THE WESTERN PENNSYLVANIA TRIAL LAWYERS ASSOCIATION'S

THE ADVOCATE

Volume 28, No. 4
Summer 2016

UPCOMING EVENTS FOR WPTLA

Join us **Aug 23-24** for the **Pittsburgh Retreat**. Events include a Board of Governors Meeting, tailgate and Pirates game at PNC Park, overnight at the Cambria Suites Hotel, then breakfast and CLE in the morning.

Sat, Sept 17 is the annual **5K Run/ Walk/Wheel** event to support the Pittsburgh Steelwheelers. Bring your family and friends to this awesome morning on the **Riverwalk on the NorthShore** of Pittsburgh.

Don't miss the **Beaver County Dinner Meeting and CLE** on **Mon, Sept 12** at the **Wooden Angel Restaurant** in Beaver.

JUDICIARY DINNER RECAP

*By: David M. Landay, Esq. ***

Pictured above, from L to R: Scott Melton, The Honorable Richard Mancini, The Honorable Dale Fouse, 2016 Judiciary Honoree The Honorable C. Gus Kwidis, The Honorable Harry E. Knafelc, The Honorable Marilyn J. Horan and The Honorable John D. McBride. *See page 17-18 for more pictures from the Judiciary Dinner*

The annual WPTLA Judiciary Dinner, one of our signature events, took place on May 13, 2016. Once again, the dinner was held at Heinz Field. This year, however, a new venue was chosen: the newly built Champions Club. The dinner was very well-attended and a definite success.

Before the dinner and program, there was a cocktail hour with hors d'oeuvres. In addition to the main lounge area, guests had the option of socializing either in the Chief's Bar or on the outdoor patio overlooking the field. The new Champions Club added a nice touch to the evening's events.

After a delicious dinner, the program began with Mark Milsop presenting the Scholarship Essay Contest Award to three well-deserving participants. This year's winners were Sabrina Helbig of Oakland Catholic High School, Siddarth Narayan of North Allegheny Senior High School, and Liam Walsh of Burgettstown Middle/High School. Each winner received a substantial check to assist him or her in their further education. Liam Walsh was absent, attending his senior prom.

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A Message from the President …

*By: Lawrence M. Kelly, Esq.***

For the past several years, I have had the honor of being the Master of Ceremonies for the Lawrence County Historical Society's Sports Hall of Fame Induction. It is an organization that recognizes the achievements of some of the finest athletes from Lawrence County.

I was lucky enough to be able to play varsity baseball in high school and then continue my baseball career at Slippery Rock University. I thought I was pretty good; however, my career would never be confused with a Hall of Fame career.

Every year, I often wondered what it would feel like to be inducted into a Hall of Fame. How proud the inductee must be and how great his or her family must feel as a result of the induction.

As my tenure as President of the Western Pennsylvania Trial Lawyers was coming to a close, I asked our magnificent administrator, Laurie Lacher, to send me the list of attorneys who have served as President of the Western Pennsylvania Trial Lawyers. After reviewing that list, I feel as if I have been included in a Hall of Fame class.

The list of Past Presidents includes some of the finest trial lawyers who have ever stepped into a courtroom in Western Pennsylvania. You can read the list on p. 4. When you review it, I am certain that you, like me, will agree that the names on that list are legendary.

I am humbled and honored to have my name now included in that list of great attorneys.

I only hope that I have served our organization well. It is an awesome responsibility to be the voice and face of trial lawyers in Western Pennsylvania. We have a great organization. Our members are dedicated, talented and committed to their clients.

Whenever I am involved with an organization, my goal is to try to leave it just a little better than I found it. We have such a great organization that would be very difficult to do. However, I hope that I have moved the needle forward if only slightly.

I am confident that our incoming President, Sandra Newman, will do great things. She, like the rest of the names on the list below, is a great attorney.

It was never my goal to become President of the Western Pennsylvania Trial Lawyers. However, I am honored to have been selected and it has been a pleasure to serve.

I want to thank all of our members for allowing me to serve in the capacity as President. I feel as if it is my induction into the Western Pennsylvania Trial Lawyers' Hall of Fame. Thanks again.

Lawrence M. Kelly

***Larry is a WPTLA Member from the firm of Luxenberg Garbett Kelly & George, P.C. Email: lkelly@lgkg.com*

JUDICIARY DINNER RECAP *(Continued from Page 1)*

Next on the agenda, Greg Unatin presented the Daniel M. Berger Community Service Award to Ali and Jamie McMutrie for their work for Haitian Families First. Ali and Jamie have received national and international attention for their unbelievable devotion to helping the Haitian people keep their families together. After an earthquake devastated Haiti in 2010, they expedited the emigration of children who were already scheduled for adoption outside the country. Both Ali and Jamie have spent several years living in Haiti to pursue the mission of Haitian Families First. The judiciary dinner attendees were honored to view a moving video montage of Ali's and Jamie's good works.

Sean Carmody then presented a check for $30,300 to the Pittsburgh Steelwheelers for the President's Challenge 5K Run/Walk/Wheel. The Pittsburgh Steelwheelers are a team of male and female wheelchair athletes who participate in a variety of sports. WPTLA has been active for several years raising funds for the Steelwheelers to assist with their travel and equipment expenses. Since WPTLA began supporting the Steelwheelers in 2001, the organization has donated $382,885.00 to the Steelwheelers.

The evening culminated with special recognition given to Western Pennsylvania judges who achieved senior status or retired in 2015. This year, in what appeared to be a well-received format, there were no individual presentations to the judges. The judges recognized and honored were Judge Shad A. Connelly, Court of Common Pleas of Erie County, Judge Timothy P. Creany, Court of Common Pleas of Cambria County, Judge Ernest J. DiSantis, Jr., Court of Common Pleas of Erie County, Judge David C. Klementik, Court of Common Pleas of Somerset County, Judge C. Gus Kwidis, Court of Common Pleas of Beaver County, Judge Paul F. Lutty, Jr., Court of Common Pleas of Allegheny County, Judge Kathleen R. Mulligan, Court of Common Pleas of Allegheny County, Judge Debbie O'Dell Seneca, Court of Common Pleas of Washington County, and Judge Dan Pellegrini, Pennsylvania Commonwealth Court.

President Larry Kelly then gave the inaugural Champion of Justice Award to Warren Ferry. Our new Champion of Justice Award is given to a deserving member who has devoted his or her legal career to furthering civil justice for injured victims. Larry, as only he can do, gave a rousing and inspirational tribute to Warren while echoing the words of President Teddy Roosevelt. To quote, in part, Larry quoting Teddy Roosevelt, "…It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds…"

The final highlight of the evening was when President-Elect, Sandy Neuman, recognized President Larry Kelly for his outstanding achievements. One notable achievement involved establishing a social media campaign to promote the cause of injury victims among potential jurors.

On a final and sad note, Sandy paid tribute to our late board member, Debbie Maliver. Debbie was a medical doctor who decided to go to law school to make a difference in patient care when she saw the laziness and carelessness of other medical practitioners. Debbie definitely made a difference in patient care as well as in all of our lives. She will be sorely missed.

The evening concluded with dessert and coffee at a sundae bar. There were also cocktails and the Chief's Bar was converted into a Cigar Bar. We hope all of our members will join us next year for this wonderful event.

*** David is a WPTLA Member from the firm of David M. Landay, Attorney at Law. Email: dave@davidlanday.com*

See pages 17-18 for more photos from the Judiciary Dinner.

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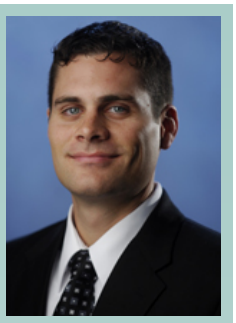
Columns

WPTLA Past Presidents, by Year

Murray Love	
Milt Rosenberg	
Sydney Baker	
Joseph P. Moschetta	1971/1972
Robert A. Cohen	1972/1973
William Caruthers *(Deceased)*	1973/1974
Louis M. Tarasi, Jr.	1974/1975
Henry H. Wallace	1975/1976
John F. Becker	1976/1977
Daniel M. Berger *(Deceased)*	1977/1978
Jack L. Bergstein	1980/1981
William R. Caroselli	1981/1982
Richard J. Catalano	1983/1984
Charles E. Evans	1985/1986
Irving M. Portnoy	1986/1987
Howard F. Messer	1987/1988
John P. Gismondi	1988/1989
Richard H. Galloway	1989/1990
Jerry I. Meyers	1990/1991
Christine L. Donohue	1991/1992
Jay Harris Feldstein	1992/1993
Richard J. Schubert	1993/1994
William F. Goodrich	1994/1995
James R. Antoniono	1995/1996
John Patrick Lydon	1996/1997
Alexander H. Lindsay, Jr.	1997/1998
John E. Quinn	1998/1999
Merle Kramer Mermelstein	1999/2000
Beth A. Lazzara	2000/2001
John P. Goodrich	2001/2002
Jonathan B. Mack	2002/2003
Mark J. Homyak	2003/2004
Cynthia M. Danel	2004/2005
Steven E. (Tim) Riley, Jr.	2005/2006
Veronica A. Richards	2006/2007
Bernard C. Caputo	2007/2008
Jason E. Matzus	2008/2009
Carl R. Schiffman	2009/2010
Stephen P. Moschetta	2010/2011
Joshua P. Geist	2011/2012
Paul A. Lagnese	2012/2013
Charles F. Bowers III	2013/2014
Christopher M. Miller	2014/2015

MEMBER PICTURES & PROFILES



Name: Chad McMillen

Firm: McMillen, Urick, Tocci, Fouse & Jones

Law School: University of Pittsburgh

Year Graduated: 2006

Special area of practice/interest, if any: Personal Injury/ Estate Administration

Tell us something about your practice that we might not know: I received a LL.M in Taxation Law from the University of Miami in 2007.

Most memorable court moment: Obtaining a significant award for a minor who lost her mother in an accident.

Most embarrassing (but printable) court moment: At my first ever court appearance, I raised my right hand to be sworn in along with the witnesses.

Most memorable WPTLA moment: I have enjoyed being a part of the Steelwheelers 5K committee and event the past two years.

Happiest/Proudest moment as a lawyer: Recently being named partner at my firm.

Best Virtue: I'm honest with my clients.

Secret Vice: Buffalo wings (see favorite restaurant).

People might be surprised to know that: I work in the same firm as my uncle and brother.

Favorite movie: Casino

Last book read for pleasure, not as research for a brief or opening/closing: The Book of Basketball by Bill Simmons

My refrigerator always contains: Iced Tea

My favorite beverage is: Dr. Pepper

My favorite restaurant is: Big Shot Bob's in Avalon

If I wasn't a lawyer, I'd be: School teacher or professor

BREACHING AN ASSUMED DUTY AND THE INCREASED RISK OF HARM – AN EXAMINATION OF A RECENT DECISION OF THE SUPERIOR COURT OF PENNSYLVANIA

*By: Jason Schiffman, Esq. & Dan Schiffman, Esq. ***

I. Introduction

In the matter of *Estate of Hill v. Slippery Rock Univ.*, 2016 PA Super 96, 2016 Pa. Super. LEXIS 252, No. 180 WDA 2015 (Decided May 3, 2016), the Pennsylvania Superior Court addressed the elements of a negligence claim made under Section 323(a) of the Restatement (Second) of Torts. The *Hill* opinion provides much needed clarification regarding the circumstances wherein injured individuals can sustain their causes of action premised upon a theory involving a negligent undertaking to provide services.

The *Hill* opinion is thorough, yet concise. It should be considered mandatory reading for Pennsylvania practitioners pursuing assumed duty negligence claims or other matters involving allegations of negligently performed services.

II. Salient and Relevant Facts of Hill

On September 9, 2011, Jack Hill, Jr., collapsed while participating in a high-intensity practice for the Slippery Rock University basketball team. Jack was transported to Grove City Medical Center where it was determined that he was experiencing respiratory failure and cardiac arrest. Jack passed away and his autopsy revealed that his demise had been caused by a previously undiagnosed medical condition known as Sickle Cell Trait ("SCT") of Sickle Cell Disease ("SCD"). Had Mr. Hill been timely diagnosed through a simple and inexpensive blood test, his death would have been preventable.

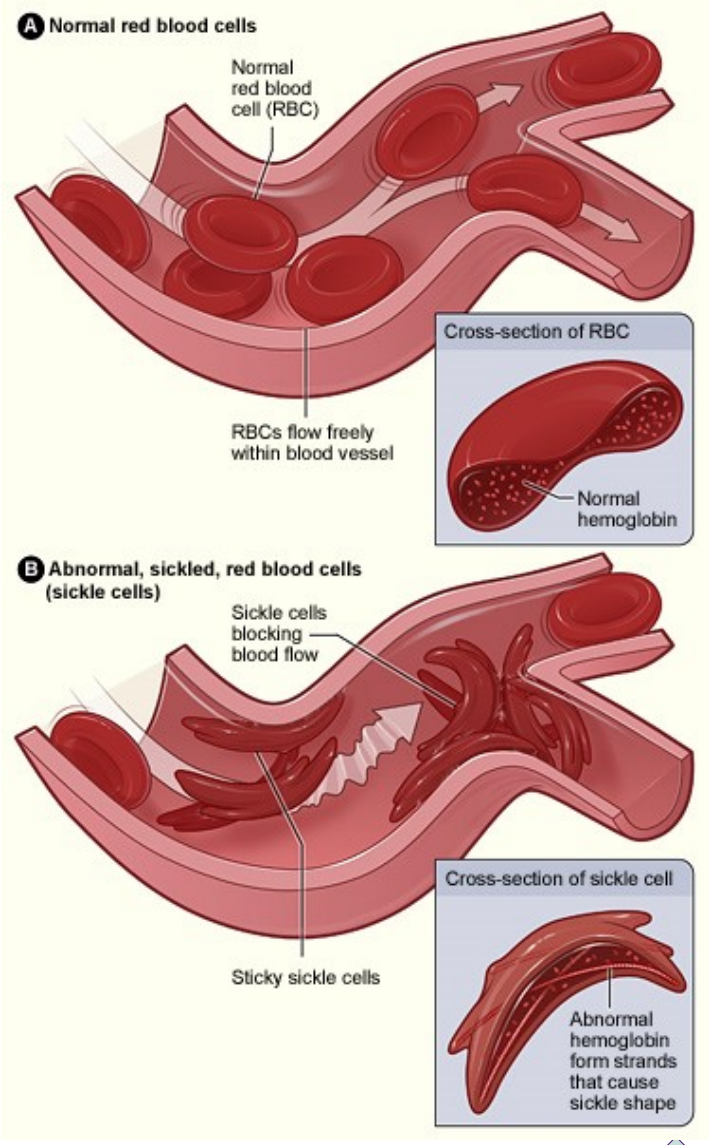
III. Background Information

SCT is diagnosed in approximately 1 in 300 African Americans at birth, though its actual incidence is thought to be higher. SCT is a mutation of a specific hemoglobin gene that codes for an abnormal hemoglobin: the protein in red blood cells (erythrocytes) that carriers oxygen throughout the body. The variant hemoglobin is commonly called "hemoglobin S" or "sickle hemoglobin."

Healthy erythrocytes that contain normal hemoglobin are disc shaped and flexible allowing them to efficiently travel through the blood vessels to deliver oxygen. However, when red blood cells containing sickle hemoglobin become deoxygenated, they deform or "sickle." Sickled erythrocytes can't change shape easily and tend to burst apart (hemolyze). The sickled blood cells block blood flow and limit the transfer of oxygen.[1]

The sickling of the red blood cells results in cellular damage causing vaso-occlusion and hemolytic anemia resulting in widespead acute and chronic organ damage. In relevant part, vaso-occlusion can result in deprivation of oxygen to the lungs (acute chest syndrome), pulmonary hypertension, and a deprivation of oxygen to the brain causing a clinical stroke.

[1] See Figure 1. From the National Institutes of Health.



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BREACHING ... (*Continued from Page 5)*

The National Collegiate Athletic Association (NCAA) was founded in 1906 as the Intercollegiate Athletic Association of the United States (IAAUS) before changing to its present name in 1910. It is a non-profit association which regulates athletes through the promulgation of safety standards for student-athletes. The safety standards are mandatory in that member schools are required to follow the safety standards applicable to their division. If a member school fails to comply with the NCAA's rules, policies, and protocols, the NCAA is empowered to designated the school as a "rule-breaker" and punish it with extensive sanctions. Since 1973, NCAA has utilized a three division setup with each division being divided into multiple conferences. The rules applicable to the member schools are dependent upon their placement in a designated division.

Evidence developed in the *Hill* case revealed that the NCAA knew that SCT represented a leading cause of death among student-athletes and had required Division I schools to test their student-athletes for SCT since 2010. NCAA elected not to impose this testing requirement on Division II member schools including Slippery Rock University.

IV. Relevant Procedural History of Hill

Suit was filed by Thomas R. Kline, Charles L. Becker, Michael A. Trunk, and Garabet Zakeosian, of the law firm of Kline & Specter. Therein, the parents and Administrators of the Estate of Jack Hill, Jr. (Plaintiffs), alleged Slippery Rock University, the Slippery Rock Health Center, and Laura A. Bateman, CRNP, were negligent for, among other allegations, failing to test Jack for SCT prior to permitting him to participate in athletic activities and failing to educate Jack of the dangers of SCT.

Allegations were also lodged against the NCAA for its negligent failure to require Division II schools, such as Slippery Rock University, to screen its athletes for SCT prior to permitting them to participate in athletic activities.

The NCAA filed preliminary objections in the nature of a demurer. The NCAA argued that Plaintiffs failed to allege any legally recognized duty, the pleadings lacked specificity regarding any source of any alleged duty owed to the Decedent, and the "no-duty" rule precluded any basis for liability.

Plaintiffs responded that their pleadings contained allegations regarding NCAA's alleged duty to Jack Hill, Jr., which, when taken together, sufficiently averred that the NCAA owed a duty owed to him and the "no-duty" rule would not apply since the risk at issue, complications from SCT, was not an inherent risk of physical activity.

The Trial Court considered the submissions and concluded that, while Appellants' factual allegations did aver, with sufficient specificity, the assumption of a legal duty by the NCAA to and for the benefit of Jack Hill, Jr., Plaintiffs failed to sufficiently plead liability on the part of the NCAA since the assumption of this duty did not substantiate an "increased risk of harm" as required by the Restatement (Second) of Torts § 323 (a). The Trial Court quoted *Wissel v. Ohio High School Athletic Association*, 605 N.E. 2d 458 (Ohio Ct. App. 1992)[2] for the proposition that, "the defendant's performance must somehow put the plaintiff in a worse situation than if the defendant had never begun performance… to prevail under a theory of increased risk of harm a plaintiff must 'identify sins of commission rather than omission.'"

The Trial Court granted the preliminary objection in the nature of a demurrer filed by the NCAA and dismissed the claims against it with prejudice.[3]

Plaintiffs appealed the Trial Court's Order of dismissal to the Pennsylvania Superior Court. The Superior Court reversed the portion of the Order granting the NCAA's demurer and remanded for further proceedings.[4]

V. Legal Framework

Restatement (Second) of Torts § 323, titled, "Negligent Performance of Undertaking to Render Services" reads as follows:

> *One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if:*
>
> *(a) his failure to exercise such care increases the risk of such harm, or*
>
> *(b) the harm is suffered because of the other's reliance upon the undertaking.*
>
> Restat. 2d of Torts, § 323.

Section 323 of the Restatement (Second) of Torts has been adopted as the law of Pennsylvania. See *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742, 746 (1984).

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[2] *Wissel* and the cases cited therein are not binding precedent. The Superior Court specifically noted that it was not bound to follow these decisions in the *Hill* opinion.

[3] Notably, the Trial Court also found Plaintiffs failed to plead the elements necessary for finding of liability pursuant to the Restatement (Second) of Torts § 324A. It does not appear that this matter was briefed on appeal or addressed by the Superior Court.

[4] At the time of the writing of this article, a Petition for Reargument is pending.

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BREACHING ... (*Continued from Page 6)*

VI. The Superior Court's Analysis

The Pennsylvania Superior Court began by considering the averments in Plaintiffs' pleadings including:

> 1. The NCAA had an irrevocable duty to Jack Hill, Jr. and other student-athletes to establish and enforce protocols relating to student-athlete safety;
>
> 2. The NCAA regulated, promulgated, and enforced protocols for the safety of student-athletes;
>
> 3. NCAA affiliated schools were mandated to comply with NCAA medical condition testing;
>
> 4. If a school failed to abide by the NCAA mandates for student-athlete safety, that school would face sanctions;
>
> 5. Slippery rock was an NCAA member school in Division II; and,
>
> 6. Beginning in 2010, the NCAA required SCT testing for Division I athletes but such testing was not implemented in Division II schools until 2012.

The Superior Court also considered that Jack Hill, Jr., completed a pre-participation athletic physical including a medical questionnaire inquiring whether he had Sickle Cell Anemia ("SCA") or SCT. Jack Hill, Jr., was unaware that he had SCT. No blood test was ever required to determine whether he suffered from these diseases and Jack Hill, Jr., was never informed of the dangers of SCA or SCT.

The Court held, "relevant to our standard of review, the complaint asserted that the Slippery Rock Defendants and the NCAA initiated medical and physical evaluations, but provided no SCT testing and permitted Mr. Hill to participate in the workout that led to his demise. The incomplete medical clearance may have led Mr. Hill to believe that he was physically fit for basketball. Therefore, Appellants sufficiently alleged that the initiation of medical and physical evaluations, which did not include SCT testing for Division II schools, increased Mr. Hill's risk of harm."

The Superior Court found Plaintiffs had sufficiently averred that the NCAA Division II participation protocols allowed Mr. Hill to participate in a high-intensity workout and, had the protocols included SCT testing, Mr. Hill may not have suffered the event that caused his death. The Court recognized Plaintiffs claims that the inadequate pre-participation physical increased his risk of harm and the increased risk of harm could have been prevented if the NCAA had required SCT testing.

Citing *Hamil v. Bashline*, 392 A.2d 1280, 1288 (Pa. 1978), the Superior Court expressly rejected the concept that an increased risk of harm can only be established though "sins of commission." It reiterated that, in Pennsylvania, an increased risk of harm can occur through a failure to act, or a "sin of omission."

The Court concluded that, "the factfinder could reasonably conclude that the NCAA's decision to test for SCT at Division I schools as part of its protocols, **while forgoing such testing at Division II schools**, was an error of omission and a failure in its duty, thereby increasing the risk of harm to Mr. Hill." It held, "[s]imply stated, Appellants' allegations are sufficient to survive preliminary objections."

The Trial Court's Order was reversed to the extent it had granted the NCAA's preliminary objection in the nature of a demurrer and was remanded for further proceedings.

VI. Takeaways

The *Hill* opinion further solidifies several significant legal concepts and clarifies Pennsylvania's approach to Section 323 claims.

First, *Hill* affirms Pennsylvania's approach to claims premised upon Restatement (Second) of Torts § 323 allows recovery where the pleadings aver one or more failures to perform actions required by an assumed duty of care, where said actions would be necessary to properly discharge the assumed duty. **Pennsylvania makes no distinction between "sins of omission" and "sins of commission" in the context of assumed duty cases.**

Second, when evaluating the "increased risk of harm" element of a Section 323 claim, Pennsylvania's approach recognizes that in claims predicated upon a defendant's failure to perform actions necessitated by an assumed duty, the relevant comparison is to weigh the plaintiff's risk as it actually existed in light of the defendant's failure(s) to act against the risk that would have existed had the defendant not acted negligently. **Essentially, the factfinder should balance the risk to which the plaintiff was exposed against the risk to which the plaintiff would have been exposed had the defendant never assumed the duty.**

Third, prior to *Hill*, there was little guidance offered regarding whether a defendant's failure to act in an assumed duty case could proceed outside of the context of medical malpractice actions. *Hill* definitively answered this question in the affirmative. **A cause of action for a negligent failure to act can be actionable in an assumed duty case regardless of whether the matter involves medical malpractice.**

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BREACHING ... *(Continued from Page 7)*

VIII. Insights and Conclusion

I was privileged to have the opportunity to discuss this matter with Charles L. Becker, Esq. a partner at Kline & Specter with a focus in post-trial and appellate practice. Mr. Becker offered valuable insight into the impact of the *Hill* decision stating that the, "decision doesn't change or advance Pennsylvania law so much as represent an application of well-settled principles on the facts of this case." He noted that the Superior Court, "said something very clearly that hadn't clearly been said in the past . . . in that sense, the opinion should have real value going forward."

As Mr. Becker observed, *Hill* does not create new law; nor does *Hill* change or expand Pennsylvania's application or interpretation of Restatement (Second) of Torts § 323. Rather, the impact of the *Hill* opinion is to clarify an ambiguity. It creates certainty and positively defines when allegations involving the negligent undertaking of a duty are actionable.

***Jason and Dan are WPTLA Members from the Schiffman Firm.*
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16th Annual President's Challenge
5K Run Walk Wheel

Saturday, Sept 17, 2016

SAVE THE DATE!

ETHICS AND GOLF

*By: Chuck Alpern, Esq. ***

WPTLA's long standing Ethics Seminar and Golf moved from the traditional pre-Memorial Day Thursday to Friday June 3, 2016, in the hope that—by eliminating Memorial Day conflicts—more members would be able to participate.

The event was held at **New Castle Country Club** (President Kelly's home course) and featured **Rich Schubert's** always enlightening and scintillating **Ethics Seminar** (somewhat akin to 'Darwin Awards' for lawyers), which was followed by lunch, golf, cocktails and dinner.

Teams led by Joe George and Jack Goodrich tied for low score (72) on the challenging NCCC course.

Our much appreciated **Business Partners Chris Finley** (who provided Pirate tickets) of **Finley Consulting & Investigations** and **FindLaw**'s **Charlie Georgi** and **Mark Melago** brought their "A' games; **Don Kirwan** of **Forensic Human Resources**, although unable to attend, provided golf balls to all players.

Photos on page 19.

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THE ADVOCATE

ARTICLE DEADLINES and PUBLICATION DATES

VOLUME 29, 2016-2017

	Article Deadline	Publication Date
Volume 29, No. 1	September 23, 2016	September 30, 2016
Volume 29, No. 2	December 2, 2016	December 9, 2016
Volume 29, No. 3	March 17, 2017	March 24, 2017
Volume 29, No. 4	June 9, 2017	June 16, 2017

BY THE RULES

*By: Mark E. Milsop, Esq.***

Cooper Interrogatories

Since 2006, the standard for whether or not supplemental discovery of a medical expert retained for litigation is permissible has been defined by *Cooper v. Schoffstall*, 588 Pa. 505, 905 A.2d 482 (2006). In *Cooper*, the Pennsylvania Supreme Court approved of the use of depositions by written interrogatories directed to a defense medical examiner. In so doing, Justice Saylor explained for the Court that, "we believe that the appropriate, threshold showing to establish cause for supplemental discovery related to potential favoritism of a non-party expert witness retained for trial preparation is of reasonable grounds to believe that the witness may have entered the professional witness category." *Cooper*, 905 A.2d at 494-95.[1]

Most recently, a widely circulated opinion addressed when a plaintiff's treating doctor may be subjected to *Cooper* Interrogatories. In *Mina v. Hua Mel, Inc.*, 2012 CIV 7781 (Lackawanna County 2015), Senior Judge Robert Mazzoni had initially granted discovery of a plaintiff's doctor. However, the Court granted reconsideration, and upon reconsideration denied such discovery. In doing so, Judge Mazzoni found that the doctor at issue had not entered into the "professional witness category" referred to in *Cooper*. In doing so, Judge Mazzoni considered the following factors: 1) the doctor was not independently retained by plaintiff's counsel, 2) he did not have a prior professional relationship with plaintiff's counsel and 3) his involvement in the case was by referral from another physician. Although defense counsel had relied on the website of the doctor at issue, the court was not persuaded because although the doctor's practice held itself out as a provider of medical-legal services, the website was not specific as to which doctor(s) in the practice offered medical-legal services.

[1] You may recall that the Court allowed the following:

> [T]he proponent of the discovery may be permitted to inquire as to the following: the approximate amount of compensation received and expected in the pending case; the character of the witnesses' litigation-related activities, and, in particular, the approximate percentage devoted to specific types of litigation and/or work on behalf of a particular litigant, class of litigant, attorney, and/or attorney organization; the number of examinations, investigations, or inquiries performed in a given year, for up to the past three years; the number of instances in which the witness has provided testimony within the same period; the approximate portion of the witness's overall professional work devoted to litigation-related services; and the approximate amount of income each year, for up to the past three years, garnered from the performance of such services.

Cooper, 905 A.2d at 495.

Attendance at Neuropsych Exams

Despite the plain language of Rule 4010[2], defense counsel have been known to argue that plaintiff's counsel may not accompany their clients to a neuropsychological exam. The issue has now been addressed by the Superior Court in *Shearer v. Hafer*, 2016 PA Super 61, ___ A.3d ___ (Pa. Super. 2016). In *Shearer*, the plaintiff sustained neurocognitive injury in a motor vehicle collision. After suit was filed, the defendant requested a neuropsychological exam and plaintiff's counsel insisted on being present during all components of the exam. The defendant sought a protective order that would have allowed counsel to remain only during the interview and would prohibit counsel's presence during and/or audiotaping of the neuropsychological examination itself. Plaintiff's counsel insisted on being present during the entire exam and to audiotape the entire exam. The trial court entered the order allowing counsel to be present only during the oral interview. In justifying its decision, the trial court placed much weight upon a statement by the National Academy of Neuropsychology regarding the presence of third parties during examinations and its interpretation of the Ethical principles of Psychologists and Code of Conduct regarding the disclosure of tests to third parties.[3]

The plaintiff filed an interlocutory appeal.[4] The Superior Court

[2] Rule 4010(a)(4)(i) provides:

> 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.

Pa. R.C.P. No. 4010.

Rule 4010(a)(5)(i) provides:

> The party who is being examined or who is producing for examination a person in the party's custody or legal control may have made upon reasonable notice and at the party's expense a stenographic or audio recording of the examination.

Pa. R.C.P. No. 4010.

[3] This statement is quoted at length. Not discussed was how solid the concern about third party observers is when applied to professionals such as attorneys, especially when less restrictive controls such as requiring the attorney to sit behind the client and not offering any answers or prompts would adequately protect the integrity of the test. Likewise, I fail to see a realistic ethical issue with an attorney seeing the testing materials. Certainly access to any test documents could be subject to an appropriate protective order.

[4] Although not the subject of this article, the propriety of the interlocutory appeal was contested and the Superior Court agreed that the interlocutory order was appropriate. The court's analysis on the interlocutory appeal issue is worth reading.

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BY THE RULES *(Continued from Page 9)*

in an opinion by Judge Panella initially noted that there was not prior appellate law on the issue. In the end, the Superior Court noted the presence of the word shall in Rule 4010 but thereafter looked to the discretion the trial court has under Rule 4012.[5] Hence, the Superior Court affirmed the trial court.

In future cases involving this issue, plaintiffs' counsel should note that the protective order in *Shearer* allowed Plaintiff's counsel to be present during the initial interview. In addition, the decision did not address the right of a defense doctor to replicate lengthy and time consuming objective testing conducted by a treating physician. Finally, it appears that in *Shearer*, the statements of the National Academy of Neuropsychology were not scrutinized, or at least were not analyzed as to whether the concerns raised by the National Academy of Neuropsychology were valid or could be protected with an order less restrictive of plaintiff's counsel's right to represent his client. Hence, an appeal which questions the validity of such statements could take a future case out of *stare decisis*.

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[5] Rule 4012 provides:

(a) Upon motion by a party or by the person from whom discovery or deposition is sought, and for good cause shown, the court may make any order which justice requires to protect a party or person from unreasonable annoyance, embarrassment, oppression, burden or expense, including one or more of the following:

(1) that the discovery or deposition shall be prohibited;
(2) that the discovery or deposition shall be only on specified terms and conditions, including a designation of the time and place;
(3) that the discovery or deposition shall be only by a method of discovery or deposition other than that selected by the party seeking discovery or deposition;
(4) that certain matters shall not be inquired into;
(5) that the scope of discovery or deposition shall be limited;
(6) that discovery or deposition shall be conducted with no one present except persons designated by the court;
(7) that a deposition shall be sealed and shall be opened only by order of the court;
(8) that the parties simultaneously shall file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;
(9) that a trade secret or other confidential research, development or commercial information shall not be disclosed or be disclosed only in a designated way.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

Pa. R.C.P. No. 4012
It may not be that all neuropsychological testing is objective, but much of it is.

*** Mark is a WPTLA Member from the firm of Berger and Green.*
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WE'VE GONE SOCIAL!! (media, that is)

WPTLA has taken to social media with messages aimed at potential jurors.

Help us spread the word by liking us on Facebook and following us on Twitter. Share the messages with your friends, family, and coworkers. The more people see the message, the better.

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Western Pennsylvania Trial Lawyers Association

Don't agree with what you've read? Have a different point of view?

If you have thoughts or differing opinions on articles in this issue of The Advocate, please let us know. Your response may be published in the next edition.

Also, if you would like to write an article about a practice area that you feel our members would benefit from, please submit it to Editor Erin Rudert.

Send your articles to er@ainsmanlevine.com

Annual Comeback Award Dinner scheduled for Tuesday, Nov 15, 2016

Save the date!

TRIVIA CONTEST

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

Trivia Question #7

How many times has an NHL team that made an in-season coaching change gone on to win the Stanley Cup in that season? (Hint: The Pittsburgh Penguins did it twice, so the answer is at least 2!)

Please submit all responses to Laurie at laurie@wptla.org with "Trivia Question" in the subject line. Responses must be received by August 18, 2016. Prize for this contest is a $100 Visa gift card. Winner will be drawn August 23, 2016. The correct answer to Trivia Question #7 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 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.

Answer to Trivia Question #6 - **The Walker Law, passed in 1920 in New York, was a law regulating which sport? Boxing. "**The Walker Law passed in 1920 was an early New York state law regulating boxing. The law reestablished legal boxing in the state following the three-year ban created by the repeal of the Frawley Law. The law instituted rules that better ensured the safety of combatants and reduced the roughness of the sport. The law limited matches to fifteen rounds, required a physician in attendance, restricted certain aggressive acts such as head-butting, and created a regulatory commission, the New York State Athletic Commission." https://en.wikipedia.org/wiki/Walker_Law

Congratulations to Question #6 winner Chad Bowers, of Bowers & Fawcett in Beaver.

COMP CORNER

*By: Thomas C. Baumann, Esq.***

PAJ and WPTLA member Fred Soilis recently forwarded a decision to the author regarding a modification petition under the impairment rating evaluation portion of the Worker's Compensation Act. Fred's work is quite clever and deserves further dissemination.

In Fred's case, the claimant suffered an injury in on May 4, 2011. In June 2015, the employer filed a petition to modify compensation benefits based on impairment rating evaluation showing a whole person impairment of 8%. The employer had obtained a rating evaluation from Dr. Jeffrey Moldovan, who appears to have a rather extensive IRE practice. He had initially evaluated the claimant under the sixth edition of the AMA guides to the Evaluation of Permanent Impairment, which yielded an 8% impairment rating. Following that evaluation, the Commonwealth Court issued its decision in *Protz v. WCAB (Derry Area School District),* 124 A.3d 406 (Pa. Cmwlth. 2015), where the use of the fifth and sixth editions of the AMA guide was found to be unconstitutional based on an improper delegation of legislative authority. Dr. Moldovan then rated the claimant's impairment under the fourth edition and concluded the whole person impairment was 5%. Dr. Moldovan was called to testify in the case.

Claimant's counsel filed a motion to strike the testimony of Dr.Moldovan as being incompetent as a matter of law under §306(a.2)(1) and Bureau regulation §123.103. Counsel alleged that Dr. Moldovan did not have an active clinical practice for at least 20 hours per week so as to qualify to be able to perform rating examinations under the strictures of the Act and the regulations.

Dr. Moldovan testified that his practice was limited to emergency medicine. He does not have admitting privileges at any hospital and does not have a surgical practice. Furthermore, he did not have a professional office and sees patients only in an emergency room setting. He would make treatment recommendations in the emergency room but did not provide treatment after discharge from the emergency room.

The judge ultimately concluded the physician did not have the qualifications to perform impairment rating evaluations. He concluded that the doctor did not have an active clinical practice for at least 20 hours a week. Section 123.103(B) of the Bureau regulations describes ”active in clinical practice" as follows: the act of providing preventative care and the evaluation, treatment and management of medical conditions of patients on an ongoing basis. The Act itself does not define the relevant term. The judge concluded that Dr. Moldovan did not meet the requirement set forth in the Bureau regulation. Therefore, he concluded that the physician was not competent for purposes of offering an impairment rating evaluation. The physician's testimony was struck from the record. As a result, the employer’s modification petition failed.

Kudos to Fred for an inventive argument. The author imagines many readers will utilize this strategy. Also, a tip of the hat to John McTiernan, Fred's partner, for bringing this case to the author's attention.

In regard to the *Protz* case, the briefing schedule for the case has been set. Protz was designated the appellant by the court and her brief is due June 1, 2016. Oral argument will be scheduled during the October session in Pittsburgh. The PAJ amicus committee has agreed to submit a brief in support of Protz, which Dan Siegel has offered to write. Protz expects numerous amicus briefs to be submitted.

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HOT OFF THE WIRE

*By: James Tallman, Esq.***

Zero-damages award upheld *Gold v. Rosen*, 2016 Pa. Super. 44 (Feb. 19, 2016) – affirmed entry of judgment after jury verdict awarding no damages from rear-end collision.

In *Gold*, the plaintiff was in a rear-end collision about 6 weeks after being released from physical therapy for injuries suffered in a prior auto collision. The defendant stipulated that her negligence caused the accident and that such negligence caused the plaintiff to suffer a neck sprain/strain. The matter started in arbitration and a panel awarded $25,000 to the plaintiff. The defendant appealed the arbitration award. In light of the defendant's stipulation on negligence and causation, the issue for the jury was the extent plaintiff's injuries and damages. The jury awarded zero damages. The trial court denied the plaintiff's post-trial motion for a new trial. On appeal, the Superior Court relied on *Van Kirk v. O'Toole*, 857 A.2d 183 (Pa. Super.) for the proposition that not all injuries are serious enough to warrant compensation. The court explained that even though the jury had found that the defendant caused harm to plaintiff, it was with the jury's purview to determine that such harm was not significant enough to warrant a monetary award. Thus, the trial court did not commit error in denying plaintiff's post-trial motion.

Undated UIM rejection form valid *Lieb v. Allstate Prop. and Cas. Ins. Co*., No. 14-4788 (3d Cir. Jan. 6, 2016) – holding that UIM rejection form not dated by insured was valid where it had insurer's fax machine date stamp.

Ed and Janet Lieb purchased an Allstate insurance policy and chose to waive UIM coverage. Plaintiff husband executed the waiver form but failed to date it. The Third Circuit held that insured had to sign the form but did have to date it himself. It could be dated by someone else. Accordingly, the machine dated form was valid and enforceable.

Peer review basis for bad faith claim *Urena v. Allstate Ins. Co.*, 2016 WL 1071557 (March 14, 2016) – held that insured stated viable bad faith claim based on insurer's handling of peer review process.

Plaintiff suffered multiple injuries in a MVA requiring treatment from at least nine medical providers. The accident happened on November 10, 2010. Plaintiff had $100,000 in first party medical loss benefits. After about one year of treatment, Allstate retained a company to perform a peer review of PT services provided to plaintiff. A peer review report issued on April 6, 2013 determined that treatment after June 30, 2012, was not medically justified. Allstate began sending denial letters to providers on May 8, 2013, but did not send the peer review report to plaintiff's counsel. The peer review report was not timely mailed to plaintiff's counsel. Plaintiff's counsel requested a copy of the report and was mailed a copy on July 24, 2013. Allstate continued to deny medical claims throughout 2013, 2104, and 2015, not only from PT providers but also for diagnostic studies and neurosurgery. As a result of the denials, plaintiff was left with a lien in excess of $80,000. Plaintiff filed a bad faith claim based on Allstate's handling of the peer review process. Allstate moved to dismiss arguing that plaintiff's claim was preempted by § 1797(b) of the MVFRL. The court held that the plaintiff's allegations were not limited to challenging the PRO findings and the reasonableness of the medical treatment, but sufficiently alleged abuse and misuse of the PRO process, including not timely mailing the report. Accordingly, the court held that plaintiff had pled a viable bad faith claim.

Workers' compensation carrier able to subrogate against non-claimant personal policy *Davis v. WCAB (Pa. Social Services Union),* -- A.3d – (Pa. Commw. Dec. 30, 2015) --

Claimant Davis was injured in a MVA while in the course and scope of her employment. She was a passenger in her co-worker's personal vehicle. The at-fault driver was unknown. Davis filed an uninsured motorist claim with her co-worker's insurer and settled for $25,000. The employer's carrier asserted a subrogation claim against the uninsured settlement proceeds. The Commonwealth Court noted that precedent holds that subrogation will not reach a claimant's recovery of underinsured/uninsured motorist benefits received from the claimant's own personal policy. Claimant argued that uninsured motorist benefits are intended to benefit beneficiaries as defined in the policy, such as occupants, not only the actually policyholder. It was immaterial that it was not the claimant's policy. It was not a recovery from the third-party tortfeasor and the employer had not paid for the policy. The uninsured benefits recovery should not be subject to subrogation. The court rejected that argument, however, holding that employers have a right to subrogate against any recovery from a policy not paid form by the claimant. Thus, the employer was entitled to subrogate against the Allstate settlement proceeds. It is worth noting that the court stated in a footnote that the facts did not indicate if any of the settlement proceeds had been allocated for pain and suffering. The court, therefore, did not reach the question of whether the employer could subrogate against portions of the recovery designated

Continued on Page 14

HOT OFF THE WIRE *(Continued from page 13)*

to compensate for pain and suffering.

Caption could not be amended to name new party after expiration of SOL *Rivera v. Manzi*, 2015 WL 7453998 (Pa. Super. Nov. 23, 2015) – denied motion to amend caption to add driver listed on police report but reversed trial court's grant of summary judgment based on police report.

In *Rivera*, after a rear-end collision, the injured driver filed suit. The defendant denied that he was the operator of the vehicle that had struck her car. The plaintiff moved to add the actual driver, who was the son of the originally named defendant, and to add a claim for negligent entrustment. The statute of limitations had run by this time. The trial court, therefore, denied the motion to amend and dismissed the case. The Superior Court affirmed the trial court's denial of the motion amend to add a new party and a new claim. As for the dismissing the entire case as originally filed, however, the court held that it was premature to grant summary judgment because a police report cannot be used as evidence under 75 Pa. C.S. § 3751(b)(4) and there were no facts of record to establish the identity of the driver.

No stay of discovery in Federal bad faith action pending UIM claim *Wagner v. Allstate Ins. Co.*, 2016 WL 233790 (Jan. 19, 2016) – denied insurer's motion to stay discovery.

Plaintiff filed a breach of contract and bad faith action arising out a claim for UIM benefits in federal court. Allstate moved to stay all pretrial proceedings in the bad faith case. The court denied Allstate's motion. In doing so, the court emphasized the Seventh Amendment right to a jury trial in a bad faith action in federal court. Because of this right, a stay creates a significant hardship as the parties are forced to have two separate jury trials. This is a key distinction from state court where there is no right to a jury trial and one trial judge can preside over the UIM jury trial and then hear the bad faith claim. The court noted that it was following the majority view among the federal district courts in Pennsylvania. After denying the motion for a stay, the court turned to the parties' dispute over plaintiff's discovery requests. Allstate withheld documents on the basis that they were prepared in anticipation of litigation. The court held that this argument was not reasonable because at the time of the creation of the withheld documents, Allstate had requested additional materials from plaintiff's counsel to complete its review. Thus, Allstate could not now claim that documents were shielded by the work-product doctrine, when at the time the documents were created it was telling plaintiff's counsel that the claim was still under review and was requesting more information from plaintiff.

Failure to perform medical tests basis for increased risk of harm claim *Hill v. Slippery Rock Univ.*, 2016 PA Super (May 3, 2016) – reversed grant of demurrer on claims against NCAA.

Suit was filed on behalf of the Estate of Jack Hill, Jr. The decedent was a basketball player at Slippery Rock University. He collapsed during a practice and subsequently died. An autopsy revealed the presence of sickle cell trait. Claims were brought against the university and the N.C.A.A. The Plaintiffs contended that the N.C.A.A. had a duty to establish and enforce protocols to ensure student athlete safety and that by not requiring sickle cell trait testing at Division II schools the N.C.A.A. increased the risk of harm to the decedent. For a detailed discussion of this case, see the full article on p. 5.

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VOIR DIRE IMPROVEMENT

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

It is an honor to serve a term as the incoming President of the Western Pennsylvania Trial Lawyers Association. I remember joining the organization as a fairly new and inexperienced attorney, almost in awe of what trial lawyers do on a daily basis. Representing individuals who do not have a voice or championing the cause of an underdog is a noble calling. It is certainly not for the meek of heart as the work can be grueling and frustrating, but there is something about "getting into the arena" and fighting the good fight that keeps all of us coming back for more. Twenty plus years later and having my fair share of battle wounds has not discouraged me from wearing the badge of "trial lawyer" with pride. However, what has been discouraging, at least from the perspective of wanting to believe our civil justice system is fair and impartial to all, is the disparity among the counties in this Commonwealth on how a jury is empanelled. There are some counties where the system could use an overhaul and some honest feedback and input from trial lawyers.

One of the cornerstones of our judicial system is the absolute and fundamental right to an unbiased and impartial jury. As Joseph Towers, said "the right to a trial by jury cannot be guarded with too much vigilance, nor defended with too much ardor. If the people surrender it, their other rights will inevitably follow." The debate about and defense of a fair and impartial jury is ongoing and we, as an organization, need to stand up to a system that "inexplicably finds it necessary to shoehorn certain perspective jurors into the jury box when faced with information that at the very least gives the appearance of an inability to be impartial." *Cordes v. Associates of Internal Medicine*, No. 1737 WDA 2011. How many times has your voir dire boiled down to the question, uttered by a court clerk, "can you be fair and impartial" after the prospective juror has proudly proclaimed that he is pro-tort reform or that he feels most lawsuits are frivolous? Too often, if the juror claims that despite statements, beliefs or opinions that would suggest bias, he can be fair, the juror will not be stricken for cause without a fight.

So how do we take steps to ensure that every plaintiff in our Commonwealth is getting the same open and thorough voir dire? This is a question that has been debated and discussed ad nausum in legal circles. What I would like to do during my term as President is to quickly form a committee to address voir dire on a local level. I would like to try to establish a dialogue with civil trial judges in our surrounding counties on how voir dire is being handled. More importantly, I would like to prepare a civil litigation packet for any member interested that will include a Motion for Voir Dire, a Motion for a Court Reporter During Voir Dire and a brief that would highlight the Commonwealth's long standing opinions that due process and equal protection demand that each juror be one with a "clean slate and an open mind."

If anyone has a particular interest in improving the voir dire process in counties where there is a definite need for improvement, please contact me at ssn@r-rlawfirm.com or Laurie Lacher at laurie@wptla.org. We would like to have a meeting in September and have the written materials completed by the November trial term.

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New Email Address!
Please update your address book.

For WPTLA and/or Laurie:
laurie@wptla.org

Annual Judiciary Dinner

May 6, 2016

Photos Courtesy of Martin Murphy

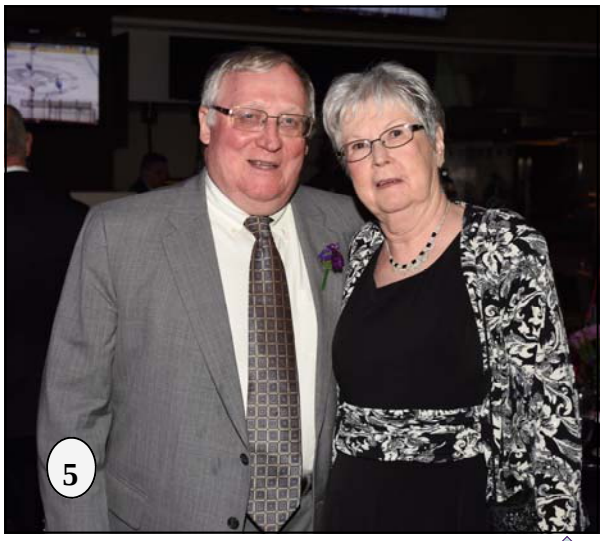
Pictured above from L to R in photo 1: Bryan Mills, Vice President Liz Chiappetta, Katelyn Dornburg and Board of Governors Member Laura Phillips. In photos 2: Past President Chuck Evans, Sydne Unatin, Marilyn Evans and Board of Governors Member Greg Unatin. In photo 3: Treasurer and Judiciary Dinner Chair Dave Landay, Scott Melton, Junior Member Vic Kustra, President Larry Kelly, and Junior Member Ian Watt. In photo 4: Commissioner Bob Krebs, Rhoda Carmody and Board of Governors Member Sean Carmody. In photo 5: Monica Milsop, Board of Governors Member Mark Milsop, Board of Governors Member Joe Froetschel, Business Partner Chris Finley, Amy Finley, Board of Governors Member Eric Purchase and Sandy Purchase. In photo 6: Terry Gine and Rolf Patberg. In photo 7; Board of Governors Member Erin Rudert, Board of Governors Member Jason Schiffman, Dan Schiffman.

More photos on p. 18

Annual Judiciary Dinner
May 6, 2016

Photos Courtesy of Martin Murphy

Pictured above from L to R in photo 1: Daniel M. Berger Community Service Award Winner Jamie McMutrie, Judiciary Dinner Chair Dave Landay, and Daniel M. Berger Community Service Award Winner Ali McMutrie. In photo 2: President's Scholarship Essay Winner Siddarth Narayan , Scholarship Essay Committee Member Mark Milsop, and President's Scholarship Essay Winner Sabrina Helbig. In photo 3: Champion of Justice Award Winner Warren Ferry and President Larry Kelly. In photo 4: 5K Committee Member Dave Zimmaro, 5K Chair Sean Carmody, Pittsburgh Steelwheeler Lee Tempest, Pittsburgh Steelwheeler Dave Zaks, President Larry Kelly. In photo 5: Warren Ferry and Marion Laffey Ferry.



2016 Golf Outing

June 3, 2016

New Castle Country Club

Pictured above, from L to R in photo 1: Tom Chapas, Bill Chapas, Past President Rich Schubert and Golf Chair and Board of Governors Member Chuck Alpern.
In photo 2: The Honorable Dale Fouse, Charlie Georgi of FindLaw, The Honorable Richard Mancini and Jim Moyles.
In photo 3: Past President Bill Goodrich, Bill Weichler, Past President Tim Riley and Mark Melago of Findlaw.
In photo 4: Past President Mark Homyak, Phil Clark, Bill Flannery, and Hamka Abdullah.
In photo 5: Dick Kelly, Past President Jack Goodrich, Mark Aletto and John Linkosky.
In photo 6: Past President Chris Miller, Vice President Bryan Neiderhiser and Troy Frederick.
In photo 7: Chris Finley of Finley Consulting & Investigation, Brian Quinn, Joe George and Past President Rich Catalano.

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...*Through the Grapevine*

Board of Governors Member Chad McMillen, Curt McMillen, President's Club Member Keith McMillen, Board of Governors Member Kelly Tocci, Laura Tocci and **Rich Urick** announce their firm's new name as McMillen Urick Tocci & Jones.

Board of Governors Member James Tallman has moved to Elliott & Davis, at 425 First Ave, Pittsburgh 15202. P: 412-330-7625 Email: jtallman@elliott-davis.com

Congratulations to **Board of Governors Member Greg Unatin** and **Brendan Lupetin**, who joined **Past President Chuck Evans** and **Past President Jerry Meyers** as partners in the firm of Meyers Evans Lupetin & Unatin, LLC.

President's Club Member Pete Giglione and **President's Club Member Rudy Massa**, of The Massa Law Group, have moved to 3 Gateway Center, 401 Liberty Ave, Ste 1543 in Pittsburgh, 15222. Phone, fax and email remain the same.

Congratulations to **President's Club Member Rhett Cherkin** and **President's Club Member Thomas Smith**, of Caroselli Beachler McTiernan & Coleman, who have been certified as specialists in the practice of workers' compensation law by the Pennsylvania Bar Association Workers' Compensation Law Section.

Chris Apessos has joined **Mark Smith** to form The Smith Apessos Law Firm, LLC, at 215 E 8th Ave, Homestead, 15120. P: 412-368-8398 F: 412-368-8952 Emails: capessos@injurylawyerpgh.com and msmith@injurylawyerpgh.com Website: www.injurylawyerpgh.com

President's Club Member John Lienert has moved to Chaffin Luhana LLP, at 615 Iron City Dr, Pittsburgh, 15205. P: 888-480-1123 F: 888-317-2311 Email: jlesq@outlook.com
Website: www.chaffinluhana.com

Congratulations to **President's Club Member Damon Faldowski**, who was sworn in to the bench of Washington County Court of Common Pleas on July 12, 2016.

Congratulations to **President's Club and Board of Governors Member Laura Phillips**, on her promotion to Managing Partner at Phillips Phillips & Smith-Delach, P.C. She joins her father, **Denny Phillips** in forming the new firm. All contact information remains the same.