viewed under these labels. As long as this remains true, the government must put more emphasis on protecting individual privacy over freedom of speech in trademark registrations. If the Supreme Court decides to deem Section 1052(c) of the Lanham Act unconstitutional, the decision would not only contradict every fact of *Vidal* v. *Elster,* but it would also severely undermine the purpose of the U.S. government which is to provide security to its citizens. Maintaining a balance between the government's role in the protection of individual liberty under the Constitution and safeguarding individual rights is crucial to sustain the principles of a genuine democracy.

Essay submitted by Lindsay Bush, of Kiski Area High School.

Lindsay's future plans were to attend Boston College, and double major in International Relations and French & Linguistics.

She stated "I am very grateful to be recognized by such a prestigious association."

WESTERN PENNSYLVANIA TRIAL LAWYERS ASSOCIATION
909 MOUNT ROYAL BOULEVARD, SUITE 102
PITTSBURGH, PA 15223-1030

Through the Grapevine....

Past President and President's Club Member Mark J. Homyak has relocated his office to 2222 Koppers Bldg, 436 Seventh Ave, Pittsburgh 15219. His email, phone and fax remain the same.

Congratulations to the following members on their induction to the Academy of Trial Lawyers of Allegheny County; **President's Club Member Lauren Kelly Gielarowski**, **President's Club Member Thomas A. Will**, and **Board of Governors Member and President's Club Member Timothy G. Wojton**.

Member **Thomas F. Merrick** can now be reached at 22 Mission Dr, Pittsburgh, 15228. Phone: 412-680-7741 or thomasfrancismerrick@gmail.com.

President-Elect and President's Club Member James T. Tallman's firm of Elliott & Davis has moved to 6101 Penn Ave, Ste 201, Pittsburgh 15206. His email , phone and fax remain the same.

Past President Charles E. Evans was recently awarded the Judge James R. McGregor Award from Amen Corner, for exceptional contributions to the community.

Congratulations to **Board of Governors Member Nicholas C. Katko** and his wife, on the recent birth of their son, James. All are doing well, and big sister Clair is "over the moon and loving being a big sister."

Condolences to **President's Club Member Laura D. Phillips** on the passing of her father, **Member William "Denny" Phillips**.

And condolences to **President Katie A. Killion** on the recent passing of her father.