

Your Best Defense, beginning with this issue, is back on a quarterly basis, offering articles, firm announcements and a wealth of resource and reference materials.

Asbestos litigation continues to defy the predictions of its ultimate demise and the legislative efforts to bring it under control. One of the articles contained in this issue, which I have submitted, looks at the recent *Gregg* decision by the Pennsylvania Supreme Court, which attempts to give the courts of the Commonwealth some guidance in their gatekeeper function of deciding whether an asbestos case goes to a jury or is disposed of at the summary judgment level. Anyone involved in this litigation should look at this decision and its application as these cases move forward.

Warren Siegfried has authored an article which discusses his recent successful experience in handling a case involving a claim by a spectator injured at a sporting event. The article, which details the facts of the case and the opinion of the court, concludes that the courts of Pennsylvania, for the time being at least, do not want to stray far from the "no duty rule" that has traditionally governed these cases.

Another article in this issue deals with defense efforts to keep inappropriate expert testimony from reaching the ears of



an unpredictable jury. Kate Fagan, along with Ian Walchesky, has a detailed discussion of the *Daubert* and *Frye* cases and their impact on efforts to limit who can offer expert opinion and on what matters it can be offered, often overlooked tools which can prove helpful in evaluating exposure in a case and limiting negative testimony.

Finally, Michael Magulick, along with Kristen Lunz, takes a look at two key opinions recently announced by the appellate courts, *Vientiane-Brand* and the *Sackett* line of cases. *Vientiane-Brand* stands for the proposition that an appeal from a compulsory arbitration award removes the cap on damages, which is critical for evaluating exposure, determining if a case should be settled and, foremost, assessing the advisability of appealing an arbitration award. The *Sackett* cases discuss UM/UIIM claims and the circumstances under which election of limits less than liability limits can occur.

We hope you find the Spring 2008 edition useful and informative.

If you know of anyone else who might be interested in receiving an e-mail of this newsletter, please let me know at dforsythe@waymanlaw.com.



SUPERIOR COURT UPHOLDS NO DUTY RULE FOR SPECTATORS

By: Warren L. Siegfried, Esq.

were barred by what was known as their assumption of the risk. Later, as the case law developed and assumption of the risk fell out of favor, the Courts developed the "no duty" rule. Basically, this rule provides that operators of a baseball stadium, amusement park, or other such amusement facilities have no duty to protect or to warn spectators from common, frequent, and expected risks inherent in the activity. *Romeo v. Pittsburgh Assocs.*, 787 A.2d 1027 (Pa. Super. 2001). However, creative plaintiffs' attorneys have attempted and have been successful in creating new ways around the no duty rule.

One such attempt was made in a case that I recently handled. In the case of *Losch v. Little League Baseball*, an action was commenced by the Plaintiffs, Shabnam and Harry Losch. On August 17, 2003, the Losches attended a Little League baseball game at Lamade Stadium in Williamsport, Pennsylvania. The stadium, which is the home of Little League Baseball, is owned and operated by Little League Baseball, Inc. While watching the game from the first base side of the field, Mrs. Losch was struck in the left eye by a foul

In This Issue:

Superior Court Upholds No Duty Rule for Spectators.....	1
Pennsylvania Supreme Court Examines <i>Eckenrod</i> Standard Examined.....	3
Challenging Expert Testimony in Pennsylvania.....	4
Updates on Arbitration Limits and UM/UIIM Stacking Waiver	5
Wayman Watch	8

Lawyers Solving Problems

Court Strikes, continued from page 1

ball, shattering her orbital bone and resulting in loss of sight.

In their lawsuit, the Losches argued the no duty rule was not applicable. Specifically, it was their argument there was an enhanced duty of the baseball facility since Mr. and Mrs. Losch were seated in the handicapped section of the stadium due to Mr. Losch's disability. It was the Plaintiffs' position that the no duty rule did not apply since there were additional protections provided by the Pennsylvania Legislature for disabled and handicapped people.

In further support of their position, the Plaintiffs produced an expert witness who indicated the design and construction of Lamade Stadium did not comply with the American Society for Testing Materials standards as they relate to spectator fencing or the Americans With Disabilities Act as it relates to direct line of sight.

The Plaintiffs buttressed this argument by relying on the Supreme Court case of *Jones v. Three Rivers Management Corp.*, 483 Pa. 75 (1978), which first developed the modern line of reasoning which controls the duty owed to baseball spectators. In *Jones*, the Court reaffirmed that operators of amusement facilities have no duty to protect patrons from risks that are common, frequent, and expected in relation to the activity involved. However, in *Jones*, the Court allowed recovery to a spectator who was walking in an inside walkway when they were struck by a foul ball. The Court in *Jones* indicated the no duty rule should not be extended to a person struck by a batted ball while standing in an interior walkway because this was not "part of the spectator sport of baseball". The Plaintiffs herein have taken this holding and have attempted to argue that, as in *Jones*, the issue is one of location. Their argument was that persons seated in the handicapped section should not have to anticipate the common risks as these locations are specifically designed for persons who may not have the ability to protect themselves. To hold otherwise would render the designation of "handicapped" as a misnomer, as there would be nothing to distinguish this from other seating.

The Superior Court was not willing to make this exception to the no duty rule. During discovery, Mrs. Losch admitted she was aware that foul balls enter the stands and can enter the stands during a baseball game. Specifically, she testified she had attended games at that particular stadium before and was aware foul balls could enter portions of the handicapped section which were not protected by fencing. Further, Mrs. Losch was not disabled. Therefore, part of our argument was any ADA protections would not apply to her and, by creating an exception to the no duty rule, the Court would open up a Pandora's box for this type of claim. For example, it was argued to the Superior Court that creating this exception could also necessitate creating an exception for a handicapped person who is not sitting in a handicapped

seat or exceptions for the very old or very young who are also not potentially able to recognize and protect themselves from potential risks.

The Superior Court agreed the instant case was distinguishable from the *Jones* case. In their opinion, the Court found that Mrs. Losch faced the same risks as other spectators viewing a baseball game. They reaffirmed that a foul ball hit into the stands is inherent to the game of baseball. Finally, the Court stated, "Furthermore, we do not find the need to broaden the holding of *Jones* to spectators sitting in the handicapped section of a stadium as the Appellants have not demonstrated that an owner of a baseball stadium has a duty to protect these spectators where the person struck by the ball is not disabled." The Court further stated the protections provided by the Pennsylvania Legislature for disabled and handicapped people were not relevant to the case at bar. Instead, the Court found the risks undertaken by Mrs. Losch were precisely the type of common, frequent, and expected risks associated with viewing a baseball game. The handicapped area, which ran the entire length of the first base and third base foul lines, was part of the seating at the ball park. Since the Pennsylvania courts have consistently found the no duty rule applies to situations where patrons are seated in an unscreened portion of a baseball stadium and are struck by a foul ball, the Losches, likewise, could not recover.

The Court also did not accept the Plaintiffs' argument with regard to the proposition set forth by their expert witness. It was our position that the Plaintiffs' expert merely showed how the accident could have been prevented with either additional or higher fencing. Under Pennsylvania law, the Plaintiffs would have had to show how Lamade Stadium deviated in design and construction from other Little League stadiums. The Court agreed with our position. Specifically, the Court stated, "The Appellants' argument for additional fencing would lead to the absurd result of screens encircling the entire field." Further, the Court stated the Plaintiffs' expert did not indicate how the ADA applies to Mrs. Losch, who is not disabled. Accordingly, the Court found no merit in the Plaintiffs' claims and upheld the decision finding in favor of Little League Baseball.

Accordingly, for the time being, the Court is holding steadfast to the proposition that an amusement facility is not an insurer of a patron's safety. This decision demonstrates the unwillingness of the Pennsylvania courts to limit the no duty rule of *Jones* and expose amusement operators to additional liability. The practical lesson learned is that when attending spectator sports, be mindful of the inherent risks of the game.

Attorney Siegfried will be happy to discuss these or related issues further if you would like. Please contact him at wsiegfried@waymanlaw.com.



PENNSYLVANIA SUPREME COURT EXAMINES *ECKENROD* STANDARD

By: Dale K. Forsythe, Esq.

Since 1988, when the Pennsylvania Superior Court offered its landmark opinion in *Eckenrod v. GAF Corp.*, 375 Pa.Super. 187, 544 A.2d 50 (1988), Pennsylvania asbestos plaintiffs, defendants and counsel, along with the courts, have repeatedly looked to its guidance in determining whether a claimant could successfully submit his case in front of a jury or be stopped at the summary judgment stage. Under *Eckenrod*, this would be determined by plaintiff's showing of the "frequency of the use of the product and the regularity of plaintiff's employment in proximity thereto" - the "frequency, regularity and proximity analysis" as it has become known.

The Supreme Court of Pennsylvania has now weighed in with a critical opinion discussing the application and effect of this standard. On December 28, 2007, the Supreme Court rendered its opinion in *Gregg v. V.J. Auto Parts Company, et.al.*, 2007 Pa. Lexis 2935 (12/28/07), discussing the standard, its history, and how it should be applied moving forward. The opinion was written by Justice Saylor, and joined by Justices Castille, Eakin and Fitzgerald. Justices Cappy, Baldwin and Baer dissented.

Plaintiffs have historically argued that the *Eckenrod* frequency, regularity and proximity analysis should only be applied where the plaintiff is relying upon circumstantial evidence of exposure; specific, direct evidence of exposure would obviate the need for the test, it is argued. Plaintiffs, in conjunction with this, would assert via expert testimony that a single fiber or minimal exposure to a defendant's product could be causally related to the medical injuries being claimed. Generally, where the test was applied, it would determine if exposure to a particular defendant's product could be seen by a jury as a substantial causation factor.

In *Gregg*, the Supreme Court, after a lengthy analysis of the case law in this and other jurisdictions, adopted the *Tragarz* court (7th Circuit) approach to the frequency, regularity and proximity factors. See *Tragarz v. Keene Corp.*, 980 F.2d 411 (7th Cir. 1992). The Supreme Court did not want the limited use of the standard in only non-direct exposure cases, as plaintiffs would request, and the *Tragarz* approach afforded a broader manner in which to apply the standard. The *Tragarz* court held that the frequency, regularity and proximity factors do not establish a rigid standard for an absolute threshold for liability. Rather, that court, the Supreme Court noted, felt that the factors "are to be applied in an evaluative fashion as an aid in

distinguishing cases in which the plaintiff can adduce evidence that there is a sufficiently significant likelihood that the defendant's product caused his harm, from those in which such likelihood is absent on account of only casual or minimal exposure to the defendant's product." In explaining the *Tragarz* approach further, the *Gregg* court noted that *Tragarz* suggested that the test should be tailored to the specific facts and circumstances of the case, so that its application would be "somewhat less critical" where there was direct evidence of exposure. Where competent medical evidence can establish that minimal exposure can lead to disease, the test would be less cumbersome as well.

Thus, in adopting *Tragarz*, the Pennsylvania Supreme Court rejected that clear distinction between direct and circumstantial cases that plaintiffs would embrace. Since most cases involve some combination of the two, the distinction would be "unrelated to the strength of the evidence" and ... "too difficult to apply."

In addition, the *Gregg* court significantly looked at the common submission of plaintiff expert affidavits attesting that any exposure, no matter how minimal, would be a substantial causative factor in a disease. The court refused to adopt an approach where such generalized opinions would create a jury question in a *de minimus* exposure situation. This would be indulging in a fiction that would not offer a viable solution to these issues. The courts, in determining the merit of a summary judgment motion, "should make a reasoned assessment concerning whether, in light of the evidence concerning frequency, regularity, and proximity of a plaintiff's/decedent's asserted exposure, a jury would be entitled to make the necessary inference of a sufficient causal connection between the defendant's product and the asserted injury."

What this decision will mean to litigants in terms of actual application is unclear at this point. It appears to allow more leeway for a judge to determine if a case should go to a jury, although typically a judge has rather free reign regardless. The refusal to adopt a minimal exposure theory as a matter of course in a *de minimus* exposure case is certainly significant however. However courts choose to apply *Gregg*, it is very likely that this opinion will be cited often as the asbestos litigation moves forward.

Attorney Forsythe will be happy to discuss these or related issues further if you would like. Please contact him at dforsythe@waymanlaw.com.

Lawyers Solving Problems



CHALLENGING EXPERT TESTIMONY IN PENNSYLVANIA

By: *Kate J. Fagan, Esq. and Ian C. Walchesky, Esq.*

Once, expert testimony was merely left to the realm of litigation involving areas of dispute that were foreign to the average juror. Often, these issues included medical issues ranging from the simple to the complex, to engineering, physics, and science. However, along with the adoption of the Pennsylvania Rules of Evidence, the array of fields left amenable to expert testimony has grown exponentially. As Pa. R. E. 702 declares, expert testimony is permissible by an expert qualified by relevant education, training, or experience in any area that may be beyond the realm of understanding of the ordinary person. Today, most cases that proceed to a jury trial involve some degree of expert testimony, either on liability or damages. With the influx of expert testimony, it becomes necessary to identify the various legal and procedural challenges to that expert testimony.

First, anyone familiar with federal court practice knows that the former test for evaluating expert testimony, the test from *Frye v. United States*, 293 F. 1013 (DC Cir. 1923), has been replaced by the test set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Under *Daubert*, the Court is to function as a gatekeeper to exclude unreliable expert opinion and testimony. *Daubert's* analysis is broad, in that expert testimony can be excluded if the testimony is unreliable. The analysis includes whether the expert is qualified to render the opinion that is being provided, as well as if the methodology underlying the expert's conclusion is too unreliable to warrant reasonable results. The term "unreliable" is not specifically defined, but rather is determined on a case-by-case basis. Further, it is clear under *Daubert* that the party presenting the expert bears the burden of establishing the expert's reliability.

Under the *Frye* standard, however, the test for admissibility of expert testimony does not rely on whether the expert's methodology is reliable. Rather, the *Frye* test focuses on whether the science utilized by the expert is generally accepted within the scientific community. At first glance, there may not seem to be much distinction between the two tests. However, the test under *Frye* is far more permissible

of testimony than the *Daubert* test. Under *Frye*, regardless of the methodology utilized by the expert, as long as the actual science utilized by the expert has been accepted by the scientific community, the testimony would be permitted. Thus, even if the expert has overlooked key materials or committed errors, as long as the science is generally accepted, the *Frye* test will allow the expert to testify.

The interesting side effect of the adoption of the *Daubert* standard is that it has opened up a new means of challenge to expert testimony. Specifically, in situations where the expert states mere conclusions and fails to identify the methodology utilized in coming to those conclusions, the *Daubert* standard would permit the opposing party to challenge the expert's analysis as unreliable. In this situation, a party in Pennsylvania could also make a *Frye* challenge to the testimony, as the expert's failure to identify a methodology leaves the Court in the position of potentially admitting unproven scientific testimony. Thus, the *Daubert* framework of challenging expert methodology has opened the door to similar challenges under the *Frye* method, forcing the opposing party to present evidence that the methodology and science is generally accepted in the scientific community, and force an otherwise reluctant expert to divulge his or her methodology.

Beyond the mere *Frye* standard, there are other means of challenging expert testimony that often go overlooked. First, it is important to note that the Pennsylvania Rules of Evidence mirror the Federal Rules, with some slight changes that make it easier to challenge expert testimony. First, and most importantly, Pa. R. E. 403 authorizes the court to exclude any evidence where the risk of prejudice outweighs the probative value of the evidence. This is in contrast to Federal Rule 403, wherein the prejudicial value must "substantially" outweigh the probative value. The official comment to the Pennsylvania rule notes this change, specifically determining that Pennsylvania law only requires the risk of prejudice to slightly outweigh the probative value for the evidence to be excluded. Applied to expert testimony, this is very friendly. Specifically, where the expert testimony is very speculative, based on incomplete evidence, or there are other defects in the opinion rendering the probative value of the evidence minimal, the risk of prejudice can often lead to the exclusion of the evidence in state Court.

Another valuable means to excluding unfriendly expert testimony lies in Pa. R. E. 702, which authorizes expert testimony where the expert is qualified by some level of education, training, and experience to render an opinion. Often, especially in cases involving engineers, parties will obtain experts who testify beyond their field of expertise, even if only slightly. An effective Rule 702 challenge to the expert's qualifications to render the opinion would often have that expert opinion excluded.

Further, it is important to note that in Pennsylvania, parties are not permitted to depose the opposing party's expert

Lawyers Solving Problems

Challenging Expert, continued from page 4

witnesses prior to trial except in the limited circumstances of preserving testimony for use at trial. Further, parties are not required to disclose expert reports until the time of the Pretrial Statement. As such, parties often have limited knowledge of the expert's opinion or demeanor. A challenge under any of these rules presents the possibility to observe the testifying expert before the jury has an opportunity to do so. Of course, parties are cautioned that they must have valid cause under the *Frye* standard and the Pennsylvania Rules of Evidence to move *in limine* for such a hearing. However, assuming that a party has good reason to challenge the testimony under any of these options, the evidentiary hearing before the Court provides an excellent opportunity to observe the expert and assess his or her presentation prior to trial, which can be effective for settlement evaluation.

In conclusion, while the threshold for the admissibility of expert opinion testimony in Pennsylvania is lower than in the federal system, there are still several options for excluding such testimony. First, the methodology may not be clearly identified, warranting a *Frye* challenge in the event the methodology reflects unproven scientific or other testimony. Second, if the risk of prejudice even slightly outweighs the probative value of the evidence, a challenge under Pa. 403 would be appropriate. Finally, the expert may be testifying slightly outside his field of expertise, warranting further challenge. These methods of challenging often go overlooked, and can be excellent tools in evaluating the risks of trial, and in limiting negative testimony.

Attorneys Fagan and Walchesky will be happy to discuss these or related issues further if you would like. Please contact them at kfagan@waymanlaw.com or iwalchesky@waymanlaw.com.



UPDATES ON ARBITRATION LIMITS AND UM/UIM STACKING WAIVER

By: Michael L. Magulick, Esq. and Kristen L. Lunz, Esq.

Vanden-Brand vs. Port Authority of Allegheny County

2007 brought a significant decision on arbitration awards in Pennsylvania, in the case of *Vanden-Brand v. Port Authority of Allegheny County*, 936 A.2d 851 (Pa. Commw. 2007).

On October 8, 2002, Gwen Vanden-Brand sustained an injury when she fell from a bus owned and operated by Defendant, Port Authority of Allegheny County. She filed a Complaint in the Arbitration Division of the trial court, alleging that her claims against the Port Authority were within the \$25,000 jurisdictional limits of compulsory arbitration. After an arbitration panel entered summary judgment in favor of the Port Authority, Plaintiff appealed to the trial court, and a *de novo* trial was scheduled.

Following a brief trial, the jury was instructed that the amount to be awarded to the Plaintiff was to compensate Plaintiff for past and future damages, including those medical expenses which she would reasonably incur in the future for the treatment of her injury. The jury returned a verdict in favor of the Plaintiff in the amount of \$100,000. Defendant filed a post trial motion, seeking to mold the verdict to reflect the \$25,000 jurisdictional limit applicable to compulsory arbitration actions. The trial court refused to mold the verdict holding that because appeals from the arbitration division were *de novo*, the \$25,000 compulsory limit did not apply.

On appeal to the Commonwealth Court of Pennsylvania, the Port Authority argued that the trial court erred in refusing to mold the verdict to reflect the \$25,000 jurisdictional limit on compulsory arbitration claims, contending that Plaintiff initially filed her Complaint in arbitration, but because she failed to amend her claim to allege damages in excess of the jurisdictional limit, she waived her right to recover damages in excess of \$25,000. The Commonwealth Court held that although Plaintiff may not have amended her Complaint or transferred it to the General Docket, the trial court did not err in failing to mold the verdict, because appeals from an arbitration award are *de novo*, and as such, a new trial is to be conducted without conditions placed upon the trier of fact with respect to assessing damages according to arbitration limits.

Lawyers Solving Problems

Updates on Arbitration, continued from page 5

In making such holding, the Commonwealth Court relied on the case of *Weber v. Lynch*, 473 Pa. 599, 375 A.2d 1278 (1977). In that case, our Supreme Court addressed an appeal taken from compulsory arbitration and found that although Section 27 of the Arbitration Act provides for *de novo* appeals from compulsory arbitration, the legislature intended such appeals, once perfected, to proceed to trial with no evidentiary limits upon the parties, other than those which would be applicable to an original trial.

The *Vanden-Brand* decision is important, as the rule in Pennsylvania now appears to be that any appeal from an arbitration award destroys the \$25,000 cap on damages. This will be crucial in evaluating exposure, decisions to settle cases, as well as the decision to appeal an arbitration award.

Sackett I and II

Our state Supreme Court made a significant decision affecting the interpretation of the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law relating to staking of uninsured/underinsured benefits.

On April 17, 2007, the Supreme Court of Pennsylvania decided the case of *Sackett v. Nationwide Mutual Insurance Company*, 591 Pa. 416, 919 A.2d 194 (2007). This case was filed by Plaintiffs Victor M. and Diana L. Sackett. Prior to July 26, 2000, Plaintiffs insured two vehicles on an automobile insurance policy issued by Defendant, Nationwide Mutual Insurance Company. Plaintiff Mr. Sackett was the first named insured under the policy. On July 26, 2000, Plaintiffs acquired a third vehicle, a Ford Windstar, which required Plaintiff to acquire additional insurance. On August 5, 2000, Plaintiff Mr. Sackett was injured in a motor vehicle accident, which was caused by an underinsured motorist.

In 1998, when the subject policy incepted, Plaintiff Mr. Sackett selected \$100,000 in UIM coverage, but rejected stacked limits of that coverage by executing a waiver as prescribed by the Pennsylvania Motor Vehicle Financial Responsibility Law. When the Sacketts subsequently acquired a third vehicle, Mr. Sackett, the first named insured, was not provided an opportunity to waive stacked UIM coverage.

Following the August 5, 2000 accident, Plaintiffs asserted a claim for stacked UIM benefits under the Nationwide policy. Nationwide denied coverage. Plaintiffs thereafter filed a declaratory judgment action asserting that the UIM coverage available under the policy is \$300,000, which is the sum of \$100,000 for each of their three vehicles. The parties filed Cross Motions for Summary Judgment. The trial court found that an insurer “does not have a duty to obtain waivers of stacking when the same named insured simply adds a vehicle to the policy,” and entered Summary Judgment in favor of Nationwide. The Superior Court of Pennsylvania

affirmed this decision, concluding that a waiver of stacking at the inception of a policy is continually binding.

On appeal to the Supreme Court, the Court held that no prior decision by the Pennsylvania Supreme Court addressed the narrow issue of statutory construction raised in the instant appeal. The Court defined this issue as whether the Pennsylvania Motor Vehicle Financial Responsibility Law requires automobile insurers to provide first named insureds the opportunity to waive the stacked limits of uninsured/underinsured coverage for each instance an insured purchases UM/UIM coverage by adding a new vehicle to an existing policy.

The Motor Vehicle Financial Responsibility Law provides that “each named insured purchasing uninsured or underinsured motorist coverage . . . shall be provided the opportunity to waive the stacked limits of coverage.”

The Court found that “once the Sacketts purchased coverage for the Ford Windstar, the available sum of stack limits increased. Naturally, an insured “purchasing” UM/UIM coverage could not waive the actual stacked limits available to him or her unless that waiver was made after coverage for the newly added vehicle was purchased.” The Court further found that Section 1738(a) makes it clear that an insurer must provide a stacking waiver each time a new vehicle is added to the policy because the amount of coverage that may be stacked increases. The Court found that Mr. Sackett was denied the opportunity to waive the increased stack limit of UM/UIM coverage because Nationwide did not provide the required rejection form, and thus did not meet the requirements of the Motor Vehicle Financial Responsibility Law.

The Court further held that this holding does not extend to circumstances where an existing named insured simply replaces a vehicle, or renews an existing policy. The Court reasoned that such changes are not “purchases” of coverage within the meaning of Section 1738.

Following this decision, which is referred to as “*Sackett I*,” the Pennsylvania Supreme Court granted Nationwide’s application for re-argument. On December 7, 2007, after accepting said re-argument, the Supreme Court held that the extension of coverage under an after-acquired vehicle provision to a vehicle added to a pre-existing multi-vehicle policy is not a new purchase of coverage for purposes of Section 1738(c), and thus does not trigger an obligation on the part of the insurer to obtain new or supplemental UM/UIM stacking waivers. However, where coverage under an after-acquired vehicle clause is expressly made finite by the terms of the policy, *Sackett I* controls: it requires the execution of a new UM/UIM stacking waiver, upon the expiration of the automatic coverage, in order for the unstacked coverage option to continue in effect subsequent to such expiration.

Accordingly, after *Sackett II*, there are two scenarios that follow when a consumer purchases a new vehicle, varying

Lawyers Solving Problems

Updates on Arbitration, continued from page 6

based upon the “after acquired” clause in the policy. Under the first scenario, the new vehicle is covered automatically, under the terms the existed before the new purchase, and no waiver is required. Under the second scenario, the newly acquired vehicle is covered for a finite period, under the terms of the policy prior to the purchase. However, when that time period expires, a new policy is issued, and thus a waiver is required under the MFVRL.

Much “*Sackett*’ litigation can be anticipated, as the rules set forth in *Sackett* require fact-intensive inquiries of future courts deciding these issues, and insurance companies will likely adjust their policies based on the *Sackett* decisions.

Attorneys Magulick and Lunz will be happy to discuss these or related issues further if you would like. Please contact them at mmagulick@waymanlaw.com and klunz@waymanlaw.com



Wayman, Irvin & McAuley, LLC
www.waymanlaw.com

437 Grant Street
Suite 1624 Frick Building
Pittsburgh, PA 15219
(412) 566-2970

PRSRT STD
U.S. POSTAGE
PAID
McMURRAY, PA
PERMIT NO. 111

Wayman Watch...

- *The firm is proud to announce that Michael Magulick has been selected by his peers as one of the Best Lawyers in America for 2008. Pittsburgh Magazine has also recognized him in their February 2008 edition highlighting Pittsburgh's Best Lawyers. Congratulations Mike!*
- *Dick McMillan's son, Sean, is graduating in May from the University of Richmond with a double major in accounting and economics, and he has been hired by the Pittsburgh accounting firm of Schneider Downs & Co., Inc.*
- *Dick's daughter was recently recognized by the Columbus Theater Round Table with their award for the Best Actress in a Leading Role for her portrayal of Queen Elizabeth in the play, Mary Stuart.*
- *Dale Forsythe, Jim Creenan and Krista Orashan will be presenting Liability Update to CNA's regional claims offices in Reading, PA in April.*
- *Warren Siegfried was recently a presenter at the TIDA national seminar in Atlanta. The topic was bias in the trucking industry and early intervention in catastrophic loss cases.*
- *Dale Forsythe and Greg Knight will be presenting Liability Exposure for the Mortgage Broker to the western regional meeting of the Pennsylvania Mortgage Brokers Association in Pittsburgh on March 18, 2008.*

