



Common Pleas Court Management System

The New and Improved CPCMS

by Beth Orbison, Esq.

The Common Pleas Court Management System (CPCMS) has arrived in the criminal courts of Westmoreland County. To some it is a blessing, and to others a curse. In actuality, the CPCMS is the culmination of an



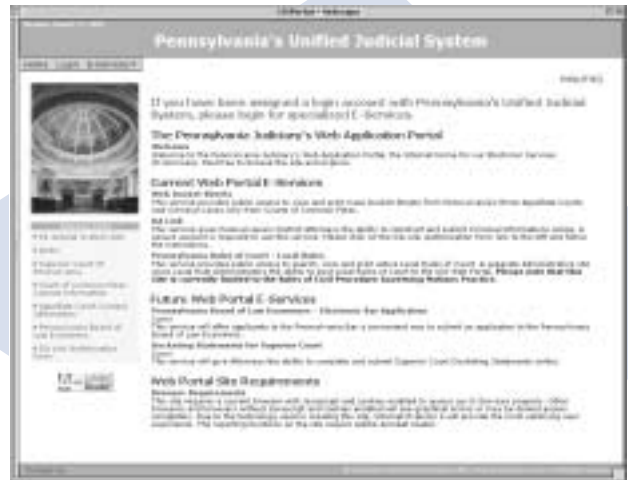
Beth Orbison

extensive project that was conceived by the Administrative Office of Pennsylvania Courts (AOPC) as a way of integrating information, linking the unified judicial system and fueling the criminal justice system into a database that is accessible statewide. When the system is fully implemented, users will be able to process cases more efficiently in each trial court and share data and case files within and among the district courts, the trial courts and the appellate courts.

A handful of quietly energetic individuals in the Westmoreland County court system provided invaluable time and effort in the development of this project. Paul Kuntz, Westmoreland County Court Administrator, led a team comprised of Tami Silvis (Assistant Court Administrator), Don Heagy (formerly of the Clerk of Courts Office), and

others from the various offices in the Courthouse, who worked closely with the AOPC in brainstorming sessions. "We started with a dream list," said Paul, when asked what they hoped a statewide computer-managed case management system could encompass. And because the Westmoreland County administrators were among the first few individuals involved in the conception of CPCMS on the trial court level, many of our administrators' ideas and elements of the county's existing case management program (commonly referred to as "the AS400") were incorporated into the master CPCMS plan.

Paul and Tami believe this opportunity gave Westmoreland County a distinct advantage over other counties, because the new system was tailored, in many respects, around our county's specific needs and desires. "Later," Paul says, "we'll be a voice in the wilderness," as county administrators across the state become more involved and have more to say about how the system should operate.



At the present time, the District Attorney's Office, the Office of Adult Probation, and the Public Defender's Office have general access to the CPCMS through the AOPC web portal. Private attorneys can access the CPCMS only through the AOPC's web portal.

As is usually the case, the dream differed significantly from reality. For example, the capacity for electronic filing had been on the wish list, but that idea was tabled for the time being. Budgetary constraints and system proliferation concerns prevented all criminal court-related offices from having direct and full access to the network. At the moment, only three offices, the Clerk of Courts Office, the Court Administrator's Office, and the Judges' Chambers,

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President's Message

It's What We've Come To Expect Of Ourselves

by Robert I. Johnston, Esq.

Not long ago, I was involved in a lawsuit in which one of the litigants was a member of our bar. The case was of a rather longstanding nature and hotly contested. Suffice it to say that the



matter was of a very personal interest to the person about whom I write, more so even than is usually the case.

In any event, as the fortunes of litigation would have it, a decision was rendered

which favored my client. I'm certain it was a great disappointment to the lawyer in my story. Not long after, we both attended a Bar Association social event. We were each in the company of family and friends. It was crowded. An encounter could easily have been avoided. Frankly, I wasn't sure what to expect when the other lawyer approached. As it turned out, we chatted amiably, each inquiring after the other's family, without apparent rancor or mention of our case. Neither lawyer nor layman, watching or listening, would have detected even a hint of the fact that we had opposed each other in so personal a circumstance.

I've thought about this incident many times since. I've pondered what a strange thing it is that we can sometimes separate the professional from the personal, and I've wondered if I would have reacted with the same grace had the circumstances been reversed. But the thing I find most

odd is that as I write this, it seems no big deal. If the story was about lawyers in almost any other place, I'm certain it would be a big deal. Anyone who practices in any other county would likely confirm that for you. As it turns out, we have the great good fortune to live our professional lives in a place where the point of my story can be taken for granted, where civility and respect among people who oppose one another for a living has existed long enough that yet another example of its presence is really no big deal.

Bench, unlike any you'll find elsewhere, that participates in and supports our efforts. It exists here because it's what we have come to expect of ourselves.

It would be very easy for us to rest on our laurels, to take for granted the circumstances we are privileged to live in. But it's a sad fact that you're either moving forward or falling back, it's not easy to tread water for long. Placed in the same circumstances as the lawyer in my story, any one of us could go the other way tomorrow; it's as much a part of us as taking the

It would be very easy for us to rest on our laurels, to take for granted the circumstances we are privileged to live in. But it's a sad fact that you're either moving forward or falling back, it's not easy to tread water for long.

But it would be wrong to think luck has much to do with it. We are not descended from some race of lawyers less subject to the weaknesses of human nature than those in other places, and it's not the water either. I believe it's because we've worked at it, harder than lawyers in most other places I know. It exists here because of the Inn of Court and the Trial Academy, the Bench/Bar Conference, and the Bar Association, not as institutions but because we, as individuals, vigorously participate in them. It exists here because we have a

high road. And the best protection I can think of is for as many of us as possible to continue to be a part of things, to continue to actively participate in the Bar Association and its many activities, and to take advantage of the opportunity to be an influence in the world we live in. Together, we really can make a difference.

New Site, New Time for 2005 Bench/Bar Conference

Just as the cruise lines are touting their close-to-home, close-to-fun vacations, the Westmoreland Bar Association can likewise claim a backyard location and the promise of a fun-filled 2005 Bench/Bar Conference. The decision of the Bench/Bar Conference Committee Co-Chairs Judge Ackerman and Rachel Huss and their committee members to move the conference to Seven Springs for June 23, 24 and 25,

2005, was based on the promise of a perfect fit for a myriad of activities requested by Bench/Bar attendees.

“Seven Springs offers a variety of interesting activities not available at prior conferences, including tours of two of Frank Lloyd Wright’s masterpieces, Fallingwater and Kentuck Knob, and white water rafting on the Youghiogheny River,” says Co-Chair Judge Ackerman. “Consistent with prior conferences, there will be golf,

horseback riding, cycling and hiking, with professional entertainment offered in the evening. As a bonus, the site is only an hour’s drive from Greensburg.”

With 5,500 acres of lush serene surroundings nestled in the Laurel Highlands, Seven Springs offers clean, comfortable (and recently renovated) lodging, ideal meeting space, outdoor dining with breathtaking mountain scenery and something for everyone.

Golf, swim, bowl, bike, play tennis. Shoot the rapids on a white water raft; ride a trail on horseback; visit nearby historic sites. Enjoy the panoramic view from a chairlift then zip down 2,200 feet of track on the Alpine Slide. Tee off on the picturesque mountaintop golf course. Hike or mountain bike along miles of natural trails. Play a pick-up game of sand volleyball, or pamper yourself with a massage. Enjoy the nightlife with live music, unwind in the outdoor mountainside hot tub, join colleagues for a drink in the Bavarian Lounge.

Why not plan to make the drive up the mountain on June 23–25, 2005 to spend time with colleagues and join in some outdoor adventure? We’re saving a space for you.

letter to the editor



In re: “The Wizends of Law,” *the sidebar*, page 19, May–June 2004: Although there are 43 lawyers in the picture, only 41 were named. The following were omitted from the caption:

Third Row: Henry Abromson (between Theodore Levin and Dominic Ciarimboli);

Last Row: Louis Kober (between Gilfert Mihalich and Albert Nichols). I know, I was there!

Very truly yours,
Bernard S. Shire

Editor’s note: The contest winners did identify Mr. Abromson and Mr. Kober; we apologize for inadvertently omitting them from the caption. No disrespect was intended by our typographical error.

Got News?

Do you have news to share with the sidebar? Making Partner? Marriage? Birth? Anniversary? Accomplishments? Send us a fax (724.834.6855), an e-mail (westbar.org@verizon.net), a note by carrier pigeon or any other means and we’ll publish your news in the next available issue.

The New and Improved CPCMS *continued from page 1*

use CPCMS for operational and not merely informational purposes. If implementation of the system progresses as planned and sufficient funding is obtained, eventually the District Attorney's Office, the Office of Adult Probation, and the Public Defender's Office could have additional direct access to the system as well. At the present time, these offices have limited direct access to information through the system, and general access



▲ Court Administrator Paul Kuntz

through the AOPC web portal, ujportal.pacourts.us. Private attorneys can access the CPCMS only through the AOPC's web portal.

Due to Westmoreland County's early immersion in project develop-

ment, we were chosen as one of two pilot counties in the state who would launch the system. In some respects, being chosen was a back-handed compliment—it was flattering to be entrusted with the responsibility of being the first, but the county also had to suffer the inevitable bumps and bruises that can come with being the "guinea pig." The usual glitches had to be worked out of the software, as they became apparent only after the system began to be employed. While court employees spent many hours in training sessions learning how to navigate the system, they discovered application and performance issues that needed to be addressed in the process. For example, at times the CPCMS will "fill in the blanks" without being prompted or will change a computer-perceived error when there is none. In addition, more processing resources were needed at the central site to enable the software.

Simultaneous with the implementation of CPCMS in Westmoreland County, Don Heagy, one of the most knowledgeable resources in the Clerk of Courts Office, took another position with the county. Then, the county commissioners determined that a percentage of court employees had to be laid off in order to balance the county's budget. While other counties added employees to take on the additional work required in the transition to CPCMS, Westmoreland County found itself with decreased human resources. A smooth implementation of the new system became more of a challenge.

Without question, when all of the objectives of the system are met and the wrinkles are ironed out, the CPCMS will streamline the work of the criminal courts and the supporting offices and agencies. But during the conversion phase from old to new, and with only 20 of the state's 67



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counties currently enrolled, users are frequently heard to complain.

The system is more complex than the less sophisticated AS400 system. Migrating data from the old system into the new system was, and continues to be, a major undertaking. Early on, some data had to be entered twice, both in the old and in the new systems, and thorough researchers continue to search both systems for data available in any given case. Due to the complexity of the program, there are layers of steps involved in entering and retrieving data in the new system, which means that it takes more time to complete certain routine tasks.

Public defenders can no longer print trial lists to aid in keeping track of their cases. Security concerns limit access to information (e.g., date of birth and social security number of a defendant) that was previously available.

Understandably, the learning curve and some resistance to change plays a role in new users becoming comfortable with using the new software. Furthermore, the county no longer

has direct control, there now being a statewide system into which its local operations, policies and procedures must fit. Novice users are politely reminded in the AOPC newsletter to focus on the greater good: “Users are urged to be mindful of the fact that because the CPCMS must serve the


As part of the AOPC’s Local Rules Project, all new local rules will be entered into an internet database when the new rule is passed. Attorneys will be able to go to www.aopc.org/judicial-council/local-rules/westmoreland/, for a complete up-to-date set of the local procedural rules.

needs of all 67 counties within the Commonwealth, certain aspects of its functionality, or approach to some business processes, may differ from those to which they are accustomed.”

With patience, the CPCMS promises to emerge as the solution to managing the patchwork quilt of individual systems that serve one purpose, one agency, one court and

one county. Data will be entered at the source where it’s generated, rather than only in the Clerk of Courts Office. Information entered at the District Justice’s offices will automatically be available in the trial courts, and information entered in the trial court will automatically be available in the appellate courts. Eventually, personnel costs may be reduced. Information needed from other jurisdictions regarding a defendant’s criminal history will be accessible in one database. The current residence of a prisoner will be updated daily, with the Department of Corrections feeding information directly into CPCMS. The system has the capability of applying an electronic signature. In other words, there will be one system to use in case processing, from the beginning to the end.

Eventually, the Prothonotary’s Office and the Register of Wills Office will be similarly transformed, allowing civil, criminal and orphans’ court case information to move more expeditiously and uniformly through the Pennsylvania courts.

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Scholarships Awarded at Summer Quarterly Meeting



◀ *WBF Trustee KJ Collamer presents scholarship checks to Tiffany R. Waskowicz, Marc C. Bryson and Susan Ott at the WBA Summer Quarterly Meeting.*

The Westmoreland Bar Foundation awarded three law school scholarships to Westmoreland County residents at the WBA Summer Quarterly Meeting held July 30, 2004, at Cherry Creek in Youngwood.

THE WAYNE R. DONAHUE MEMORIAL SCHOLARSHIP was awarded to Murrysville resident, Susan Ott. Susan, a third-year night student at the Duquesne University School of Law, previously worked with the Allegheny Health, Education and Research Foundation. Susan hopes to combine her health care and research

background with a law degree to work on improving her local community.

THE DONALD LAIRD HANKEY MEMORIAL SCHOLARSHIP was awarded to Latrobe resident Marc C. Bryson. Marc will be attending the University of Pittsburgh School of Law in the fall. He hopes to pursue a certification in Environmental Law in conjunction with a law degree.

THE HONORABLE DAVID H. WEISS MEMORIAL SCHOLARSHIP was awarded to Tiffany R. Waskowicz. A resident of Greensburg, Tiffany is a second-year law student the University of Pittsburgh School of Law. She is currently interning with Allegheny County's Public Defender's office and

has recently been awarded the 2004 PLISF/Pitt Law Faculty Fellowship.

College scholarships were also awarded to participants of the 2004 county-wide Mock Trial Competition.

Cara Spencer and Stephen DeMatteo are 2004 graduates of Greensburg Salem High School, and were members on the winning Westmoreland team. Jacob Yundt recently graduated from Kiski High School. All three plan on attending college this fall.



▲ *WBF Trustee Kathleen Kemp presents the Mock Trial Scholarship awards to Jacob Yundt and Stephen DeMatteo. Cara Spencer was unable to attend.*

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Spotlight on Leo Ciaramitaro



Editor's note: Leo Ciaramitaro, an Assistant District Attorney for Westmoreland County, is also a Captain in the Army Reserves. In June, his unit was called to active duty and was deployed to Iraq.

Q WHAT JOBS HAVE YOU HAD PRIOR TO BECOMING AN ATTORNEY?

A I worked as a movie theater usher while in college, and an assistant manager for an Audio/Visual company in Pittsburgh for four years before law school.

Q WHICH WAS YOUR FAVORITE AND WHY?

A I enjoyed working for the A/V company the most, though I did not appreciate that until law school. While there, I worked with groups of people that varied from politicians to engineers to doctors to business people to medical professionals to labor union representatives and everyone in between. As a trial attorney, I appreciate the plethora of viewpoints that potential jurors may bring with them. (Plus, I got to meet a whole bunch of famous people while putting microphones on suits/dresses.)

Q WHAT IS THE FUNNIEST THING THAT HAS HAPPENED TO YOU AS AN ATTORNEY?

A While not funny at the time, it causes many of us to chuckle now. During an arson trial, a witness, who

was with the defendant when he set fire to an abandoned house, was testifying concerning his involvement. Prior to this, the state troopers had said that this witness had driven them to the house that was torched. During his direct, I showed him a picture of the house he pointed out to the troopers, and asked him if he recognized it. (Understand that he had seen the picture before (a burned house) and had been there.) The witness indicated he did not recognize the house and had never seen it before. This lack of recollection (as defense counsel will indicate) was due in no small part to the witness' lack

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Spotlight on Leo Ciaramitaro *continued from page 7*

of mental prowess. The defendant was still convicted of the arson.

Q WHAT IS THE QUALITY YOU MOST LIKE IN AN ATTORNEY?

A Integrity. Without it, how can any of us be trusted as Officers of the Court.

Q WHAT IS YOUR FAVORITE JOURNEY?

A Traveling with my family anywhere outside 50 miles of my house.

Q WHAT IS YOUR GREATEST REGRET?

A Not spending enough time with my wife and son.

Q WHO ARE YOUR HEROES IN REAL LIFE?

A Firefighters, Law Enforcement, Medical Personnel, and my fellow Prosecutors. I like to think we all believe that helping others and making our communities safer is a noble aspiration.

Q WHAT ADVICE WOULD YOU GIVE ATTORNEYS NEW TO THE PRACTICE OF LAW?

A If you went straight from high school to college to law school, get a job doing something that is not law-related. Join a volunteer organization that has no lawyers as members (yet). You will then understand that what we do in the legal community is not the center of the universe and is in fact just a cog in our society. It will improve your skills as an attorney as well because it will give you perspective.

Q WHAT DO YOU CONSIDER YOUR GREATEST ACHIEVEMENT?

A My wife and son. While they are not an achievement, per se, I consider my wedding day and my son's birthday the two most important days in my life.

Q WHAT IS YOUR IDEA OF PERFECT HAPPINESS?

A Being able to travel across America and Europe with my family and experiencing the variety of cultures and peoples and seeing justice done in every case I prosecute.

Q WHAT IS YOUR MOST TREASURED POSSESSION?

A My family. Everything else can be replaced.

Q WHAT DO YOU MOST DISLIKE?

A Chaos. Disorder really gets under my skin. Of course, my desks at home and work continually taunt me by seeming to disorder themselves of their own volition.

Q WHAT IS YOUR GREATEST EXTRAVAGANCE?

A Books. There is nothing like sitting by the fireplace with a glass of wine and a "good read."

Q WHAT TALENT WOULD YOU MOST LIKE TO HAVE?

A To be able to play any sport competently that involves any form of a ball. Obviously, some hand-eye coordination would be nice as well.

Q WHAT DO YOU MOST VALUE IN YOUR FRIENDS?

A Loyalty. This requires no explanation.

Q WHICH LIVING PERSON DO YOU MOST ADMIRE?

A My father. Always very quiet and unassuming, he never hesitated to give us kids the shirt off his back if that is what was needed.

Q WHAT IS YOUR MOTTO?

A "The only thing necessary for the triumph of evil is for good men to do nothing." —Edmund Burke

and

The law is the chain that leashes the evil beasts of anarchy and tyranny; when the law is corrupted for whatever reason, the chain holding those monsters at bay is inevitably weakened.

Inn of Court Meeting Planned; Officers Elected

The Ned J. Nakles American Inn of Court is gearing up for a ninth year of camaraderie, discussion, and, of course, food and drink! The first meeting is scheduled for Wednesday, September 15, 2004, at 5 p.m.

If you were an Inn member last year, you will automatically receive an invitation to join for the 2004-2005 year. If you were not a member last year but are interested in membership for the 2004-2005 year, please contact any officer or the Westmoreland Bar Association.

On June 1, 2004 the following attorneys were elected to serve two-year terms as officers for the Ned J. Nakles American Inn of Court:

PRESIDENT—Barbara Artuso

VICE-PRESIDENT—Donald Snyder

SECRETARY—James Boggs

TREASURER—Jackie Knupp

ASSISTANT TREASURER—Rachel Huss

To-Wit: Damn My Ears

by S. Sponte, Esq.

Some of you may recall when last we spoke that I was bound and determined to get back to my roots, legally speaking, by doing more of what I used to do way back when I was a young, hungry, angry, passionate lawyer. And no, I don't mean a return to those halcyon days of abusing the minor judiciary.

Rather I mean I had rededicated myself to representing the poor, the oppressed, the needy, those unfortunate folk who don't by themselves have the wherewithal to deal with some of life's less choice compost. Of course for me, and most of us, that means *pro bono* work.

One of the quirkier upsides of doing *pro bono* work is that I actually find it bracing not having to mail out bills every month on these cases. With no anticipation of payment, there is no concomitant frustration at not

getting paid, and, as an added bonus, it saves me a ton of money in postage. In fact, I'd probably be a lot happier if no one ever paid me. Oh sure, I could no longer afford my therapist, but then again if I was happy to begin with, what the hell would I need a therapist for?

So immediately after figuring out how to explain to my partner that I intended to give away even more of my time, I did just what I said I was going to do. I called our bar association's *pro bono* coordinator, a lovely, intelligent, witty and devoted professional administrator, and offered my services.

"What," she replied, "did you lose a bet?"

She was apparently surprised that I, or anyone for that matter, was volunteering, as normally she has to aggressively solicit colleagues to do the work. But when I told her all about the new me, the revitalized me, the

eager and energetic me, she seemed quite pleased. That was a good thing. She never was all that fond of the old me to begin with.

"So," I said, "have you got any cases for me?"

"Not at the moment," she replied, "but I'll keep your metamorphosis in mind."

"Oh, come on, you must have something," I beseeched her, "I'll take anything you've got. I really want to do this."

"Well, I do have one interesting case and it's right up your free speech alley. A landlord is trying to evict a tenant for putting up a "Reelect President Bush" campaign poster in his window."

"What else you got?"

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James A. Wells

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To-Wit: Damn My Ears *continued from page 9*

“I only have one other unassigned case,” she said, “but to tell you the truth, all my entreaties to other lawyers to take this case have fallen on deaf ears.” I could have sworn I heard a chuckle.

She proceeded to tell me that the “client” was a tenant, profoundly deaf from birth, charged with harassment for physically and verbally assaulting his landlord over a rent dispute. “No one wants to take this case,” she said, “so you can have it if you want.”

“Sure,” I said, and the deal was struck. A few days later, I met the client in the *pro bono* office. He came with his signing interpreter and the interview went well. I quickly gauged that he was a quiet and unassuming sort, an hourly laborer working hard to get by, and, judging by his demeanor, most unlikely to have harassed anyone. Once again I saw this as a dispute between the landed gentry and the proletariat, and accordingly I was as happy as a pig in swill.

At the hearing a few weeks later, things went quite well, provided you

don’t count either the result or the five independent witnesses presented by the prosecution to corroborate the landlord’s story. Oh, I tried to shake them, I really tried to undermine their credibility, but the best bias I could come up with was that three of them and the landlord all shared a common gender.

“Look at this face,” I said to the magistrate in closing while pointing to my client, “is that the face of a criminal,” and with that the interpreter, signing so that the client could follow the hearing, also pointed to the client, encircled her face with her hands and assumed the aura of a very young Shirley Temple. It was quite touching.

It was also quite ineffective. The magistrate did not hesitate to find my client guilty and impose a \$25 fine. The interpreter communicated the verdict to the client with a simple gesture that no one could mistake for victory.

The client was quite stoic about the result, at least until we got outside. Then, with no magistrate

around, he pulled a hearing aid from his pocket and commenced.

“Well, you sure screwed that one up, clown.”

I was startled. I had never heard his voice before.

“You can talk,” I exclaimed.

“How’s this for talking,” he went on, “I give you the most sympathetic client in the county and you put me right into the crapper. You #&y*#!&*+ turkey.”

“And I guess you can hear, too,” I said.

“Yeah, well, now hear this,” he said, and the string of epithets that followed was a pretty solid indicator he had not actually been deaf from birth. At its conclusion, he stormed off in his car, burning rubber and leaving me and the interpreter alone on the sidewalk. She looked at me, once again encircled her head with her hands, made a frowny face and then left.

Oh, I know what you’re thinking. You’re thinking that here I was, helping the downtrodden, sticking my neck out for the disadvantaged, ennobling myself and our profession, and then taking it in the throat by a cretin trying to take advantage of the system. Yeah, me too. But really, it’s okay. You can’t be short-sighted when you do these kinds of cases, you simply have to keep your eyes on the prize. This work remains its own reward and though I’m smarting a bit now, I’m sure I’ll eventually find the professional grace and maturity to deal with it.

I’m actually relieved to know this guy can hear. Otherwise the cherry bomb I’m going to set off underneath his mobile home in the middle of the night would be completely wasted. A childish response, yeah, I know, but until all that grace and maturity shows up, it’ll have to do.

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May/June 2004 Trial Term

Jury Trial Verdicts

by Rachel Huss, Esq.

Of one hundred cases set for the May/June 2004 Civil Jury Trial Term, thirty-seven settled, thirty-four were continued, two were non-jury, two moved to arbitration, two will be mediated, summary judgment was granted in one, six verdicts were entered (one from a binding summary jury trial and one from April 8, 2004), one non-suit was entered and thirteen were held to the next trial term. The four cases that were deliberated upon by juries are summarized below.

SOFIA B. PLISKO AND FRANK PLISKO, HER HUSBAND

V.

LARRY E. WILKINS, D.C., AN INDIVIDUAL, AND LARRY E. WILKINS, D.C., P.C. D/B/A LAUREL MOUNTAIN CHIROPRACTIC CLINIC, A CORPORATION NO. 1346 OF 2000

Cause of Action: Professional Negligence—Medical Malpractice

Wife-plaintiff, eighty-three years of age, sought chiropractic treatment from the defendants on November 6, 1998, due to back pain. Plaintiff alleged that during her treatment on November 23, 1998, defendant-chiropractor performed a spinal manipulation in a negligent manner and with excessive force, fracturing plaintiff's L4 vertebra. From and after the fracture of her vertebra, plaintiff has suffered a complete loss of mobility and is confined to a wheelchair. Husband-plaintiff sued for loss of consortium.

Defendants denied all allegations of negligence and contended that defendant-chiropractor complied with all applicable standards of chiropractic care. In new matter, defendants asserted that plaintiffs' claims were barred by assumption of the risk or consent, plaintiff's injuries were the

result of intervening or superseding acts, omissions or other conduct by person or entities not under the control of defendants and for which defendants had no duty or responsibility, and plaintiff's injuries were the result of pre-existing conditions and/or unrelated medical conditions, diseases or maladies of plaintiff and are not related to any negligent conduct of defendants.

Plaintiffs' Counsel: Robert L. Potter, Strassburger McKenna Gutnick & Potter, Pgh.

Defendants' Counsel: Dennis J. Roman, Grogan Graffam, P.C., Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of defendant.

RESOLVE, INC.

V.

STONE AND COMPANY, INC. NO. 3096 OF 2003

Cause of Action: Breach of Contract

In January, 2003, plaintiff and defendant entered into an oral contract

wherein plaintiff agreed to supply heavy construction equipment, operators and maintenance for use by defendant at defendant's construction site at hourly rates agreed upon by defendant. Plaintiff contended that defendant was obligated to plaintiff in the amount of \$22,874.35 (\$31,390.90 for the equipment and labor less certain credits).

Defendant claimed that it was not obligated to plaintiff and set forth a counterclaim, wherein defendant averred that plaintiff breached its agreement by failing to spread, compact and stabilize the soil where the structures were to be placed such that it would not subside. Plaintiff performed excavation, dirt moving and compaction work for defendant in January and February, 2003, at

continued on page 12



Rachel Huss

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Jury Trial Verdicts *continued from page 11*

defendant's location in preparation for the construction and placement of a new ready-mix concrete plant and materials silo, which defendant subsequently erected on the property. During March, 2003, defendant discovered that the fill underneath the plant and silo had eroded away, causing the structures to shift and sink. As a result, defendant was required to raise the concrete plant and replace the silo and underlying soil, incurring expenses in the amount of \$25,374.47.

The issues at trial focused on which party was responsible for directing the excavation and procuring the fill material used. Plaintiff argued that its sole responsibility under the contract was to provide defendant with machinery and operators, and had no responsibility for the design of the project. Defendant argued that plaintiff was responsible for the excavation work and that the work was not performed appropriately.

Plaintiff's Counsel: S. Michael Streib, Pgh.

Defendant's Counsel: Bernard T. McArdle, Stewart, McArdle & Sorice, LLC, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman, President Judge

Result: Molded verdict in favor of plaintiff in the amount of \$22,874.35. On the counterclaim, verdict entered in favor of plaintiff/counterclaim defendant.

ROSEMARY SKAGGS

V.

JEFF BURKHOLDER, INDIVIDUALLY AND T/D/B/A J.L. BURKHOLDER ASPHALT PAVING NO. 4800 OF 2002

Cause of Action: Breach of Contract—
Arbitration Appeal

On July 17, 2001, plaintiff and defendant entered into a written contract whereby defendant was to

blacktop a commercial parking lot and driveways owned by plaintiff for \$9,700.00. The work was completed in August or September of 2001. On or before May 2002, the surface of the blacktopped parking lot and driveways began breaking up in areas where water would accumulate after rainstorms. Plaintiff brought this action against defendant for failure to complete the asphalt work in a workmanlike manner by improperly constructing, pouring and leveling the blacktop such that it was uneven, misformed and misaligned. Plaintiff paid \$2,500.00 for temporary repair of the damage to the blacktop, and contended that permanent repair would cost an additional \$9,700.00.

At trial, defendant contended that he properly constructed, poured and leveled the blacktop in a workmanlike manner. Defendant argued that the base for the asphalt was inadequate and was prepared

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by another contractor. Defendant maintained that plaintiff permitted heavy vehicles to pass over the asphalt after defendant had advised plaintiff that the base may not be sufficient to hold heavy vehicles. Plaintiff contended that she was neither advised by defendant not to permit heavy vehicles to traverse the asphalt, nor did she allow such vehicles over the asphalt. Plaintiff argued that the asphalt laid by defendant was thinner than the terms of the contract required. Further, she argued that if the base of the asphalt was inadequate, defendant should have remedied the base to accommodate the asphalt work performed.

Plaintiff's Counsel: J. E. Ferens, Jr., Waggoner & Ferens, Uniontown.

Defendant's Counsel: Ronald L. Chicka, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of defendant.

**JOANNE BRODRICK AND
WILLIAM BRODRICK,
HER HUSBAND
V.
EDWARD HALUSIC, D.M.D. AND
DAVID O. STEFFENSEN, M.D.
NO. 671 OF 2001**

*Cause of Action: Professional
Negligence —Medical Malpractice—
Loss of Consortium*

Wife-plaintiff brought this medical malpractice action against the defendants, Dr. Halusic, an oral surgeon, and Dr. Steffensen, an infectious disease specialist, with respect to the care and treatment rendered to plaintiff during her admission to the hospital in March, 1999. On March 9, 1999, plaintiff was referred to Dr. Halusic by her treating dentist. Dr. Halusic determined that plaintiff had a massenteric infection. On March 13, 1999, she was admitted to Westmoreland Regional Hospital and diagnosed with a massenteric space infection, placed on an antibiotic and Dr. Steffensen was consulted. On March 18, 1999,

Dr. Halusic performed an incision and drainage of a left masticator abscess. On March 19, 1999, Dr. Halusic removed a previously placed surgical drain. Plaintiff had a difficult post-operative course that included undulating fevers and an episode of anemia, which required a blood transfusion. On March 24, 1999, Dr. Halusic discharged plaintiff from the hospital. On April 11, 1999, plaintiff was admitted to Allegheny General Hospital, and she was diagnosed with osteomyelitis of the mandible and related jaw bones. Surgery was performed on April 12, 1999, and plaintiff was discharged on April 16, 1999.

Plaintiff alleged that Dr. Halusic deviated from the appropriate medical standard of care in failing to take all reasonable steps to extract all infectious material during surgery, in prematurely removing a surgical drain on March 19, 1999, in failing to administer appropriate antibiotics, in failing to timely and appropriately treat

continued on page 14

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Trial Academy Elects Officers

At the Annual Membership Meeting of the Westmoreland Academy of Trial Lawyers held at the Ligonier Country Club, James R. Antoniono assumed the office of President, succeeding Rabe F. Marsh, III. Other elected officers for the 2004-2005 term include: Donald J. Snyder, Jr.—Vice President; Wesley T. Long—Treasurer; and Bernard T. McArdle—Secretary. Board members include Kim R. Houser, Timothy M. Maatta, and Larry D. Loperfido.

The Westmoreland Academy of Trial Lawyers, founded in 1967, includes lawyers skilled and experienced in the trial of civil cases and strives to improve and enhance the administration of justice. Membership is by invitation only.

Jury Trial Verdicts *continued from page 13*

plaintiff's post-operative infection after surgery, and in prematurely discharging the plaintiff on March 24, 1999, when she had an ongoing infection. Plaintiff also claimed that Dr. Halusic failed to disclose the material risks of surgery to plaintiff. Plaintiff alleged that Dr. Steffensen deviated from the standard of care in his management of plaintiff's antibiotics throughout her admission, particularly as to his choice of antibiotic at discharge and that he discontinued her antibiotic therapy prematurely. Plaintiff's husband brought a claim for loss of consortium.

Dr. Halusic contended that he properly managed the plaintiff by admitting her to the hospital, performing an incision and drainage and consulting with an infectious disease specialist. When plaintiff experienced continued difficulties, Dr. Halusic arranged for plaintiff to be seen by Dr. Clemenza and admitted to Allegheny General Hospital. Dr.

Halusic contended that he advised plaintiff of the risks of the procedure and alternatives to treatment. Dr. Steffensen contended that he properly provided antibiotic therapy to plaintiff. Plaintiff had significant allergic reactions to a number of antibiotics. Although the chosen antibiotic was not his first choice, he maintained that the antibiotic he prescribed was appropriate for treatment of plaintiff's infection.

Plaintiff's Counsel: Rolf L. Patberg, Ludwig, Patberg, Dixon & Ging, Pgh.

Counsel for Defendant Halusic: Gayle L. Godfrey, Pietragallo, Bosick & Gordon, Pgh.

Counsel for Defendant Steffensen: Ronald M. Puntil, Jr., Israel, Wood & Puntil, P.C., Pgh.

Trial Judge: The Hon. Daniel J. Ackerman, President Judge

Result: Molded verdict entered in favor of defendants. Jury found that neither defendant was negligent in their care and treatment of plaintiff.

FULL FUNDING RESTORED

CLIENT OPENINGS AVAILABLE IN THE RIP/ATS PROGRAM FOR LEVEL 3 & 4 OFFENDERS

As a result of full state funding being reinstated to the Restrictive Intermediate Punishment/Alternative Treatment Services (RIP/ATS) program, the client capacity has been increased from 20 clients to a 30 client caseload. At this point in time the RIP/ATS Program is operating at full client capacity and immediate client openings exist for eligible Level 3 & 4 offenders. The RIP/ATS Program is a partial level of care which provides clients with 30 hours of intense substance abuse treatment services per week over a 14 week time period. Daily client transportation both to and from services, is provided by the program. If you would like to refer an individual to the RIP/ATS Program or if you have any questions about the program, please contact either Louisa Wotus at 724-830-3482 or Bill Shifko at 724-830-3448, the RIP/ATS probation officers.

Candid Camera: 2004 WBA Family Picnic



“Boy, oh boy, a car wreck!”

“Well, if I had known I'd have to give a specimen to get into the picnic, I for sure would have just stayed home.”



“OK, I'm only going to tell you this one more time ... consideration is the glue that binds the contract together. Think you can remember it now?”



“Damn nice purse,” thinks Moe. “It would go just great with my new spring ensemble.”

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The Pennsylvania Continuing Legal Education (CLE) Board requires Pennsylvania attorneys to earn twelve hours of CLE credit per year, including a minimum of one hour of ethics.

One credit hour is given for each 60 minutes of instruction, not including introductory remarks or breaks, but including question and answer periods. One half-hour credit is given for attendance of at least 30 minutes beyond the initial 60 minutes.

The WBA offers at least one CLE seminar each month and video CLE compliance seminars near the end of each compliance period. At least six

credits are offered at the compliance seminars, including one ethics credit. The cost per credit hour is \$20 for WBA members and \$40 for non-members. (As reported in the last issue of *the sidebar*, the Board of Directors voted to charge \$50 per hour plus a \$100 administration fee per session for any attorney needing an “emergency” unscheduled CLE, and to charge \$70 per hour for non-members.)

Pennsylvania lawyers can earn up to three of the required twelve annual CLE credits online, under the CLE Board’s Distance Learning Pilot Project. Links to approved Distance Learning courses can be found on the CLE board’s website at www.pacle.org.

To determine the number of CLE credits that have been reported to the CLE Board on your behalf, you can check online at www.pacle.org or call 1-800-497-2253. You will need your PA Supreme Court ID number to access your personal records.

LawSpeak

A colleague of mine at the Harvard Law School with whom I got into a tangle about some question of law once chided me, indeed, closed a contentious argument between us by saying, “You take law awfully seriously.”

I said, “That’s one accusation against which I plead guilty without reservation.”

I am bound to say hardly another member of the Harvard Law faculty would have thought of making an accusation. I do take law very seriously, deeply seriously, because fragile as reason is and limited as law is as the expression of the institutionalized medium of reason, that’s all we have standing between us and the tyranny of mere will and the cruelty of unbridled, undisciplined feeling.

— FRANKFURTER, Felix, in Phillips, Harlan B., *Felix Frankfurter Reminisces* (New York: Reynal and Company, 1960) p. 189

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New Member Sketches

L. Anthony Bompiani II was admitted to the WBA as a participating member. A graduate of Hempfield Area High School, Saint Vincent College and the Duquesne University School of Law, Anthony is an associate with Stewart McArdle Sorice Whalen Farrell Finoli & Cavanaugh in Greensburg. He and his wife, Kristina, have an infant son, Domenic, and live in Youngwood.

Stephanie Liberto Hebrank has joined the WBA as a participating member. A graduate of Greensburg Central Catholic, she earned a B.S. in Political Science from the University of Pittsburgh at Greensburg, and her J.D. from the University of Pittsburgh School of Law. Stephanie is a solo practitioner. She and her husband, Timothy, live in Greensburg.

William John Jozefczyk II has joined the WBA as an associate member. A graduate of Charleroi Area High

School, William earned a B.S. in Education and a B.A. in Business from California University of Pennsylvania. He went on to earn an M.A. in Health Administration from George Washington University and his J.D. from Duquesne University.

Deborah S. Miskovich has been admitted as an associate member of the WBA. A graduate of the University of Pittsburgh with a degree in English and Philosophy, and Duquesne University School of Law, Deborah is a solo practitioner based in Pittsburgh.

Andrea Sharretts was admitted to the WBA as a participating member.

Andrea graduated from Sweet Briar College in Amberst, Va., with a degree in English and Philosophy and earned her J.D. from the University of Cincinnati. She is a staff attorney

with Laurel Legal Services in

Greensburg, and lives in Laughlintown.

James C. Ward has joined the WBA as an associate member.

A graduate of Elizabeth-Forward, he earned a B.S. in Natural Sciences from

the University of Pittsburgh and his J.D. from Duquesne University. Jim is an associate with Woomer & Friday in Pittsburgh. A native of Jeannette, he and his wife, Kimberly, have a son, David, and live in Pittsburgh.



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Do You Want to Serve?**Openings on Committees, Board**

The Nominating Committee of the Westmoreland Bar Association is accepting applications for positions on the Membership Committee, Building Committee and Board of Directors. Any member interested in running for these positions should send a letter to the Chair of the Nominating Committee, c/o the WBA, by September 30, 2004. The positions will be filled at the Annual Meeting of the association to be held on April 4, 2005.

Applicants must be active, participating members of the WBA. The responsibilities for each position are as follows:

MEMBERSHIP COMMITTEE

The Membership Committee is the first point of contact that most applicants have with the WBA. One five-year term is available. The Membership Committee member will:

- Attend monthly committee meetings.
- Personally interview and educate applicants on the workings of the WBA, including committee assignments, staff responsibilities, and new lawyer opportunities such as the mentor program, the Young Lawyers, and Pro Bono.

- Make recommendations for membership eligibility with specific recommendation for membership class.

BUILDING COMMITTEE

The Building Committee is responsible for maintaining the management and upkeep of Bar Headquarters. One five-year term is available. The Building Committee member will:

- Attend quarterly committee meetings.
- Be knowledgeable about the utilization of Bar Headquarters for business and social functions.
- Help to develop annual budget for operation of building.
- Make recommendations to Board of Directors on matters of concern in building upkeep.

BOARD OF DIRECTORS

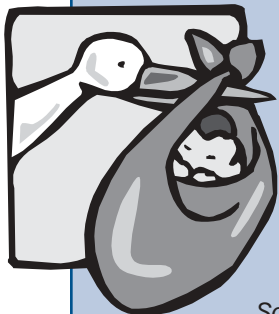
The Board of Directors ensures that the WBA's mission, services, policies and programs are carried out. Applicants should have experience in WBA activities such as chairing a committee, attending bar functions and being active in the bar community. In addition, they must be able to think clearly and creatively, and work well with people, individually and in a

group. One four-year term is available. The Director will:

- Attend all board and appropriate committee meetings and special events.
- Serve on committees and offer to take on special assignments.
- Inform others about the organization and its activities and functions.
- Assist the board in carrying out its fiduciary responsibilities, such as reviewing the organization's annual financial statements.
- Take responsibility and follow through on given assignments.
- Contribute personal and financial resources in a generous way according to circumstances.
- Open doors in the community.

Actions of the Board**JUNE 15, 2004**

- Accepted Membership Committee recommendation: Anthony Bompiani, participating.
- President Johnston attended Medical Society board meeting; WBA board agreed to invite the Medical Society board members to the July WBA board meeting.
- Heard update from President Johnston on establishment of Publicity/PR Committee. Kick-off for this committee will be CLE which will include media representatives.
- Accepted bid from Laminated Products to renovate the kitchen area which will include: plumbing,

***And Baby Makes ...***

Dustin and Lisa Barr welcomed their daughter, Cynthia "Layne" Barr, into the world on June 29, 2004. Layne weighed 8 lb, 3 oz, and joins older sister Laura "Brynne" Barr, nearly 2, at home. Dustin is a partner with Flickinger and Barr in Ligonier.

Scott and Erika Bitar had a baby girl on August 1, 2003, named Baylin Erika Bitar. She is a happy new addition to her three-year-old brother, Scott Bitar, II. Scott is a partner with Bitar & Bitar in New Kensington.

Scott and Monique Mears, Jr., are pleased to announce the birth of their son, Christian Alarek Mears. Christian arrived on July 14, 2004, weighing 7 lb, 8 oz, and measuring 20 inches. He joins big brother Maximilian Robert, 2, at home. Scott is an associate with Mears Smith Houser & Boyle in Greensburg.

wba

wiring, flooring, cabinets, and appliances.

- Agreed to run law journal opinions in their entirety, not split into parts.
- Voted to refer Membership Committee report to the by-laws committee for review and recommendation on classes of membership available with the WBA.
- Voted to present plaque to past chair of the WBF, Marnie Abraham, in recognition of years of service to bar foundation as its Chair and to do so at the July quarterly meeting.
- Agreed to send e-mail ASAP to all bar members with information provided by PBA on the Senate Bill 9, the medical malpractice caps bill.

JULY 20, 2004

- Accepted Membership Committee recommendations as presented: Judith Fischer, associate.
- Investment Advisory Committee has not met; President Johnston appointed Assistant Treasurer DeDiana to serve as chair.
- Westmoreland Bar Foundation received a \$32,000 grant from IOLTA which will be used to take pro bono on the road.
- Publicity Committee has been established.
- Executive Committee of the Inn of Court has decided to include representatives from all Westmoreland County legal organizations (Young Lawyers, Trial Academy, WBA board) onto their board in an effort to integrate and connect all groups.
- PBA Leadership will be traveling to Westmoreland County for Fall Barnstorming September 7.
- Law journal software has been updated so that law journal database is integrated with bar association database.

- Discussed the status of Greensburg Country Club and the fact that the WBA holiday dinner dance is scheduled for December 4; agreed to investigate the feasibility of the club remaining open for the event.
- Authorized the WBA executive committee to enter into contract for 2005 Bench/Bar Conference at Seven Springs Resort.
- Reviewed recommended by-law changes; tabled until language for Investment Advisory Committee responsibilities could be included.
- Agreed to opt-in to PBA-sponsored Estate Planning public education campaign in the Fall.
- Employment Law Committee is hosting a Fall community education program at WCCC on October 26.
- Referred offer from Nevin Mindlin, PBA legislative coordinator, to visit Westmoreland to the PAC.
- Met with Board of Directors of the Westmoreland Medical Society and discussed issues of concern for both professions.
- Discussed holding mixer between WBA and Medical Society members as well as possible adoption of joint resolution on civility and professionalism.

Kemp Wins Five Medals

Kathleen Nagy Kemp earned five medals in the 24th Annual Pennsylvania Senior Games and in the process qualified for six events in the 2005 National Senior Games to be held in June in Pittsburgh.



▲ Kathleen Kemp

Kathleen competed in the swimming competition winning gold in the 100-yard breaststroke, silvers in 200-yard backstroke, 50-yard butterfly and 200-yard breaststroke, and bronze in the 200-yard individual medley. While out of the medals with a fourth place in the 100-yard backstroke, she beat the qualifying time, thus qualifying to swim at the national games in that event as well.

More than 1,800 athletes over the age of 50 competed in more than two dozen sports at Shippensburg University June 26 through July 3.

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Since 1991, the Westmoreland Bar Foundation has raised thousands of dollars to assist the poor, disabled, elderly and children in our community. Through the **Memorial Program**, you can honor a colleague or loved one with a contribution to the Foundation. Your gift will help serve the needs of our own who have nowhere else to turn for legal services.

If you would like to make a gift to the Foundation as a meaningful expression of respect, please make check payable to the Westmoreland Bar Foundation and mail to WBA Headquarters, 129 N. Pennsylvania Ave., Greensburg, PA 15601.



CALENDAR of Events

SEPTEMBER

- 6 Courthouse closed in observance of Labor Day
- 8 Membership Committee, Noon
- 13 Bankruptcy Committee, Noon
- 15 Northern Lawyers, Noon, *King's, New Kensington*
- 18 Fall Gathering, 5:30 p.m., *Latrobe Country Club*
- 21 Family Law Committee, Noon
- Board Meeting, 4 p.m.
- 22 Young Lawyers Committee, Noon
- 24-25 Antietam National Military Park Tour
- 30 Solo Practice/Small Firm Committee, Noon

OCTOBER

- 8 Red Mass, Noon, *St. Joseph's Hall, Greensburg*
- 11 Courthouse closed in observance of Columbus Day
- 13 Membership Committee, Noon
- 19 Family Law Committee, Noon
- Board Meeting, 4 p.m.
- 20 Northern Lawyers, Noon, *King's, New Kensington*
- 21 Elder Law & Orphans' Court Committees, Noon
- 26 Employment Law & Human Resources Forum
CLE, 8:45 a.m. to Noon, *WCCC, Youngwood*

Parting Shot



"Oh God," thinks Pat, "if only I were young again ... and handsome ... and could go for more than four hours without peeing."

● ● ● Fall Gathering

Saturday, September 18, 2004
5:30 p.m.
Latrobe Country Club, Latrobe, Pa.



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