



THE ADVOCATE

Volume 29, No. 4
Summer 2017

UPCOMING EVENTS FOR WPTLA

The **Kick-Off Event** will be held on **Thur and Fri, Sept 14-15, 2017**. A mini-wine dinner will be held on Thur at 5:45 pm at The Carlton Restaurant. On Fri, come to a 2-credit CLE featuring WPTLA Past Presidents, at 9:30 am at the Cambria Hotel in Pittsburgh.

On **Mon, Oct 9**, we'll meet again at the famed **Wooden Angel Restaurant in Beaver** for dinner, and hear from Tom Baumann afterward for a 1 credit CLE. Tom will speak about his recent PA Supreme Court victory.

Sat, Oct 21, 2017 is the annual **President's Challenge 5K Run/Walk/Wheel** event, to be held this year at **North Park**.

Wed, Nov 8, 2017 is the annual **Comeback Award Dinner**, this year at the **Cambria Hotel & Suites in Pittsburgh**.

JUDICIARY DINNER A RESOUNDING SUCCESS!

*By: Eric Purchase, Esq. ***



On May 5, 2017, the WPTLA hosted its annual Judiciary Dinner at Heinz Field. Intended to honor the contributions of the judiciary by specifically recognizing those who have left the bench in the prior year, the Judiciary Dinner is one of WPTLA's premier annual events. This year's rendition was a rousing success, not least because the honorees were so deserving of recognition.

In addition to specially recognizing the judiciary, the dinner is also the time reserved for the presentation of prestigious regional awards both inside and outside of the profession and it is the evening the WPTLA celebrates its long relationship with the Pittsburgh Steelwheelers and presents the proceeds of the annual 5K Run/Walk/Wheel to the organization.

Recognized for their service on the bench were the Honorable Carol Hanna of the Court of Common Pleas of Indiana County; the Honorable Bernard L. McGinley of the Commonwealth Court; the late Honorable Debra A. Pezze of the Court of Common Pleas of Westmoreland County; and the late Honorable Robert A. Sambrook of the Court of Common Pleas of Erie County.

Winners of the Annual Scholarship Essay Contest were presented by Charles W. Garbett, the 2017 Scholarship Essay Committee Chair. Scholarships this year were presented to Sydney Nicole Cosgrove, of Neshannock Junior Senior High School; Grace Merriman, of Quaker Valley High School; and Hunter Stecko, of Norwin High School.

Paul A. Lagnese presented the annual Daniel M. Berger Community Service Award. The award is named after one of the founding partners of the firm Berger & Lagnese and the recipient receives a \$2,000.00 contribution to his or her charity. This year's contribution was funded by WPTLA, the firm of Berger & Lagnese, and WPTLA business partners Cindy Miklos of Planet Depos and Bill Goodman of NFP Structures. The winners of the Community Service Award were Kirk and Patricia Shronce, who together support the Hope Bilingual Academy in La Concepcion, Nicaragua.

The Champion of Justice Award was presented by founder Lawrence M. Kelly. Intended to recognize those trial lawyers who demonstrated a career long resolve to try cases for their clients, sometimes earning victory and sometimes suffering defeat but always risking all and returning again and again for the battle, the award this year was earned by William R. Caroselli. Attorney Caroselli is a legendary Pittsburgh trial lawyer who retired this year from the practice of law after a career marked by record verdicts and great causes.

The proceeds of the annual 5K Run/Walk/Wheel were presented by President's Challenge Chair Sean J. Carmody to the Pittsburgh Steelwheelers. The Steelwheelers are an organization dedicated to developing a program of physical activity and competition for the disabled as part of a broader commitment to help individuals achieve the maximum use of their abilities while educating the public about acceptance and employment of the disabled. The Steelwheelers and the WPTLA have enjoyed a long history together and the WPTLA is honored to be able to support

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President

Sandra S. Neuman

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**WESTERN PENNSYLVANIA
TRIAL LAWYERS
ASSOCIATION**

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A Message from the President ...

*By: Sandra S. Neuman, Esq. ***

As I close out my tenure as President of WPTLA, I'd like to make a few observations about our organization's most valuable asset: our membership. Being a plaintiff's trial lawyer isn't an easy job. The hours are long, the stress is high, and we must put our faith in a legal system that often seems biased and unfair. There are tremendous highs and lows in our profession. But one *constant* in our tumultuous profession is what exists in our organization. I am humbled and inspired by the number of colleagues who support each other through each trial and tribulation. Our organization is made up of many excellent lawyers who are always willing to share their experiences and insight and there is never a shortage of help when a fellow trial lawyer needs a hand. I knew this before I began my term as President, but it really became evident to me over the past year. We are truly blessed to have the privilege to represent victims of negligence and we are equally blessed to be able to rely on each other to fight for civil justice.

I am thrilled to report that although we continue to face obstacles with proposed or pending anti-civil litigation legislation on the state and federal level, our lobbyist and allies have, so far, done an excellent job in defeating damaging legislation. And I am even more thrilled to report that our colleagues here in Allegheny County and in "we've never had a plaintiff's verdict" counties have had tremendous success in the last year. Kudos to Brendan Lupetin for his \$2M premise liability verdict in Allegheny County; Rudy Massa and Megan Carben for their \$500K medical malpractice verdict in Fayette County; Mike Calder, who obtained a \$2M med mal verdict in Clarion County; Gary Ogg, (\$500K verdict in a fall down), Josh Geist (\$500K in an insurance coverage dispute) and Mark Homyak (\$100K in an auto case) who obtained results in Allegheny County; and Brendan Lupetin and Greg Unatin, who obtained a \$2M verdict in a med mal in Allegheny County. These results are encouraging; they lift us all and pave the way for our clients' success.

I would also like to express my gratitude to our officers and Board of Governors who have chaired committees and put in significant time to make sure our key events such as the Judiciary Dinner, Comeback Award Dinner, President's Challenge, Community Service events and CLE's are successful. Thank you to all of our committee members, especially Max Petrunya, Bryan Neiderhiser, Greg Unatin, Sean Carmody and Eric Purchase. Also, a huge thank you to Erin Rudert, who single-handedly puts together The Advocate with tremendous patience and skill. And finally, I'd like to sincerely thank Laurie Lacher and Lorraine Eyler for their professionalism and hard work. This year went by quickly and smoothly because of your excellent management of every aspect of our organization.

On a final note, I want to extend a warm welcome to our incoming President Elect Elizabeth Chiappetta. Liz is an amazing lawyer but an even more amazing individual. I look forward to experiencing her leadership and being part of the great things she does for our organization.

*** Sandy is a WPTLA Member with the firm of Richards & Richards, LLP Email: ssn@r-rlawfirm.com*

JUDICIARY DINNER ... (Continued from Page 1)

such fierce and successful competitors. \$26,000.00 was raised for the benefit of the Steelwheelers this year, bringing the total raised to \$408,885.00

The evening ended with President-Elect Elizabeth A. Chiappetta's special recognition of the service of our outgoing President, Sandra Neuman, whose services will be dearly missed but whose company we all look forward to enjoying for a very long time to come.

Emceed by Treasurer Eric J. Purchase, this year's judiciary dinner returned to the East Club Lounge at Heinz Field and it was the consensus of the attendees that the venue and the activities were great fun for all involved. The ongoing success of this storied dinner bodes well for the event for years to come.

*** Eric is a WPTLA Member with the firm of Purchase George & Murphey, P.C. Email: eric@purchasegeorge.com*



Pictured above, the evening's emcee, Judiciary Chair Eric Purchase.



Pictured above, from L to R; Dusty Kirk, Champion of Justice Awardee Bill Caroselli, and Past President Larry Kelly. Pictured at right, from L to R; Community Service Awardee Kirk & Sofia Shronce. Pictured below, from L to R; Scholarship Essay Contest Winner Grace Merriman and her parents, Steelwheeler Chris Mielo, The Honorable Beth A. Lazzara, 5K Race Chair Sean Carmody, President Sandy Neuman, and Steelwheeler Katie Smith.



Pictured below; Scholarship Essay Contest Winner Sydney Nicole Cosgrove and her parents.



Dear (WPTLA),

Thank you so much for providing such a wonderful and exciting experience at the annual Judiciary Dinner. I was truly honored to have been a guest, and I hope the essay contest continues to be competitive among high school students because the opportunity to give our opinions on such important issues is one of a kind. I am so grateful to have participated.

Many Thanks,
Grace Merriman
Quaker Valley HS



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WPTLA MEMBERS MAKING A DIFFERENCE

*By: Bryan S. Neiderhiser, Esq. ***

In the Winter 2017 edition of The Advocate, I wrote an article discussing a number of opportunities that we, as members of WPTLA, would have to make a difference in the lives of others through various initiatives undertaken by our Community Outreach Committee. As I write this article, I can't help but be proud of the fact that our members have affected the lives of hundreds of people by participating in this past year's projects.

The first community outreach project undertaken by WPTLA was a program designed to educate young people about the dangers of distracted driving. As many of you are aware, attorney Joel Feldman, and his wife Diane Anderson, created a program aimed at educating people about the risks of distracted driving. This program, entitled End Distracted Driving (EndDD), has reached more than 300,000 students and drivers in 45 states. Last fall, WPTLA agreed to join the ranks of those presenting the EndDD program by doing so in high schools throughout western Pennsylvania.

Those of us who represent individuals that were injured in motor vehicle collisions, are eminently aware of the fact that distracted driving is an ever increasing problem in our society. People are increasingly attached to their telephones and distracted driving is no longer limited to dialing or talking on the telephone while driving. Instead, many people are now checking email, sending texts, reading text messages, etc. all while driving a vehicle. Research has proven the increased dangers associated with driving while distracted, even if just for a few seconds. In an effort to curb the number of people who drive while distracted, WPTLA members Joshua Rosen and Mark A. Smith took the time to speak to hundreds of young drivers about the dangers associated with distracted driving. Joshua Rosen made a presentation at Lower Merion High School in Ardmore, PA on October 28, 2016 and at Norwin High School in North Huntingdon on May 15, 2017. Mark A. Smith gave the EndDD presentation at Steel Valley High School in Homestead on May 16, 2017.

The second community outreach project involved assisting Habitat for Humanity in Beaver County. Habitat partners with people from communities around the world to build or improve places that people can call home and the Western Pennsylvania Trial Lawyers Association has now participated in seven different Habitat for Humanity projects in Beaver County dating back to 2011. On Saturday, April 29, 2017, six WPTLA members helped the Beaver County Habitat for Humanity in a carpet sale fundraiser that it was hosting. The initial work request was for cataloging, pricing, organizing and

setting up for this carpet sale. Unfortunately, the warehouse was not ready for that work to be performed, so the six volunteers were asked to move 12' and 15' rolls of carpeting from one side of the warehouse to the other. Needless to say, all of the volunteers had a good workout that day! Thanks to the member volunteers who gave up their Saturday morning to help their community: Lorraine Eyler, Tom Hall, Laurie Lacher, Sandy Neuman and her daughter Olivia, Erin Rudert and James Tallman. If you'd like to participate in upcoming Habitat for Humanity work days, please contact Community Service Co-Chair Greg Unatin at gunatin@meyersmedmal.com or our Executive Director at laurie@wptla.org.

The third opportunity for community outreach being offered through WPTLA is performing pro bono legal services through the Pittsburgh Pro Bono Partnership. This is a signature pro-bono project dedicated to benefitting the less fortunate of Allegheny County. The project is called "The Wills Project," and our members will play a key role in staffing the clinic which will be held once per month at CCAC Homewood. No experience in drafting wills is required. Instead, an experienced lawyer will be available for consultation during the clinic's hours. All that is required is that volunteers from WPTLA staff the clinic for a few hours each month. This clinic truly provides an opportunity for our members to give to those who are less fortunate. Through this project, we will be able to help those who are unable to afford an attorney, by providing them with sound estate planning and providing them with peace of mind knowing that their wishes will be respected when they die. If you are interested in getting involved in this meaningful project, please contact Bryan Neiderhiser at bneiderhiser@marcusandmack.com or Greg Unatin at gunatin@meyersmedmal.com.

*** Bryan is a WPTLA Member with the firm of Marcus & Mack
Email: bneiderhiser@marcusandmack.com*

LOCAL VERDICTS

In an effort to combat the common refrain that local juries never give money to plaintiffs, we are collecting verdicts from our members. If you have had a recent verdict within the western district of PA, please forward that information to our Executive Director (laurie@wptla.org) for publication in the next issue.

Brendan Lupetin, of Meyers Evans Lupetin & Unatin, received a \$2,100,000 verdict (all noneconomic damages) from an Allegheny County jury in March 2017 in Judge Della Vecchia's courtroom. The case was personal injury - slip and fall.



ETHICS & GOLF 2017

By: *Chuck Alpern, Esq. ***

Due to inclement weather, this year's WPTLA's Ethics Seminar & Golf was rescheduled from the traditional pre-Memorial Day Thursday to Friday June 9, 2017. Unfortunately, a third of those who had initially signed up for May 25 were unable to accommodate the date change, resulting in a very small field of 19 golfers.

The event was held at **Green Oaks Country Club** and featured **Rich Schubert's Ethics Seminar**, which, as always, was very enlightening, followed by lunch, golf, cocktails, and dinner.

Despite the low turnout, all of our participants enjoyed a spectacular weather day while playing Green Oak's always challenging course.

We give special thanks to **Business Partners Chris Finley** (who provided a GPS watch) of **Finley Consulting & Investigations** and **Don Kirwan** of **Forensic Human Resources**, (who provided golf balls to all players).

Note: There has been a marked trend of declining participation over the past 4 years. (Even before the rain postponement, notwithstanding numerous solicitations by Laurie Lacher (email blasts, etc.), only 28 WPTLA members had signed up to play.) As such, the continued viability of Ethics & Golf is in question.

*Chuck is a WPTLA Member with the firm of AlpernSchubert P.C.
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Pictured above, from L to R; Immediate Past President Larry Kelly, Sam Mack, Business Partner Don Kirwan, of Forensic Human Resources, Mike George, Board of Governors Member and Golf Chair Chuck Alpern, Bill Chapas, Past President Jack Goodrich, John Linkosky, and Mark Aletto



Pictured below, from L to R; Board of Governors Member Troy Frederick, Vice President Bryan Neiderhiser, Pat Houghey, Bruce Gelman, Tim Conboy, Jim Lestitian, Past President Rich Schubert, and Larry Chaban.





HABITAT FOR HUMANITY RESTORE EVENT RECAP

By: Erin Rudert, Esq. **

On April 29, 2017, WPTLA participated in a community service event with the Beaver County Habitat for Humanity program. Shortly prior to the event, the Habitat organization contacted WPTLA to inform us that a delay in funding meant all construction projects were being rescheduled for later in the year. Rather than cancel our service day, WPTLA agreed to help the ReStore project prepare for a large carpet sales event.

Our intrepid volunteers overcame the first challenge of the day simply by finding their way to the warehouse space in Beaver, as the majority of people were directed on a scenic route around and through New Brighton, only to arrive at the end of a dead end residential street. Task one after arriving was hanging a large sign advertising the location of the carpet sale so that would-be buyers could see the building in the event their GPS was equally deficient in providing accurate directions. Satisfied that the sign was securely hung and readily visible from the street, we moved inside to tackle what seemed to be a job Sisyphus himself would not envy: rearranging a warehouse full of carpeting.

ReStore received a significant donation of carpet and flooring, mostly rolled and uncut pieces of carpet, from a private business. The carpet was being sold to the public at a very low cost, with the proceeds going to Habitat's housing efforts. When the carpet was delivered to the warehouse, it was placed in such a manner that it could not be viewed by customers or accessed to be sold. There were no walking paths through the warehouse, and the carpet was piled up to chest height, with the rolls on the bottom being completely inaccessible. The rolls of carpeting – 12' to 15' in length and weighing up to 300-400 pounds – had to be lifted and moved by hand out of their existing piles, into new piles to clear up floor space, and then back to their original location in a different orientation and stacking pattern. No one took the time to count the rolls of carpeting, but a conservative estimate by this author would place the total number of rolls moved at around 500. Each of those rolls was first moved off its original pile, stacked in a new pile to the side, then restacked for display and sale.

WPTLA was the last crew of volunteers to be in the warehouse prior to the sale – and we had 4 hours to reorganize the entire warehouse before the public came on Tuesday! Thankfully, we were able to move the majority of the carpeting and came very close to completing what seemed at first like an insurmountable task. There were a few shoes lost while climbing the piles of carpet, but no injuries to report. The ReStore volunteer coordinators thanked us profusely for our help, as we were their last hope to have the carpet in a condition to allow the public to shop safely.

This project was very different from our prior work with Habitat, but was no less rewarding or important to their cause.

WPTLA has participated in volunteer events through Habitat for Humanity for over 12 years in Beaver and Westmoreland Counties. Past service projects have included hanging drywall, painting, moving gravel, small demolition tasks, etc., on houses being restored or built through the program. For information on upcoming projects or to volunteer for a future service opportunity, please contact Laurie Lacher at laurie@wptla.org.

** Erin is a WPTLA Member with the firm of Ainsman Levine LLC.
Email: er@ainsmanlevine.com

President's Challenge 5K Run/Walk/Wheel
will be held on Saturday, Oct 21, 2017
at the North Park Boathouse, in Pittsburgh



Make your plans now to attend, and bring along your co-workers, family and friends. This is a relaxing and fun event for a worthy cause.

Registration information available in Sept.

New this year, we are partnering with Anytime Fitness at the race for an extra category.
Look for more details at registration.



Sponsorship now being accepted.

Levels of sponsorship include:
\$1,000, \$500, \$250, \$100

Top two levels have their firm name/logo imprinted on the official race shirts.



Glass is all around us, and generally will not harm anyone. However a Google search for glass injuries yields hundreds of citations. Among the associates at Keystone Engineering Consultants, Inc. are two of the world's foremost experts in various technical aspects of glass. Between Dr. George Pecararo and Dr. Paul Duffer there are almost 80 years experience in glass chemistry and technology.

Dr. Pecararo has extensive experience in analyzing:

- Personal injury cases involving glass from spontaneous and impact breakage of and glass tables, cold milk jugs, glass medicine vials, flower and candle vases, carbonate non-carbonated beverage, food sauce bottles and other glass objects,
- Injuries from exterior and storm door glass and panels, fire door wire glass and non-tempered glass breakage from human impact.
- Commercial and residential building glass damage issues such as delamination, scratched and gouged windows resulting from unclean tempering furnace atmosphere and roller issues, and improper cleaning or mishandling and from hurricanes.

Dr. Pecararo recently investigated breakage of a glass memorial at the UN headquarters and the mysterious breakage of glass windows at a new skyscraper in Houston.

Dr. Duffer specializes in glass chemistry and chemical interaction with glass surfaces, such as:
Glass surface corrosion

- The chemistry of paper materials suitable for glass packaging
- Stains & deposits on window glass
- Acid & alkali damage to glass surfaces
- Interaction of commercial cleaners & glass surfaces
- Concrete runoff on glass
- Hard water chemistry & spotting on glass; the role of dissolved silicates in creating unexpected problems.
- The challenges associated with post-construction window cleaning and the nature of soils & debris prone

\If you have a situation that involves problems with glass, please give us a call.

For more information and complete CV's, please contact:

Dave Kassekert 855-344-7606 dwkassekert@forensicexp.com





BY THE RULES

By: Mark E. Milsop, Esq. **

UJS Public Access Policy For Confidential Information and Documents: A Review of Key Attorney Compliance Measures

In a Per Curiam Order dated January 6, 2017 and effective January 6, 2018, the Pennsylvania Supreme Court has adopted an extensive policy on which court records are to be accessible by the internet or at the courthouse. This new policy requires practitioners to follow new procedures for filing documents in cases involving confidential information. The order adopting the policy, the policy and an explanatory report can be found in their entirety at <http://www.pacourts.us/assets/opinions/Supreme/out/477jad-rpt.pdf?cb=1> (If you are not able to use this link, a link can be found on the WPTLA website which you used to access this article, wptla.org).

Key provisions of the new policy include Section 7 which sets forth a list of confidential information. For civil attorneys, this information includes:

- Social Security Numbers;
- Financial Account Numbers;
- Drivers licenses and state identification numbers;
- Minors' names and dates of birth
- Abuse victim information.

Under the rule, you will need to determine in each court whether that court has opted to follow a "Confidential Information Form" or a "two version rule." Under the Confidential Information Form procedure, a confidential information form would be used to separately file information which is redacted from a filing as Confidential Information. Under the two version rule, document filers would be required to file both a redacted and unredacted version of any filing containing confidential information.

The policy places responsibility for redaction squarely upon the parties and their attorneys. In addition to filing either a confidential information form or two versions of a filing, every filer will be required to file a certification with each filing. The certification must state:

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents

differently than non-confidential information and documents.

The policy further provides several remedies for when a party or attorney fails to comply with the rule. The "tool box" of remedies include: sealing, redaction, amendment or a combination of the foregoing. The policy further allows for the imposition of sanctions.

Section 8 of the policy further provides special procedures for the filing of confidential documents. Although there is a list of documents, in civil cases, the most common confidential documents will include: Medical/psychological records (this will apply to most pre-trial statements in personal injury cases), minors' educational records and Financial Source Documents. When a filing would include such confidential documents, the filer will need to complete and file a "Confidential Document Form." Section 8, like Section 7 requires a certification and includes remedies.

Sections 9 and 10 then define what documents will be generally available at a court facility and via remote access (with greater limits on remote access).

Section 11 sets forth a procedure for "Correcting Clerical Errors in Case Records." And specifies the filing of a written request for correction.

Overall, this policy provides a benefit to our clients by providing some protection for their personal information. However, the policy will require additional time and effort in preparing and filing documents.

Westmoreland County Orphans Court

Westmoreland County has adopted a revised set of rules for Orphans Court. They were published in the Pennsylvania Bulletin on April 28, 2017 and are effective May 29, 2017. Most noteworthy are detailed rules for settling Minors' Claims, (Rule W05.18) Incapacitated Persons' Claims (Rule W05.19) Wrongful Death and Survival Claims (Rule W05.20) and for Allowance for Minors' Settlements (W05.21). This is published at 47 Pa.B. 2431. If you will be settling a case that requires Court approval, it is important that you consult the new rules rather than merely using an old form.

** Mark is a WPTLA Member with the firm of Berger and Green
Email: mmilsop@bergerandgreen.com



COMP CORNER

By: Thomas C. Baumann, Esq.**

The AMA Guidelines Facing Criticism from Workers' Compensation Experts

Recently, scholars associated with workers' compensation have offered criticism of the AMA Guides for the Evaluation of Permanent Impairment. According to the website "Business Insurance," an article was published by the Journal of the American Medical Association authored by John F. Burton, Jr., Dean of the School of Management and Labor Relations at Rutgers University, Emily A. Spieler, Professor at West Virginia University College of Law, Peter S. Barth, Professor at the University of Connecticut, Dr. Jay Himmelstein of the Center for Health Policy and Research at the University of Massachusetts, and Dr. Linda Rudolph of the California Department of Industrial Relations. The article in the Journal of the American Medical Association criticized the AMA guides as failing "to provide a comprehensive, valid, reliable, unbiased and evidence-based system for the rating of impairments; that the impairment ratings do not reflect perceived and actual loss of function and quality of life; and that the numerical ratings represent legal fiction, not medical reality." The article went on to claim that "the ratings are improperly used as a substitute for a full assessment of the impact of impairment on work and non-work capabilities and that therefore workers receive inappropriate compensation."

Traditionally, criticism of the AMA guides have come from labor sources and organizations focused on representing injured workers. The fact that criticism of the guides is now coming from academic sources is both revealing and important. The article in question can be found at the Journal of the American Medical Association website, jama.ama-assn.org.

Important Supreme Court Case on IRE's

The Supreme Court of Pennsylvania has issued a decision in *Duffey v. WCAB (Trola-Dyne, Inc.)* No. 4 MAP 2016. This case will have a significant effect going forward where the claimant alleges additional injuries beyond the description of the injury on the Bureau documents.

In *Duffey*, the claimant suffered injuries to his hands in the nature of electrical burns. After he had received 104 weeks of benefits, he was scheduled for an Impairment Rating Evaluation. He was determined to have a 6% whole body impairment

rating. Apparently, the claimant was forwarded a Notice of Change of Status by the carrier.

Within the 60 day window, the claimant filed a Review Petition challenging the validity of the rating evaluation. He alleged that the evaluation did not rate his full work-related disability, which he claimed included posttraumatic stress disorder and an adjustment disorder. Claimant took testimony from treating physicians to support the additional diagnoses. The employer presented the testimony of the impairment rating physician as well as that of a psychiatrist.

The Workers' Compensation Judge found the claimant's evidence to be credible and added psychological conditions to the description of injury. Furthermore, the Judge determined that the IRE was invalid because the additional diagnoses had not been addressed during the impairment evaluation.

The Worker's Compensation Appeal Board reversed the Judge, and concluded that "a physician evaluator may properly limit an impairment rating evaluation according to the accepted injuries as reflected in a Notice of Compensation Payable."

The claimant then filed an appeal with the Commonwealth Court. Commonwealth Court supported the Appeal Board's determination that the Impairment Rating Evaluation could be based on the injuries as described in the Bureau documents at the time of the evaluation.

Claimant sought allocatur and the Supreme Court granted it. The majority opinion reversed the Commonwealth Court and reinstated the Workers Compensation Judge's finding that the rating evaluation was not valid. Interestingly, the majority opinion points to the language in section 306 (a.2) of the act. There, rating evaluators are to "determine the degree of impairment **due to** the compensable injury." (Emphasis in original). 77 P.S. § 511.2 (1). The majority opinion concludes that the Impairment Rating Evaluation must "consider and determine causality in terms of whether any particular impairment is "due to" the compensable injury." Since the evaluating physician failed to consider the psychological conditions which were added to the description of injury in the litigation post IRE, the IRE necessarily failed.

The author recommends that everyone dealing with an Impairment Rating Evaluation read the *Duffey*

Continued on Page 10

COMP CORNER *(Continued from Page 9)*

decision closely along with the dissents. Practitioners can now move to set aside rating evaluations if additional diagnoses are successfully added and those additional diagnoses were not considered.

Query: Can an Impairment Rating Evaluation be set aside by adding a new injury description with litigation filed more than 60 days after receipt of the Notice of Change of Status?

Query: Should practitioners litigate the extent of description of injuries when notified of an Impairment Rating Evaluation?

*** Tom is a WPTLA Member with the firm of Abes Baumann, P.C.
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2017-2018 MEMBERSHIP DRIVE IS ON!

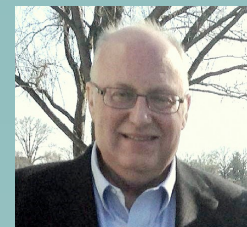
Membership applications for the current fiscal year (July 1, 2017- June 30, 2018) are currently being accepted.

The newest benefit of membership is the Online Member Directory, which lists each member's photo and contact information, as well as their classifications of practice. You can also utilize the Plaintiff-Only Database, as well as access past issues of The Advocate. These benefits are available on the Members page of our website.

There are several levels of membership from which to choose:

- **President's Club** - which entitles you to special recognition, premier exposure on our website, 3 free CLE credit hours at WPTLA-sponsored courses, and a plaque acknowledging your support.
- **General** - which provides the benefits indicated above,
- **Emeritus** - new this year, exclusively for prior members who have retired or are "of counsel" status, or
- **Junior** - a non-voting level for students enrolled in and currently attending a law school, and law clerks. Free admission to a yearly event, plus publication opportunities are included for our Junior Members.

MEMBER PICTURES & PROFILES



Name: Dominic D. Salvatori

Firm: Law Offices of Dominic D. Salvatori

Law School: University of Pittsburgh

Year Graduated: 1978

Special area of practice/interest, if any: Personal Injury, Workers' Compensation, Criminal Defense

Tell us something about your practice that we might not know: I never wear a suit and tie unless absolutely necessary, then I rip it off as soon as I leave the courtroom

Most memorable court moment: When a jury in Warren County announced \$500,000.00 verdict for my client and corporate counsel for defendant slammed his pen on counsel table in front of jury and uttered an expletive

Most embarrassing (but printable) court moment: When I was in-house counsel for Aetna and was almost jailed for contempt because I didn't have the adjuster there for a settlement conference

Most memorable WPTLA moment: Being allowed in despite my political views!

Happiest/Proudest moment as a lawyer: When my daughter, Maria, passed the bar and was sworn in.

Best Virtue: Taking time with clients

Secret Vice: Martinis (gin, not vodka)

People might be surprised to know that: I was a Trotskyite in college

Favorite movie: Blazing Saddles (what else)

Last book read for pleasure, not as research for a brief or opening/closing: Murder in an Irish Village by Carlen O'Connor

My refrigerator always contains: Cheese sticks

My favorite beverage is: Fiji Water

My favorite restaurant is: Franco's Trattoria

If I wasn't a lawyer, I'd be: On public assistance!



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HOT OFF THE WIRE

By: James Tallman, Esq.**

Supreme Court of Pennsylvania holds that doctors themselves must obtain informed consent. *Shinal v. Toms, M.D.*, No. 31 MAP 2016 (Pa. June 20, 2017)

In a 4 to 3 decision, the Supreme Court of Pennsylvania has held that the physician him or herself, not a member of the physician's staff, must obtain informed consent from a patient prior to a medical procedure. In the same case, the high court also addressed the issue of how close a prospective juror's employment relationship with a defendant must be to require disqualification.

In *Shinal v. Toms*, the court reversed the Superior Court and granted a new trial to plaintiff Megan Shinal. Ms. Shinal underwent brain surgery performed by defendant Dr. Steven A. Toms at Geisinger Clinic in Danville, Pa. During the surgery, Dr. Toms perforated her carotid artery. The court reversed a Superior Court ruling finding no error in the trial court's jury instruction that the jury could consider any information communicated to the Plaintiff by any qualified person acting as Toms' assistant, in determining whether the doctor had obtained informed consent.

Justice David N. Wecht, authored the majority opinion. Justice Wecht concluded that doctors cannot delegate their obligation to obtain informed consent, explaining: "Informed consent requires direct communication between physician and patient, and contemplates a back-and-forth, face-to-face exchange, which might include questions that the patient feels the physician must answer personally before the patient feels informed and becomes willing to consent." The duty to obtain the patient's informed consent "belongs solely to the physician."

In *Shinal*, the court also addressed the issue of jury disqualification based on the prospective juror's relationship with the defendant. At trial, the plaintiffs used their four preemptory challenges to dismiss four prospective jurors who had ties to the defendant medical center. The trial court refused Plaintiff's request that all prospective jurors with ties to a Geisinger affiliate be disqualified. Instead, the trial court conducted an individual examination of such jurors.

After a defense verdict, the plaintiffs' appealed the trial court's refusal to strike all jurors with ties to the defendant medical center and forcing the plaintiffs to use their preemptory strikes on such prospective jurors. The plaintiffs argued that the court should have presumed prejudice on the part of

the jurors with ties to the defendant medical center and not forced the plaintiff to use her preemptory challenges.

The Supreme Court upheld the Superior Court's ruling that the trial court had not abused its discretion regarding juror selection. The court focused on the fact that the medical center had been dismissed from the case and there was no direct relationship between Dr. Toms and the prospective jurors. Addressing the possibility of an indirect relationship, the court concluded that none of the prospective jurors had such close ties to the medical, which was no longer a party to the litigation, that the trial court should have presumed prejudice. The court did not find error in the trial court's acceptance of the prospective jurors' answers that a verdict against Dr. Toms would be the same as a verdict against the medical center. In reaching this result, the court rejected the plaintiffs' argument that a claim against an employee of the defendant medical center for actions committed during employment necessarily has a negative impact on all medical center entities and, therefore, the prospective jurors' ties to the medical center would be cause for disqualification.

Superior Court holds that loss of sleep does not surpass limited tort threshold and DUI guilty plea was admissible. *Vetter v. Miller*, 2017 PA Super. 64 (March 10, 2017)

Vetter arose out of a road rage incident, which resulted in the plaintiff being criminally charged. The plaintiffs were driving home from a wedding where they had consumed alcohol. As the plaintiffs were driving home, the defendant was driving behind them and allegedly was tailgating. At a red light, Vetter got out of this vehicle and approached the defendant's vehicle. The defendant started to drive off. In the process of driving off, the defendant struck and dragged Vetter for approximately 100 feet. Vetter was charged with various criminal offenses and pled guilty to DUI and driving with a suspended license.

Vetter and his girlfriend ("Jones") sued the defendant driver. Jones claim was for negligent infliction of emotional distress. The Superior Court upheld the trial court's grant of summary judgment that Jones had not suffered a serious impairment of body function. In particular, Jones claimed that she suffered from PTSD and insomnia and sleep deprivation. The court, however, concluded that Jones had not presented evidence that her injury had caused her serious impairment of a body function or restricted her daily activities.

Continued on Page 13



HOT OFF THE WIRE *(Continued from Page 12)*

The court next considered whether the trial court erred by admitting evidence at trial of Vetter's guilty pleas and having been charged with harassment. The Superior Court held that the admission of the guilty plea for driving with a suspended license and having been charged with harassment was in error and warranted a new trial. Notably, the court reached a different conclusion regarding the DUI guilty plea. With regard to the DUI plea, the court held that a guilty plea to DUI is evidence of guilt and admissible in a civil action as an admission against interest. we conclude that the trial court in the instant case properly admitted Appellant Vetter's DUI guilty plea, as it could have considerably elucidated the issue of Appellant Vetter's negligence.

Additionally, the Superior Court held that Vetter's intoxication was relevant, as recklessness and carelessness was at issue. In the court's opinion, the evidence of Vetter's drinking alcohol, aggressive and combative behavior, and smelling of alcohol, taken in totality with Appellant's BAC, could reasonably support a conclusion that Vetter was intoxicated to the point of unfitness to walk. The value of the intoxication evidence could help the jury determine the degree of Vetter's contributory negligence. Accordingly, the Superior Court found that the trial court's admission of Appellant Vetter's DUI and evidence of intoxication to have been proper.

Superior Court holds that insured was entitled to stacked UIM limits where vehicle was added 44 days after other vehicle removed and there was no new waiver of stacking. *Pergolese v. Std. Fire Insur.*, 2017 PA Super 96 (April 11, 2017)

The plaintiff-appellees in *Pergolese* had two policies with defendant insurer. One policy was multi-vehicle policy. The other insured only one vehicle. Under both, the plaintiff-appellees had waived stacking of UIM benefits several years prior to February 1998. On February 23, 1998, the Pergoleses requested that one vehicle be removed from a policy that had insured four vehicles. An amended declarations page with three vehicles listed and a decreased premium was issued. Forty-four (44) days later on April 8, 1998, John Pergolese requested coverage for an additional vehicle. His insurance agent complied and a new declarations page was issued, with an April 8, 1998 effective date, listing four (4) vehicles and an increased premium. Standard Fire did not request a new waiver of stacking. Three years later, John Pergolese was seriously injured by a drunk driver. The Pergoleses demanded stacked benefits of \$500,000, based on the number of vehicles (5) insured across both policies. Standard Fire denied the claim stacked benefits. The Pergoleses then filed a declaratory judgment action. The trial court granted summary judgment for the Pergoleses.

The issue before the Superior Court was whether the insurer, Standard Fire Insurance Company was required to obtain a new waiver of stacking with the plaintiff-appellees added a vehicle to their one multi-vehicle policy. The additional vehicle was added by way of an amended declarations page. The Superior Court followed *Sackett I* and *Sackett III* and held that this rendered the "after-acquired" vehicle clause inapplicable. Thus, a new waiver was required. In the absence of a new waiver of stacking, the Superior Court affirmed the trial court and held that the Pergoleses were entitled to stacked limits.

Trial court denies preliminary objections to punitive damages claim where concrete block fell from truck. *Kluska v. Pocono Farmstand and Nursery*, 59 Northampton 581 (August 12, 2016)

Trial court denied preliminary objections to claim for punitive damages. The complaint alleged that the defendant failed to secure concrete block by such mean as a tarp and/or edge restraints. The driver also failed to inspect the block to determine whether it was secure. The block dislodged and fell on a vehicle behind it, while traveling at a high rate of speed.

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THE ADVOCATE

ARTICLE DEADLINES and PUBLICATION DATES

VOLUME 30 2017-2018

	DEADLINE	PUB DATE
Vol 30, No 1	Sep 8, 2017	Sep 22, 2017
Vol 30, No 2	Dec 1, 2017	Dec 15, 2017
Vol 30, No 3	Mar 3, 2018	Mar 23, 2018
Vol 30, No 4	Jun 19, 2018	Jun 15, 2018



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TRIVIA CONTEST

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

Trivia Question #11

In what country were sausages considered legal tender until 1990?

Please submit all responses to Laurie at laurie@wptla.org with "Trivia Question" in the subject line. Responses must be received by Friday, Sept 29, 2017. Prize for this contest is a \$100 Visa gift card. Winner will be drawn Sept 30, 2017. The correct answer to Trivia Question #11 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 laurie@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 in 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 time 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.

Answer to the Trivia Question #10 is - There is no one answer to who is the fifth Beatle. Many people have been referred to as the fifth Beatle, including original drummer Pete Best, original bassist Stu Sutcliffe, famed producer George Martin, and the band's manager Brian Epstein.
<http://www.bbc.com/news/magazine-35763219>

Congratulations to Question #10 winner Jim Moyles, of Moyles Law PC



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*Congratulations to our
2017 Comeback Awardee
Deirdre Staso*

*Deirdre is a client of Laura Phillips, of Phillips
Phillips & Smith-Delach, of Washington County.*

*Deirdre's chosen charity is TRIPIL, of
Washington, PA.*

*Mark your calendar to join us on **Wednesday,
Nov 8, 2017**, as we honor Deirdre and her
accomplishments, as well as recognize the
wonderful work of TRIPIL,
at the annual Comeback Award Dinner.*

***Congratulations to Tom Baumann**
on a momentous victory at the PA Supreme Court*

Before the Pennsylvania Supreme Court, Tom Baumann won the most important Workers' Compensation decision in over 30 years. Thanks to Tom, the cap on disability no longer exists.

While this case will have repercussions far outside the area of Workers' Compensation law, the impact on injured workers is immeasurable. This ruling will lead to more appropriate benefits for thousands of injured workers. Additionally, his firm believes that this benefit may allow additional thousands of workers, who previously lost their benefits, to reopen their claims.

This case will also affect injured workers across the country as other states may be forced to accept Tom's arguments and the logic of the PA Supreme Court.

Congratulations Tom on this stupendous victory!

**MEMBER DIRECTORY
IS NOW AVAILABLE
ON OUR WEBSITE!**

If you haven't seen it yet, check it out at www.wptla.org/members/. You'll need to enter your member password to gain access to the members-only section. Once there, click the grey Members Directory button.

The directory can be accessed by last name, and can be searched by county, classification of practice, or other keywords.

If you click on the member's email address, it will open an email message, as long as you have your email program open on your computer.

If you click on the member's website, it will direct you to the Home page of that firm's website.

And if you click the member's photo, it will take you to their profile page on their firm's website.

If your entry does not have a photo currently, please send it to the Association office via email as a jpg file. Address it to laurie@wptla.org.



Any changes that need to be made to your record, please contact the Association office.

Is this the first time you've read The Advocate in a while? If so, please let us know. We're trying a new method of delivering the publication and would like to know how it's working.

er@ainsmanlevine.com
laurie@wptla.org



2016-2017 President's Club Members

The list below represents WPTLA President's Club Members,
who choose to pay an increased level of dues annually.

This additional money helps the Association in serving the membership and their clients.

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2017-2018 CALENDAR OF EVENTS

Thursday, Sep 14, 2017 Friday, Sep 15, 2017	WPTLA Board Meeting/Kick Off Event Pittsburgh, PA Thur: 4:30 Board Meeting at Cambria Hotel & Suites 5:45 Mini Wine Dinner (4 course meal w/ wine) at The Carlton Fri: 9:30 2 credit CLE w/ breakfast at Cambria Hotel & Suites
Saturday, Oct 21, 2017	WPTLA's President's Challenge 5K Run/Walk/Wheel Event Boat House in North Park, Pittsburgh, PA Registration 9:00 a.m. -- Race Start 10:00 a.m.
Monday, Oct 9, 2017	WPTLA Board Meeting / Dinner / CLE Wooden Angel Restaurant, Beaver, PA 4:30 Board Meeting; 5:30 Cocktails 6:15 Dinner; 7:00 CLE
Wednesday, Nov 8, 2017	WPTLA Board Meeting / Comeback Award Dinner Cambria Hotel & Suites, Pittsburgh, PA 4:30 p.m. Board Meeting -- 5:30 p.m. Cocktails -- 6:15 p.m. Dinner
Tuesday, Dec 5, 2017	3 Credit CLE / Lunch Gulf Tower, Pittsburgh, PA 8:30 Registration Opens; 9:00-12:30 CLE, 12:30 Lunch
January, 2018	WPTLA Board Meeting / Past Presidents Dinner Pittsburgh, PA
February, 2018	Junior Member Event Escape Room, Pittsburgh, PA
March, 2018	WPTLA Board Meeting / Dinner
April, 2018	WPTLA Board Meeting / Dinner / Elections Carmody's Grille, Pittsburgh, PA
Friday, May 4, 2018	Annual Judiciary Dinner Heinz Field, UPMC Club, Pittsburgh, PA 5:30 p.m. Cocktails -- 7:00 p.m. Dinner
June, 2018	Ethics Seminar/Golf Outing

Western Pennsylvania Trial Lawyers Association
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...Through the Grapevine

Congratulations to **Larry Chaban**, on the birth of his twin grandchildren, Juno and Vaeda.

Congratulations to **Rolf Patberg**, on the opening of the Patberg Law Firm. The principal law firm's address is 1034 Peralta St, Pittsburgh 15212. P: 412-232-3500. Email: rpberg@patberglawfirm.com
Website: www.patberglawfirm.com

Justin Joseph is now working with Chaffin Luhana LLP. He can be reached at 605 Iron City Dr, Pittsburgh 15205. P: 412-525-7991 Email: joseph@chaffinluhana.com

Board of Governors Member Katie Killion and her husband welcomed their second daughter, Gabriela Jane, in April. Gabriela joins big sister Graciela. Both mom and baby are doing great.

Executive Director Laurie Lacher extends her gratitude to the Board and membership for the many emails, cards and expressions of sympathy on the recent passing of her father, Earl M. Anger.

Wishes for health to **Tony Mengine**, who recently underwent eye surgery.

Our sympathies to **Richard Rosenthal** on the recent passing of his father, Sidney P. Rosenthal.

Congratulations to **Eric Abes**, on being chosen to sit on the NFL's Players Association Workers' Compensation Panel. Eric joins fellow co-workers and WPTLA members **Ed Abes** and **Tom Baumann** as members of this exclusive group.

Our sympathies to **Bob Daley**, on the recent passing of his mother, Nancy R. (Swanson) Daley.

Congratulations to **Shawn Kressley**, on his recent marriage.