



the sidebar

THE NEWSLETTER OF THE
WESTMORELAND BAR ASSOCIATION
VOLUME XII, NUMBER 6
NOVEMBER–DECEMBER 2000

*In keeping
with the
spirit of
the season ...*



*... the
WBA
wishes you
and yours
the very best.*

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President's Message

Arbitration Is A Balancing Act

by Diane E. Murphy

I am making an urgent plea to the members of the WBA concerning the county's compulsory civil arbitration practice. Our system has been in place for as long as I can remember, as established by Pa.R.C.P. and by the local rules with periodic minor revisions.

I spoke with the managers of the arbitration scheduling, Ginny Selesky and Rose Miller in the



Court Administrator's office, to get their input on this situation. From a master list of the association attorneys, I found out they make a conscious effort to appoint three arbitrators to each panel, such that one member would have a substantial number of years of experience, the second member would be a young lawyer who would not be so experienced, and the third member would be somewhere in the middle, in terms of experience. This gives the panel a nice balance of attorneys with a variety of experience. But more importantly, it creates a panel the litigants can feel comfortable with when presenting their cases.

Usually attorneys are asked one time per year to be a panel member. Because of the size of our bar membership, it is not often that someone is appointed an additional time during the same year.

The majority of attorneys in our association are very diligent in attending when appointed. There are even a few who "pinch hit"

when they receive a frantic phone call from the Court Administrator's office on the morning of arbitration when the regular appointees do not show up and cannot be located. They have graciously given up their morning, with no notice at all, to help. But we cannot expect to call on these few attorneys all the time to sustain the panels from month to month.

The arbitrator's compensation for participating on the panel is still set at \$125 for the day. It was made an association policy about 10 years ago that those fees would be deferred to the Bar Association, but only the fees for the first time per year that the attorney sits on a panel. Any additional times per year that he or she is an arbitrator, they would receive the compensation. So, if an attorney does act as an arbitrator for a second or third time within that year, he or she will be paid their \$125 fee for each of those times.

The current problems with the arbitration system, as I am informed, are that there are some attorneys who absolutely refuse to take their turn as an arbitrator. Some have the foresight to send a substitute, but it is not always someone with a comparable number of years of practice or experience. Very often they send a young associate from their office who may not fit in

with the intended scheme of the panel. The panel then becomes unbalanced because of the lack of variety of panel members.

But, worse than not sending a comparable substitute, it is becoming common for the attorneys to not show up at all, nor send any substitute. Therefore, cases are being forced upon a panel of only two arbitrators if the litigants are willing to have a two-member arbitration panel.

The most common complaint heard is that it is not worth the attorney's time nor the compensation paid for them to show up and be an arbitrator. This appears to be a very selfish approach when weighed against our concerns as to

why lawyers do not have a better reputation in the community and how to raise the respect we desire from our colleagues.

All the Court Administrator's office is asking

All the Court Administrator's office is asking that we personally respond to our summons.

is that we personally respond to our summons. The Bar Association asks that you act professionally responsible for the good of the cause. Not only will the other panel members appreciate your contribution, but even more so will the litigants and clients.

A handwritten signature in black ink that reads "Diane E. Murphy".

WBA Offers Members Holiday Gift

Hope for any special holiday gifts this year? Be sure to count on one from the WBA. If you are planning to practice law through 2005, make a note to be at Bar headquarters Thursday, February 1, 2001, from 4 to 6 p.m. On this date, the WBA is hosting a nationally recognized speaker, Arthur Greene, who will speak about “Facing the Future—Practicing Law in the New Millennium.” This will be a free two-hour CLE seminar for all WBA members and will be followed by a social hour for anyone interested in continuing the discussion.

This seminar is a local response to the American Bar Association’s symposium “Seize the Future” which has studied the changes that are occurring in society and with technology. This important report addresses the trends impacting lawyers and the findings are, to say the least, startling.

If you are not generally familiar with the “future practice of law” predictions, you’ll hear about the issues facing the profession, including: client-based services, economic pressures, price shopping, regional law firms, and non-lawyer, Internet and software competition.

WBA President-elect John Campfield has been an important organizer for the seminar. He has founded a WBA Vision Group

for the purpose of developing a potential road map for responding to changes in the profession. “We have an economy that has enjoyed unprecedented growth and vitality, yet we, as lawyers, are in trying times,” says John. “What is the reason for this paradox and how do we solve it? Finding the answers may become the most significant accomplishment for this generation of lawyers.”

Lecturer Arthur Greene has been a practicing attorney since graduating from Boston University Law School in 1967. His statewide trial practice focuses on land use litigation, business disputes, tax abatement appeals, and personal injury cases. In October 2000 he left a 77-member law firm, where he was a managing partner, to start a four-member firm. He continues his law practice in a small law firm setting in New Hampshire.

As well as working as a law school professor and trained mediator, Arthur is a consultant with AndersonBoyer Group of Ann Arbor, Michigan. He has lectured and written on a variety of law firm issues including “Trends in the Profession,” “Affecting Change

in the Law Firm Culture,” and “Preparing Your Lawyers for the Future.” He has served as Chair of the ABA Law Practice Management Section and is a Fellow in the College of Law Practice Management.

Rosemary Shiels, Director of the Law Practice Management Section of the ABA, describes Attorney Greene as a “forward thinker, someone who is able to speak to the big issues. Many of these topics are too global to put your hands around,” says Ms. Shiels, “but don’t let Arthur’s modest exterior mislead you. He can bring the realities home in a way that solo and small firm practitioners can understand and address on an individual level.”

Add this gift to your holiday wish list and make plans to be in attendance. This is a seminar you shouldn’t miss. Register early. Tell others. Come see YOUR future.



▲ Arthur Greene



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Remembering Philip Corbin, Jr.

by Daniel Joseph, Esq.

It is with great sadness that I write about the passing of Philip Corbin, Jr. Phil was the first lawyer that I ever knew. He had been my family's lawyer before I became a lawyer. Phil was born



on August 15, 1925, and died all too early on October 18, 2000. He was a husband of 54 years to a most wonderful woman, Ann Corbin, and he was the father of two children: Cynthia Corbin McNay and Cathy Mihok.

He was not only the first lawyer that I ever knew, he also provided me with the first date I ever had, convincing his daughter, Cindy, to attend the prom with me. In addition to the immediate family named above, he also left behind a sister, Lorraine Corbin, and his grandchild, Jonathon Mihok. He was preceded in death by both of his parents and by his brother, Robert Corbin.

Phil was a 1943 graduate of New Kensington High School and a Navy veteran of World War II. In 1955 he graduated from the University of Pittsburgh Law

School and served as law clerk for the Honorable Judge Alexander Sculco. Following his clerkship, he entered the private practice of law in New Kensington, Pa. For many years he served as solicitor for the New Kensington/Arnold School Board and was a member of the Westmoreland County Board of Viewers.

When I graduated from law school, preceptors were still required. Phil was more than happy to serve as mine. He exemplified everything that is good about lawyers. When you dealt with Phil Corbin you knew that you were dealing with a man of integrity, wisdom, and compassion. I cannot tell you the number of free legal services that Phil provided for members of his community. I remember numerous situations where members of my family would actually get into

arguments with him trying to pay him for legal services that he had rendered. He always refused.

The most striking thing that I remember about Phil, however, was his personality. He was always a gentleman. I never heard him say a harsh word or complain. Many of you who did not know Phil do not know that early in his legal career he suffered an illness that caused him to be in a wheelchair for the last 30 or so years of his life. He carried on in his practice, as he did in life, as though that wheelchair did not exist.

I know that his family misses him greatly. They loved him as much as he loved them. I know that I am a better lawyer for having known him and I wish that more of my colleagues also could have known him. He is and will always be greatly missed by our legal community.

Looking for a special way to remember someone?

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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 **Special Way to Remember** 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.



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Jury Trial Verdicts

JULY TRIAL TERM

Out of 104 cases set for trial, 31 settled; 42 were continued; three were discontinued; two were dismissed; three moved to Arbitration; two were binding summary jury trials; two were non-jury; and one was tried to a verdict. The successful plaintiff's case is outlined below.

DAVID J. TRUEMAN, AN INDIVIDUAL, V. RON DAVIS, AN INDIVIDUAL, AND KOOL RADIATOR, INC., A CORPORATION, JOINTLY AND/OR SEVERALLY T/D/B/A RON DAVIS RACING PRODUCTS, DEFENDANT V. TONY CONOVER, T/D/B/A TONY CONOVER'S CLASSIC CARS, ADDITIONAL DEFENDANT NO. 405 OF 1999

Cause of Action: Breach of Implied Warranty of Merchantability—Breach of Implied Warranty of Fitness for Particular Purpose—Negligence

The plaintiff purchased two radiators with integral oil coolers from the defendant for use in his vintage 1966 Mustang Shelby GT 350 race car. The radiators were installed by the additional defendant. While racing on two separate occasions, the radiators allegedly developed leaks in the oil coolers and destroyed the engines. Plaintiff brought this action against the defendant for breach of implied warranties of merchantability and fitness for the particular purpose of racing. Damages included the replacement of two engines and accessory parts.

The defendant, in new matter, asserted that the radiators/oil coolers were not defective; improper installation and misuse of the product; and plaintiff's failure to test, inspect and monitor the condition of the car and engines prior to and/or during operation. The defendant joined the additional defendant for improper installation and failure to monitor, check or ascertain the condition of the radiators/oil coolers prior to and during operation of the vehicle.

Plaintiff's Counsel: Bernard T. McArdle, Stewart, McCormick, McArdle & Sorice, Gbg.

Defendant's Counsel: Paul G. Mayer, Jr., Sheehy, Mason, Hitson & Mayer, Pgh.

Additional Defendant's Counsel: Kenneth B. Burkley, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for plaintiff in the amount of \$17,778.72 for defendant's breach of implied warranty of fitness for a particular purpose.

SEPTEMBER/OCTOBER TRIAL TERM

Of the six jury verdicts from the September/October 2000 Civil Division trial terms, only one resulted in favor of the plaintiff. Out of 108 cases set for trial, 38 settled; 35 were continued; one was discontinued; one was withdrawn; two were stricken; four moved to Arbitration; one was a binding summary jury trial; two were tried non-jury; and six were tried to a verdict.

GEORGE AND CLARA SORBIN V. REGIS W. McHUGH, M.D., JAMIE J. McHUGH, JEFFREY WOLFF, M.D. AND JILL G. WOLFF, ORIGINAL DEFENDANTS V. KEN RODDY, INDIVIDUALLY AND T/D/B/A KENNETH RODDY LAWN CARE AND LANDSCAPE MAINTENANCE, A/K/A KENNETH RODDY LAWN CARE AND LANDSCAPING, A/K/A KENNETH RODDY LAWN CARE, ADDITIONAL DEFENDANT NO. 1348 OF 1997

Cause of Action: Negligence—Slip and Fall—Loss of Consortium

continued on page 6

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Jury Trial Verdicts *continued from page 5*

The husband-plaintiff brought this negligence action against the original defendants when he slipped and fell in the defendants' parking lot. The plaintiff, a business invitee, alleged that the defendants allowed a dangerous condition to exist, i.e., an unlit parking lot with black ice existing under a puddle of water that formed due to the runoff water from a snowpile on the property. Injuries included a right distal fibula fracture with displacement requiring open reduction internal fixation. The wife-plaintiff claimed loss of consortium.

In new matter, the defendants asserted that they exercised reasonable care in the maintenance of their premises and had neither actual nor constructive knowledge of any defect or hazardous condition of the premises; they also asserted comparative/contributory negligence. The additional defendant, hired for snow removal and ice maintenance of the parking lot, was joined for contribution and indemnity.

Plaintiff's Counsel: Alexander J. Jamiolkowski, Margaret Egan, Egan Jamiolkowski, Pgh.

Counsel for Original Defendants: Bernard P. Matthews, Jr., Meyer, Darragh, Buckler, Bebenek & Eck, Gbg.

Counsel for Additional Defendant: Tracey A. Wilson, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Defendants.

JAMES T. HOPKINSON V. JENNIFER REINSTADTLER NO. 3958 OF 1997

*Cause of Action: Negligence—
Motor Vehicle Accident*

This negligence action arises out of a motor vehicle accident at the intersection of State Route 136 and State Route 3016. The plaintiff was travelling north on Route 136. The defendant, Jennifer Reinstadtler, was proceeding south on Route 136. The complaint alleges that the defendant made a turn directly in front of the plaintiff and hit the front of the plaintiff's vehicle. Injuries included those to the face and leg, a closed head injury and aggravation of existing medical problems.

The defendant denied that she drove in a negligent manner and asserted that she gave warning to

the defendant by using her turn signal. In new matter, the defendant asserted comparative/contributory negligence; the lack of causal connection between the injuries and damages claimed and the accident; that plaintiff's election of limited tort barred recovery of non-economic damages, and the total lack of negligence of the defendant.

Plaintiff's Counsel: Robert L. Blum, Blum Reiss & Plaitano, Mount Pleasant.

Defendant's Counsel: Dwayne E. Ross, Latrobe.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict for Defendant.

JOSEPH A. CARNERA V. JEAN A. ANTOLINE NO. 4665 OF 1998

*Cause of Action: Negligence—
Motor Vehicle Accident*

The plaintiff brought this negligence action as a result of a motor vehicle accident which occurred on State Route 3077 in Hempfield Township. The plaintiff alleged that he brought his vehicle to a stop as he waited for the vehicle in front of him to make a left turn. The complaint alleges that the defendant's vehicle came into contact with the vehicle immediately behind the plaintiff, which caused plaintiff's vehicle to be struck from the rear and pushed into the vehicle making the left turn. Plaintiff alleged severe injuries to the low back and neck areas.

The defendant asserted all rights, privileges and/or immunities accruing



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pursuant to the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL).

Plaintiff's Counsel: Christ. C. Walthour, Jr., Walthour and Garland, Gbg.

Defendant's Counsel: Joseph A. Hudock, Jr., Summers, McDonnell, Walsh & Skeel, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict for Defendant.

**STACIE L. MINNICH V.
LUCIA MARIE BASSELL
NO. 3050 OF 1998**

Cause of Action: Negligence—
Motor Vehicle Accident

Plaintiff was travelling south along McKee Road in North Huntingdon Township near its intersection with Seminole Drive. The plaintiff alleges that the defendant failed to obey the stop sign restricting defendant's access from Seminole Drive onto McKee Road, thereby striking the plaintiff's vehicle on the passenger side. Injuries to the face, back, neck, left shoulder, left arm and headaches were averred to constitute serious injuries as deemed in the MVFRL.

The defendant raised comparative negligence and the terms of the MVFRL, including but not limited to the "limited tort" provisions.

Plaintiff's Counsel: Gary A. Falatovich, Fisher, Long & Rigone, Gbg.

Defendant's Counsel: Susan D. O'Connell, Law Office of Marianne C. Mnich, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict for Plaintiff in the amount of \$9,372.00. The jury awarded non-economic damages of \$5,000.00,

while the parties stipulated to economic damages of \$4,327.00.

**JEFFREY ADAM POLOVINA V.
RICHARD A. GRIMALDI, D.M.D.
NO. 51 OF 1997**

Cause of Action:
Medical Malpractice

The plaintiff brought this action against the defendant dentist as a result of the defendant's surgical removal of the plaintiff's tooth on

January 12, 1995. Subsequently, the plaintiff developed an infection at the site of the tooth extraction, gums, cheek and face, and a large bubble developed on plaintiff's left cheek. The complaint alleges that the defendant failed to properly perform the extraction and failed to adequately diagnose and treat plaintiff's post-operative condition. Among the injuries alleged were the development of a severe infec-

continued on page 8

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Jury Trial Verdicts *continued from page 7*

tion, scarring of the left cheek as a result of surgery to alleviate the infection, and numbness in the area of the surgery.

In his pre-trial statement, the defendant contended that he examined the plaintiff post-operatively on two occasions, during which the plaintiff made no complaints regarding an infection, nor did the defendant witness any evidence of infection. The plaintiff returned to the defendant on April 13, 1995, and complained of swelling in his cheek which the defendant attributed to a minor muscle spasm. The plaintiff, although instructed to return in two weeks, returned on May 11, 1995, where the defendant observed that his condition had worsened and referred him to an oral surgeon to drain the infection. The defendant counterclaimed for the plaintiff's unpaid share of the cost of the dental treatment.

Plaintiff's Counsel: Dante G. Bertani, Gbg.

Defendant's Counsel: Michael L. Magulick, Wayman, Irvin & McAuley, Pgh.

Trial Judge: The Hon. Charles H. Loughran, President Judge
Result: Verdict for Defendant.

CLARA R. GALLICK AND JOHN GALLICK, HER HUSBAND V. WAL-MART STORES, INC. NO. 4062 OF 1999

Cause of Action: Negligence—
Slip and Fall—Loss of Consortium—Arbitration Appeal

On October 4, 1997, the wife-plaintiff was a business invitee at the defendant's Wal-Mart Super Center in Belle Vernon. The complaint alleges that the defendant permitted a dangerous and defective condition to remain on the premises, i.e., water or foreign substances on the floor which caused the floor to be slippery. The plaintiff slipped and fell on the substance and suffered alleged injuries to the bones, muscles, tissues and ligaments of her right knee, hip and back, and internal injuries. Her husband claimed loss of consortium.

In its pre-trial statement, the defendant maintained that a Wal-Mart employee noticed liquid

dripping from a customer's cart and stood over the spill for approximately five minutes while he waited for another employee to approach the site. The employee walked five to seven feet away from the spill to call for a cleanup when the plaintiff fell.

Plaintiffs' Counsel: John R. Kane, Goldberg, Persky, Jennings & White, P.C., Pgh.

Defendant's Counsel: Cary W. Valyo, Gorr, Moser, Dell & Loughney, Pgh.

Trial Judge: The Hon. Charles H. Loughran, President Judge
Result: Verdict for Defendant.

RHONDA SCHROCK V. KEVIN JOHN JACKSON NO. 5685 OF 1995

Cause of Action: Negligence—
Motor Vehicle Accident—Arbitration Appeal—Binding Summary Jury Trial

On July 29, 1993, the plaintiff was a guest passenger involved in a motor vehicle accident on State Route 66 near its intersection with Alternate State Route 66, within Washington Township. According to the complaint, both vehicles were travelling north on State Route 66 when the defendant failed to observe the vehicle containing the plaintiff and caused his vehicle to crash into the rear of the plaintiff's vehicle. Plaintiff alleged serious injuries to her head, neck and back; and that she suffered a 30% whole person impairment which caused serious and permanent impairment of body functions.

In new matter, defendant raised the statute of limitations, the provisions of the MVFRL and that the plaintiff did not sustain a serious bodily injury, thereby barring plaintiff from recovering non-economic losses.

Plaintiff's Counsel: Timothy P. Geary, Geary and Loperfito, Vandergrift.

Defendant's Counsel: Kim Ross Houser, Mears and Smith, P.C., Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for Defendant. Jury found that plaintiff did not suffer a serious impairment of a body function as a result of the accident.

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ABSTRACTS

REAL ESTATE & MORTGAGE CLOSINGS

PBA Zone 6 Report

by Daniel Joseph, Esq.

Currently the Pennsylvania Bar Association has approximately 27,000 members. The governance of the Pennsylvania Bar Association is through its officers, Board of Governors and House of Delegates. The Commonwealth is divided into twelve zones; Westmoreland, Fayette, Washington and Greene Counties form Zone 6. Each zone elects a Zone Governor who serves on the PBA's Board of Governors for a period of three years. I have been privileged to serve as the Zone 6 Governor since May. I am especially delighted to serve in this capacity during the period of time when Reg Belden will be President of the PBA and Dick Galloway will be Chair of the House of Delegates. In addition, Zone 6's Gretchen Mundorff (Fayette County) will be Secretary of the Pennsylvania Bar Association. As you can see, Zone 6 has a very active and strong presence in the association.

WEB-BASED RESEARCH MAY BE NEW BENEFIT

The PBA is currently considering a contract with an Ohio-based company to provide Web-based research as a member benefit, a move that could result in significant savings for all members. The contract will cost between \$360,000 and \$500,000 per year. Part of this cost will be offset by a \$20 increase in annual dues. As an example of the potential savings, my office currently pays \$150 *per month* for Westlaw services. Should the contract be signed, I will be able to obtain these same services for \$20 *per year*. I have personally tried the service and found it as easy to use and as comprehensive as the West service I now use.

Even though this is a matter that is just being looked into at this time and no definite decision has been made to sign the contract, things do look optimistic. The PBA thinks this could be a very valuable benefit to its members at a very minor cost.

Interested members are encouraged to log onto the PBA's site at

www.pabar.org. It is a very useful site and provides links to other sites.


HOUSE OF DELEGATES PROPOSES NEW PLANS

Most recently, at the House of Delegates meeting which was held in Harrisburg on December 1, 2000, the House approved a prototype mediation plan to encourage government entities to mediate disputes.

Additionally, a membership plan was approved to encourage law students from each of Pennsylvania's law schools to join the PBA and to provide one law student from each accredited school a non-voting seat in the House of Delegates. It is hoped that by involving law students with the PBA early in their careers, they will recognize its importance in their practice.

The next meeting of the Board of Governors will be at the Conference of County Bar Leaders (CCBL) scheduled at the beginning of March 2001 at University Park, Pa. The CCBL involves state and local bar leaders from across Pennsylvania. At this conference, hosted by the PBA, county bar leaders will be exposed to new and better ideas to help their local bar associations.


If anyone has questions concerning the PBA or issues that you would like to see explored, please contact me at (724) 339-1023.



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The First Annual *sidebar* “Oh, You Beautiful Judge” Contest

In our never-ending quest to inform and amuse our members, we are pleased to announce our first annual “OH, YOU BEAUTIFUL JUDGE, YOU GREAT BIG BEAUTIFUL JUDGE” contest. Here’s how it works: on the opposite page are photos of thirteen, count ’em, thirteen of our county’s jurists. Don’t ask us why, but we have even included our appellate court judges.

Your mission, should you choose to accept it, is to match the photos with the names. Simple enough, huh? Ah, but as in all things law-related, things are not as they may first appear.

There are pitfalls aplenty here, so watch your step. First prize is a free one-year subscription to *the sidebar*. Second prize is a free two-year subscription. Oh, I jest, but actually there will be a prize for the winner. For now, we are keeping it a secret. You’ll just have to trust us.

Submit your entry to the Bar Association office by January 20, 2001. In case you couldn’t figure it out, the winner will be whomever has the most correct answers. In the event of a tie, the Editor will decide, in his sole discretion, who the winner is, based solely on who among the finalists he likes the best. You can enhance your chances by kissing up to him right now. He likes Cuban cigars.

*Can’t name all the judges?
Here they are in
alphabetical order:*

The Hon. Dan Ackerman

The Hon. Al Bell

The Hon. John Blahovec

The Hon. Gary Caruso

The Hon. John Driscoll

The Hon. Rita Hathaway

The Hon. Joseph Hudock

The Hon. James Kelley

The Hon. Charles Loughran

The Hon. Anthony Marsili

*The Hon. Richard
McCormick, Jr.*

The Hon. Wm. Jay Ober

The Hon. Debra Pezze

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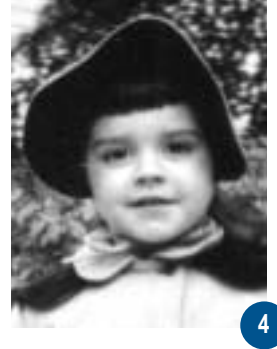
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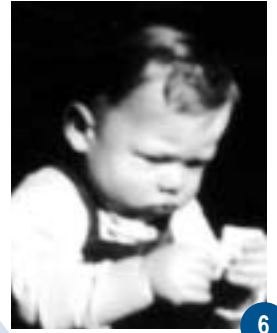
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Lawyers Abstract Company and the Changing Market, Part II

by Michael A. Johnson, President,
Lawyers Abstract Company

For the last three years, Lawyers Abstract Company has continued to provide expanded services during a booming real estate market. Even in the current year, with the real estate market somewhat more subdued, Lawyers Abstract Company continues to provide for the lawyers of Westmoreland County a viable broad-based real estate services business.

The Board of Directors of Lawyers Abstract Company is well aware of the ever-changing market for real estate. We continue to respond to those changes not only through technology upgrades and education for the staff, but also through efforts to expand the marketing and promotion of a business model that stresses the importance of clients being able to use their own lawyer in real estate transactions.

It is important to remember that there is strength in numbers. Given that Lawyers Abstract Company is comprised of over two hundred local lawyers and is growing every day, and given that our lawyer members are some of the most highly experienced real estate lawyers in the county, we believe

the services provided by the company are second to none.

It remains essential for lawyers to be involved on behalf of their clients when it comes to the buying and selling of real estate. There are some current trends in the law that point clearly to this continuing need. On the legislative side, for instance, House Bill 302 is currently pending in the Pennsylvania

Lawyers Abstract Company (“the Company”) was formed in 1989 by a group of concerned local lawyers in an attempt to provide improved service to the founding lawyer members and their clients who are either sellers or buyers of real estate.

In addition to providing improved service to real estate clients, the Company was formed to strengthen the role of the buyer’s attorney with respect to the transaction. The Company has thrived under the watchful eye of Jim Ripple, the Company Manager, Attorney John Shelapinsky, Lawyers Abstract Company’s primary title reviewer, and by the capable work of a most able staff.

Unfortunately, the climate for real estate has not improved significantly over the last eleven years of the Company’s existence. However, the Company continues to assist lawyers in providing quality title and settlement services while maintaining a real estate title presence in Westmoreland County through an organization owned entirely by lawyer shareholders. In this two-part article, some of the issues facing the real estate market and lawyers’ continued participation in that market are addressed. The author is the current President of Lawyers Abstract Company.

House of Representatives. It would impose a duty on sellers of businesses to pay back wages to employees on or before the date of closing and would impress a lien on the transferred assets to secure payment of such obligations. This would profoundly affect the manner in which some of these transactions must be handled. Such new considerations as determining to whom the wage obligations are owed, how much such obligations are and what the components are,

obtaining reliable and enforceable releases from such obligations that will be acceptable to lenders and title insurers, resolution of uncertain lien situations, including the risk of such a lien being filed up to ten days post closing, all signal the need for legal representation at the time of closing.

On another note, *Saula, et al. vs. Stewart Guarantee Company, et al.*

is currently winding its way through the Court of Common Pleas of Westmoreland County, at No. 4486 of 1999. The Defendants in this lawsuit read like a who’s who of a local realtor, local bank, local abstract company and title company. This litigation involves unrepresented buyers who were allegedly uninformed of the legal ramifications of certain recreational area designations on

a recorded plan. At each step of the transaction, from the entry into the agreement of sale until the actual bank closing (which, by the way, involved a title company to which, it is alleged, the buyers were made captive by the lender), no personal lawyer was engaged by the buyers. As a result, the ingress and egress to buyers’ property, as well as the value of the property, has been allegedly severely impacted and resulted in this litigation. It is being prosecuted by

one of one local bar members on behalf of the buyers. Unfortunately, he was not engaged until after closing. Had he been engaged prior to closing, it is likely that all of this litigation could have been avoided.

It is the mission of Lawyers Abstract Company to permit and encourage clients to use their own lawyers for closings. It provides each of us with a very important resource to solve many of the complex financial, legal, ethical and practical real estate matters that lawyers and their clients face today. In this ever changing and increasingly complex real estate market, it

is essential for clients to have access to their own lawyers in such matters and that remains our goal. Knowing most of members individually, I can assure you that the strength of this organization is its members. As the "clients" who utilize Lawyers Abstract Company, its lawyer members and their clients know the importance of the strength of such a relationship. Thus, the next ten years are looking every bit as good as the last ten, and with your continued help and support, I know that the best of times lay in front of us.

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Holiday Dinner Dance

Dashing through the snow, in a one-horse open sleigh. O'er the fields we go, laughing all the way, (ha-ha-ha). Bells on bob-tail ring, making spirits bright. What fun it is to ride and sing a sleighing song tonight.



◀ As Harry Smail looks on, Sandi Davis winds up her soul-stirring rendition of "The Impossible Dream."

▼ "Well, I'm not actually going to bid on it. I'm hoping they'll give it to me on account of my rugged good looks."



▲ "Oh my God, oh my God! The crab puffs look just like Reg!"

▶ "I know you've heard this many times before, David, but you're a true genius."



Palm Device Update

by Chris Haidze, Esq.

For those of you who don't know what a Palm Pilot is, where have you been? Essentially, the Palm is a personal digital assistant (PDA) designed with simplicity and ease of use in mind. The basic function of the Palm is to give you quick access to your schedule, contact list, to-do list and memos. The benefits of the Palm, aside from the information it stores, are many. All of the data on the Palm device is easily synchronized with and stored on your computer. Data can be entered on the Palm itself or on

the computer and transferred to the Palm. Your data, then, is stored in two places in case something happens to the other. The Palm, and most other devices like it, is easily upgradeable and expandable with thousands of software programs available on the Internet, many of them free.

This article doesn't deal with the Windows handheld devices. Having never owned one, I don't know much about them. I do know that they are a little bigger and heavier than the Palm. The batteries do not last as long. They are more expensive. They generally do more. They are more of a hand

computer than a PDA. They run WindowsCE. I don't know if that's a good or bad thing.

Currently, there are about eight Palm devices in production and about four Handspring devices. The Palm devices are the IIIe, IIIxe, IIIc, V, Vx, VII, VIIx and the newest, the Palm M100.

The Palm M100 lists for \$149. The screen is slightly smaller than the other Palm models. It has 2 MB (megabytes) of storage and has snap-on face plates so you can change the color and look of your Palm on the go. It runs on two AAA batteries and has the infrared port for beaming information back and forth with other Palm users.

The Palm III series is the oldest model in production. The IIIe runs on batteries, has 2 MB of storage and lists at \$149. The IIIxe is the IIIe with 8 MB of storage and an upgradeable operating system, which gives you the option of installing all of the latest features when they become available. The IIIxe lists at \$249. The latest in the III series is the IIIc, which is the only color Palm. It is slightly longer than the other III models, has 8 MB of memory and uses built-in rechargeable lithium ion batteries. The IIIc lists for \$399.

The Palm V series is a sleeker, thinner, metallic case Palm. The Palm V includes 2 MB of storage and the rechargeable lithium ion batteries. The Vx is the same, but with 8 MB of storage and a slightly faster processor. The Palm Vx lists at \$399. The Palm V is no longer made.

The Palm VII series features the wireless Internet. The 2 MB VII lists at \$399; the 8 MB VIIx lists at \$449. The VII looks like the Palm III but is slightly longer. With the VII you can check your e-mail on the fly and browse the Web as well. Web browsing is not the same as it is on your desktop.

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The palm.net service uses “Web clipping” to get you the information you are looking for. For more information on the Palms, check out www.palm.com.

If you don't have a Palm VII and still want wireless net access, you can buy the OmniSky modem and service. The modem lists for \$299 with unlimited service at about \$40 per month. Currently, if you pre-pay a year's worth of service, you can get the modem for \$99. Check out www.omnisky.com for more info.

Another new feature for the Palm series is the Kodak camera add-on. You can clip this Kodak device onto your Palm to use the Palm as a digital camera. The Kodak PalmPix lists for \$99.95 and can be used with any Palm device. However, to use it with the Palm V, you need a \$34.95 adapter. Go to www.kodak.com for more info.

There are tons of add-ons and literally thousands of software applications you can download from the Internet and install onto your Palm. Check out www.palmgear.com for just one source of Palm applications.

I have mentioned 2 MB and 8 MB storage in the Palm models. To give you an idea on memory, a 3.5-inch floppy disk that you may use on your computer is 1.4 MB. My Palm V, with 2 MB of storage, fully loaded with all of my information, appointments, contacts, etc., still has about 1 MB of room left. Recently, I purchased an e-book. Yes, you can buy real books and read them on your Palm. The book I bought was the 1980 classic sci-fi novel “Battlefield Earth.” The whole book—1,050 pages—fit onto my Palm. I read the whole thing on my Palm, and I still don't wear glasses.

The Visor, by Handspring, comes in four styles: Visor, Visor Deluxe, Visor Platinum and Visor Prism. Each is very similar to the Palm series of handhelds. In fact, the Visor runs the Palm OS. The major difference is that the Visors have a slot in the back for a cartridge, similar to the cartridge slot on a Nintendo Game Boy, for expansion. The Visors function just like a Palm and run all of the same software.

The \$149 basic Visor (\$179 with synchronization cradle) is comparable to the Palm M100. It has 2 MB memory and runs on 2 AAA batteries. The \$249 Visor Deluxe is comparable to the Palm IIIx. It has

8 MB of memory and runs on 2 AAA batteries. The Visor Deluxe comes in ice, green, orange, blue and graphite colors. The Visor Platinum, which costs about \$299, only comes in silver. The difference between the Deluxe and Platinum is that the Platinum runs the latest Palm OS and runs about 50% faster than the Deluxe. The \$449 Visor Prism is the color Visor and uses built-in rechargeable batteries.

The Visor, as you can see, is very similar to the Palm III series. However, as I mentioned above, the Visor has the expansion slot. What does that mean? Well, it means that you can add functionality simply by slipping a cartridge in. For instance, you can add 8 MB of memory with a memory module, backup the entire Visor with a backup module, easily add a modem with the modem module, play a round of golf with the Tiger Woods PGA Tour golf module and even add a digital phone module. Another difference between the Palm and the Visor: the synchronization cradle for the Visors uses a USB connection, which is much faster and easier to install than the standard serial cradles for the Palms.

More information on Visors can be found at www.handspring.com.

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Ancient Mayans Credited with Inventing Summary Jury Trials

by Judge Daniel J. Ackerman

Four years ago (January 1997), an article appeared in *the sidebar* entitled “Settlement Impasse: A Case for the Summary Jury Trial.” Now the editors of *the sidebar* have asked for an update on the subject (apparently they are not swamped with contributing articles).

For those not familiar with the process, a jury of eight people is selected and counsel for the plaintiff and defendant are each given an hour to make a presentation to the jury, with the plaintiff being given an extra ten minutes of rebuttal. The presentations can include any matter which the parties agree would be proper evidence and may include reading from depositions and expert reports, the use of demonstrative evidence and limited testimony from witnesses. All of this can be interspersed with argument from counsel. The jury is then asked to deliberate and return special findings on which at least six of the eight jurors must concur.

When I first started doing these proceedings, they were primarily used as a settlement tool, but in a few cases the parties agreed to be bound by the outcome, capped by a high/low agreement. Over the years the trend has changed with the parties opting for binding summary jury trials in most of the cases. Its use as a terminal proceeding rather than as a settlement tool seems to occur most often in cases at the lower end of the economic spectrum where the economy of a summary jury trial, held before the taking of expert depositions and taking less than a day, is more apparent. As a settlement tool, I am now convinced that its greatest potential lies with the more complex cases where the stakes are significantly higher. It has, on frequent occasions, removed from the docket trials which would have lasted two weeks or more, and it is with these cases that the worth of the summary jury trial can be found.

LAW SPEAK

Justice is the end of government. It is the end of civil justice. It ever has been, and ever will be pursued, until it is obtained, or until liberty be lost in the pursuit.

—James Madison,
The Federalist No. 51
(1788)

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To-Wit: All the Rage

by S. Sponte, Esq.

Okay, okay, so I'm not the most patient guy in the world. I've heard such complaints most of my adult life, especially on my wedding nights, but by the time those complaints started, I was already half asleep and no longer cared that much.

If you are not a patient guy, the practice of law makes for a poor career choice. There was a time I did indeed have the patience for it. It was on May 18, 1973, from 3:00 pm until about 3:07 pm. Since then however, its been a problem.

With cases typically taking years and depositions typically taking forever, this is a deliberative, contemplative business. As my first employer was fond of saying, since you're gonna' twist in the wind anyway, you might as well learn to like Scrabble.

Me though, I've always hated Scrabble. I used to play it with my mother. I mean, come on, pick the word, play your damn tiles. Every time I said that, she quit. She had no stomach for how the game was meant to be played and would not have made a very good lawyer.

It isn't so much the inherent pace of the law that infuriates me as it is the management of it. Keeping track of files and their contents has always been to me as elusive as the Loch Ness Monster. Nothing in all this world enrages me more than not finding something when I want it. The ensuing conversation between me and my secretary would go something like this:

Me: Where's the file?

Her: I don't know.

Me: @#%A&*

All that has changed now. In

this new world of instant communications, in this seemingly glittering age of computers, e-mails, fax machines and overnight deliveries, paper proliferates at the speed of light, containing about as much matter, and has now as a result elevated my rage to entirely new heights. Nowadays, by the time I receive an overnight document, I have already received a faxed revision followed by e-mailed comments. Before I can even garner a fresh new expletive, I am awash in a sea of paper with no land in sight. *Eo incipio* I have no idea which of the multiplicity of documents I have in my file are the currently operative ones. To draw on yet another tiresome post-nuptial criticism, I can't keep up.

Let me illustrate the point. As seems more and more typical of modern age real estate transactions, I have just concluded a transaction without ever having met a single player. I think there were at least six different versions of the sales agreement in existence before I was even hired. I got lost in the Sargasso Sea of paperwork so early on in the campaign that my final signature version contained several paragraphs that had been rejected by both parties long before I got into the foray.

My client was not pleased by either the work product or the bill that accompanied it. "What the hell kind of work is this?" he bel-lowed at me over the phone. With my years of experience, I knew just how to deal with this kind of fury. I put my secretary on the phone. "Explain it to him," I said and hung up.

It took me a week to figure out what had happened. I had worked on a redraft at home and e-mailed it to my secretary to print. She had

mailed it to the client, he mailed it back with changes, I brought the file up on my computer and made the changes without realizing that the file I was working from was an earlier one and not the one I had e-mailed into the office. That one had never been saved on disk. The conversation that followed this discovery went something like this:

Me: Uh, which version of the contract is this?

Her: What do you mean?

Me: I mean, is this the e-mailed version, the faxed version, the mailed version or the FedExed version?

Her: I think it's the second revised e-mail version.

Me: Wasn't there a subsequent revised faxed version?

Her: Yes, but that was before we got the revised FedExed version which you revised and e-mailed to seller's counsel and which he revised again and e-mailed back to you.

Me: So which version is this?

Her: I don't know.

Me: Well, what about all these other versions of the contract in the file. Do we know which one is the operative draft?

Her: No.

Me: \$#%!%^&!!!!

Now correct me if I'm wrong but if you compare this dialogue to the earlier one, you will no doubt see that in this modern world of computers, faxes, e-mail and overnight delivery, it takes me considerably longer to get to the expletives than before. Now I ask you, is that progress?



Do You Want to Serve?

Opening on WBA Board

Any member interested in running for a position on the Board of Directors of the Westmoreland Bar Association should send a letter to the Chair of the Nominating Committee, c/o the WBA by January 21. There is one four-year position to be filled at the Annual Meeting of the association to be held on April 2 at the Greensburg Country Club.

The responsibilities are as follows:

- Attend all board and appropriate committee meetings and special events.
- Be informed about the WBA's mission, services, policies and programs.
- Review agenda and supporting materials prior to board and committee meetings.
- 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.

Qualified candidates should:

- Possess experience in bar association activities such as chairing a committee, attending bar functions and being active in the bar community.
- Have the ability to think clearly and creatively, and work well with people, individually and in a group.
- Be willing to be prepared for and attend board and committee meetings, take responsibility and follow through on given

assignments, contribute personal and financial resources in a generous way according to circumstances, and open doors in the community.

Additional openings exist on the following standing committees. Interested members are encouraged to contact the Chair of the Nominating Committee:

- Membership Committee—five-year term
- Building Committee—five-year term

Actions of the Board

ANNUAL WBA BOARD/ BOARD OF JUDGES MEETING

- Reported last increase in court-appointed fees was in 1992. Committee Chairs Mike Stewart and David Caruthers were present to request an increase to \$50 per hour for 2001 budgeting.
- Reviewed procedure for being placed on court-appointed lists. Judges reported that each judge has own list and interested Bar members should approach judges on this matter.
- Discussed decrease in revenue from Arbitration Fees. The court reported that there is also a problem with lawyers sending substitutes or not showing up. All agreed this affects panel make-up and attorneys need to serve when assigned a date.
- Reviewed electronic filing, already in use by other courts. Discussed a pilot program. Court Administrator Paul Kuntz indicated that e-filing would need Bar's lead to get started.

OCTOBER 17, 2000

- Voted to pay for three tickets for bar members to attend the annual Boy Scout Explorer's Post dinner.
- In response to Planning Committee recommendation agreed to seek proposals from marketing professionals to determine the future practice of law in Westmoreland and to assist the WBA members with their practices.
- Voted to update the Bar Website as presented by employee Susan Zellner and recommended by Chris Haidze and Diane Krivoniak.
- Agreed to recommend to board of judges an increase to court-appointed fees from \$40 to \$50 per hour.
- Reviewed the change of date for the Joint Reception for Incoming PBA President Belden and Conference of Trial Judges President Caruso. Date was moved from May 18 to June 1 due to conflict with the college graduation date of Judge Caruso's daughter.

On The Move ...

CHRIS VALLANO has joined the firm of Belden, Belden, Persin & Johnston.

GEORGE WELTY has a new address and phone number: 244 West Main Street, Ligonier, PA 15668; (724) 238-5877.

foundation focus



Founding Fellows Recognized

The Westmoreland Bar Foundation recognized its Founding Fellows at the Annual Holiday Dinner Dance on Saturday, December 9. Each fellow was presented with a lapel pin and commemorative plaque bearing the WBF logo.

Through individual contributions from Bar members, the Fellows Fund guarantees the future of Mock Trial Scholarships while allowing startup funding for the endowment fund. The founding fellows members include: Judge Daniel Ackerman, H. Reginald Belden, Jr., Jack Bergstein, Alan Berk, George Berry, Raymond

Bitar, John Campfield, George Conti, Jr., B. Patrick Costello, Judge John Driscoll, Gary Falatovich, Richard Flickinger, Richard Galloway, James Gaut, David Gold, Daniel Joseph, James Kopelman, John Kradel, Aaron Kress, Robert Lightcap, B. Earnest Long, Rabe Marsh III, Gene McDonald, David Millstein, Milton Munk, Jr., John Noel, Vincent Quatrini, Jr., Leonard Reeves, John Scales and Christ. Walthour, Jr.



The Mock Trial program awards two scholarships annually in the amount of \$1,000 each. The foundation's endowment fund supports outreach projects including law-related education, community partnering projects and other philanthropic endeavors.

"Our Founding Fellows recognize the need to expand our commitment into the community at large," explains WBF Chair Gary Falatovich. "The continuing support of our membership is the foundation for our current success and

essential to our future growth."

Membership in the fund is extended to those attorneys who have been in practice prior to 1970. Pledges in the amount of \$2,000 have raised \$60,000 to date. Any member interested in joining the Fellows Fund should contact either Gary Falatovich or Dwayne Ross.

Thank You

by Iva Munk, Pro Bono Coordinator

At this time of year when we are all rushing to meet year-end deadlines I would like to say, "Thank You." My thanks to all the volunteer attorneys and to those who made monetary contributions to the program this year. Also, I would like to thank the board directors who serve countless hours in promoting the Pro Bono program. Your talent and ability made a tremendous difference in the lives of the less fortunate this year.

Best wishes to all for peace and happiness during this joyous holiday season.

Happy Holidays

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CALENDAR of Events

JANUARY

- 1 New Year's Day
- 10 Membership—Noon
- 15 Martin Luther King, Jr., Day
- 16 Family Law—Noon
- 16 Board Meeting—4 p.m.
- 17 Young Lawyers—Noon
- 18 CLE: "Estate Practice and Inheritance Tax Software"—11:45 a.m. to 1:30 p.m.
- 18 Elder/Orphans—Noon
- 18 Inns—5 p.m.
- 19 Ski Outing, Laurel Mountain

FEBRUARY

- 1 Free CLE: "Facing the Future"—4 to 6 p.m.
- 9 Legislative Gathering
- 14 Membership—Noon
- 15 Elder/Orphans—Noon
- 15 Inns—5 p.m.
- 16 New Member Ceremony
- 19 Presidents' Day
- 20 Family Law—Noon
- 20 Board Meeting—4 p.m.
- 21 Young Lawyers—Noon

TOP TEN

Top Ten Reasons To Be Thankful You're A Lawyer

1. The stress will put you out of your misery before you hit 60.
2. Plenty of extra room in your pew at church.
3. Infinite opportunities to add to your spittle collection.
4. Ample time to read all the classics of literature during depositions.
5. Tons of constructive input from the Disciplinary Committee.
6. The excitement of knowing that on any given day a really good friend and colleague could kick your butt halfway to China.
7. The satisfaction of an income wholly dependent on the misery of others.
8. Sending Christmas cards to the clients who adore you takes only one stamp.
9. The warmth and pleasure that only comes from losing cases you believe in.
10. Knowing that your family will always love you as long as you're successful.



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