

## From the President's Notebook

By Joseph Mirrione



My term as president is nearing its close. As I reflect on our progress throughout the year, I pause to remember all of the work that has been done by our past presidents. They helped build a solid foundation through their hard work, persistence and foresight. This edition is dedicated to them, to tell their stories.

One of the giants of our profession left us a reminder that guided our past presidents then and our membership now;

**"It is not about how they came to us, it is about how we leave them . . ." (Moe Levine)**

Our past presidents established the tradition of teaching and sharing with each other. And what have they shared with us about our clients? That when we prevail, they are better off than when we lose, of course, but in every case it is about how we represented them, with sincerity and true effort.

In over thirty years of litigating cases it has always been a struggle to find the right balance of style and substance, story and evidence. Every case and every trial is unique. Trial law is a career that is full of "passion and action," never two days the same. This is both a curse and gift.

Whatever its ups and downs, however difficult the challenges we face are, Moe Levine reminds me of what is at the core of our profession. It does not matter how the person comes to your door, generally broken, hurt and in need of help. What matters is that we listen with our hearts and then tell their stories. We advocate for them and this advocacy builds relationships that stay with us forever. Here is an excerpt from a letter, something I hold dearly;

*"You told my story the way I would have told my story. That's the important thing here. You provided your skills to portray my vision of what happened. That was your job and you did it to the best of your ability. I do agree with my many of the trial calls that you made. I trusted what you were doing knowing that you were looking out for my best interests and to properly identify to the jury what our case was about. I was very happy with your closing argument. You touched on all of the areas that I though needed to be addressed. Thank you for treating my wife with such kind hands. Thank you for treating my son with kind hands. Thank you for treating my friends with kind hands. Thank you for treating me with respect. I am glad to call you a friend now."* (Reprinted with permission)

We are advocates, builders of trust, and whether we work with clients for a short or long time, we create relationships that stay with us forever.

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By David Rosen

Here's a first. Some of our past presidents, inspired by President Mirrione, have written short pieces about the law, their trials, or the CTLA. It's a great window into the thinking of some very interesting people, and there's a good amount of wisdom there as well. We also have a group of notable verdicts and settlement, and Bob Carter's workers compensation column. Read it:

it's the nicest skewering of bad logic going. And after you do all that, hold onto your hats for a Presidential campaign that's going to have all kinds of — shall we say, interesting — things to say about trial lawyers, not to mention the individual rights we defend. It may be too soon to predict just what issues are going to be pumped up during the months to come,

but we can be sure that in some important ways our jobs will be harder, and more necessary, as a result of eruptions created for bad reasons. Until then, enjoy this issue!



# CTLA Forum

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## How It All Began

By Bill Davis  
President 1976-1977

In August, 1946, a group of nine workman's compensation attorneys met in Portland, Oregon, to form a national organization to combat inequities in workman's compensation law. Benjamin Marcus of Detroit, Michigan, was the first president of this organization, which was named the National Association of Claimant's Compensation Attorneys and referred to as NACCA. Shortly thereafter, this group expanded to include personal injury lawyers throughout the country in other areas of tort law. The organization held annual summer conventions in cities throughout the United States devoted to improving legal representation through lawyer education.

In the summer of 1955, a group of lawyers from Connecticut attended the NACCA summer meeting and returned enthused over the educational seminars presented. They were determined to form a Connecticut trial lawyers group with the same goal as the national organization, that is, to improve the quality of representation by education. Attorneys Leon RisCassi, Ted Koskoff, Marshall Feingold, Sigmund Miller, Charles Segal, among others, comprised this group.

A meeting was held at the Heublein Hotel, and the concept of forming a local group was discussed. I had just begun the practice of law as an employee of Leon RisCassi on Tuesday, May 31, 1955. He, at that time, was a solo practitioner who had served in the Legislature as a State Senator and Majority Leader. He had decided to leave politics and specialize in personal injury law. I was present at this initial meeting, solely because of my employment and, thus, was witness to the decision to organize. The organization was named NACCA of Connecticut so as to identify with the national organization.

One of the highlights in the early years of the Connecticut chapter was a seminar and dinner held at the Statler Hilton Hotel in Hartford in 1960 with Lou Ashe, then president of NACCA, in attendance. It was this event that encouraged lawyers to join Connecticut's developing organization. The first meetings were held at various locations throughout the state. Trial strategies, recent court decisions, jury selection, and other similar issues served as the topics of discussion.

The defining moment in the early history of the organization occurred in the late 1960's and early 1970's when there was a nationwide attempt to introduce no-fault insurance into the various states by legislation. Connecticut, because of its prominence as the insurance capital of the world, was targeted for this legislation; and local insurance companies spearheaded a drive to introduce legislation to limit the right to maintain third-party actions in automobile cases based on medical expenses. The then Connecticut Trial Lawyers mounted an attack on this legislation culminating with an appearance at the legislative hearing with injured clients to voice the inequities of the proposed scheme. The result was a compromise, which did not seriously affect the rights of the injured. This battle established the CTLA as a force to be recognized with in efforts by corporate interests attempting to limit the rights of the injured victims.

Much has changed over the years. The growth and expanding membership required an executive director and staff to run the organization. Fred Gross, Alice Ayers, and Neil Ferstand have

occupied that position since 1975. Originally, the affairs of the organization were managed out of the office of the president. This was the case for some twenty years, which serves to emphasize the dedication and commitment of many early presidents.

As it was in its inception, the primary goal of the organization should always be the education of its members and the exchange of ideas to better serve the clients we represent. On a personal note, this journey, from the early days of what is now CTLA to the present, has been a fulfilling and rewarding experience which continues to the present day. We all owe a tremendous debt of gratitude to those who served so faithfully in those early days.

## That Year Was a Number of Firsts

By Tony Piazza  
President 1983-1984

Tony Piazza was President of CTLA for 1983 to 1984. That year was a number of firsts:

1. First year to have an executive committee;
2. First year to have a retreat of the members of the Board;
3. First time the College of Evidence was held; and
4. First time CTLA and Connecticut Bar had a joint annual meeting.

but most importantly this was the year when CTLA was a driving force and backed by a number of plaintiffs in the matter of *Mary D. Pellegrino v. William A. O'Neill* 193 Conn. 670, 480 A.3d 476.

"Plaintiffs in various civil actions brought action seeking a declaration that financing provided for the state judicial system was unconstitutional because of congestion and long delays in reaching trial in civil cases in certain judicial districts. The Superior Court, Judicial System of Hartford-New Britain at Hartford, Ripley, J., dismissed the action, and plaintiffs appealed. The Supreme Court, Shea, J., held that determination of whether financing provided for the state judicial system was unconstitutional due to congestion and delays in reaching trial in civil jury cases in certain judicial districts was nonjudicial, that is, not capable of resolution on the merits by judicial action."

Note Peters, J. dissented and filled an opinion in which Grillo, J. joined.



First College of Evidence was chaired by Tony Piazza and Dale Faulkner.

(Continued on page 180)

## There Were a Lot of Firsts This Year

(Continued from page 179)



Wes Horton, Ted Koskoff, Steve Friedler and Tony Piazza at a news conference when the suit against Governor O'Neill was filed.

Here is a copy of the first article Mr. Piazza wrote for the New York Times which explains CTLA's position.

*The New York Times, Sunday, September 11, 1983*

### The New York Times Connecticut Opinion

By Anthony A. Piazza

#### Justice Delayed Is not Justice

If you live in Connecticut and are injured as a result of the negligence of an automobile driver, the design of a defective product or malpractice, you have the longest trial delay in the United States.

Ask Mary Pellegrino. While waiting in her car at a red light, she was hit by another driver on Dec. 18, 1974. Since then, she has had extensive surgery, was forced to leave her permanent job, has been dunned by bill collectors and has aged nine years.

Now a grandmother, she says, "At the time of the crash my children were still in school." If Mary Pellegrino's suit was in Springfield, Mass., just up the Connecticut River from where the crash occurred, her wait for a trial would have been eight months.

Mary Pellegrino and 13 others are suing Governor O'Neill and the State of Connecticut for violating their constitutional rights to trial without delay. This suit cites a provision of the Connecticut Constitution that guarantees "remedy by due course of law. . . without delay."

The 14 plaintiffs are asking that the judgment be made at the financing of the state judicial system in Connecticut is



CTLA and the Connecticut Bar had their first joint annual meeting. . . it also was the last joint meeting. Note everyone in this photo is now dead but me!

unconstitutional under Article 1, Section 10 of the Connecticut Constitution and Article 14, Section 1 of the United States Constitution, because of the delays in reaching trial in civil jury cases in Hartford, New Haven, Bridgeport and Stamford. They also ask that an injunction be issued to enforce compliance with any such judgment.

Why do Connecticut's courts have such delays? Connecticut's Judicial Department needs more judges, courtrooms, court personnel and money. In fiscal year 1981, the Judicial Department's expenditures were \$47,646,484. For the same year, its general revenue from bond forfeitures, fines, fees, and other revenue was \$40,664,469.

This means the total net expenditure for the judicial branch was less than one-half of one percent of the total state budget. No wonder the system is not working.

The State of Connecticut ranks 48th out of 50 states, only ahead of Arkansas and tied with Indiana, in the total operating expenditures of the State Judicial Department as percent of personal income. The per capita income in Connecticut in 1982 is the second highest among the 50 states. No wonder Connecticut has the longest jury trial delay in the nation.

The latest biennial report of the Connecticut Judicial Department noted that Stamford had nine jury trials from July 1981 to July 1982. At the same time, the number of pending jury cases increased from 1,377 to 1,626. The jury trial lists have added more cases than have ever been disposed of for every year from 1978 to the present.

As Chief Justice John A. Speziale of the State Supreme Court has said, "Connecticut's trial bench has yet to be expanded to meet the needs of the caseload increase experienced during the 1970's."

In 1981 the Judicial Department requested 15 new judges. Three were approved. In 1982, the Judiciary asked for a substantial number of new judges. The legislator's Judiciary Committee approved 12. Funding was appropriated for only five positions.

This means there will be no increase in trial judges, since five judges will be removed from trial level to staff the new Appellate Court.

There are 600,000 cases filed in Connecticut's courts each year. As Justice Speziale notes, "This total is equal to one case for every man, woman, and child in towns of Hartford, New Haven, Stamford, and Waterbury."

Who suffers from the understaffing? Not the judges, clerks, secretaries, legal research staff, probation and family offices and other personnel, but injured victims. The injured have one last insult — the system they turn to for help.



## When is it Time To Say Goodbye?

By Jim Bartolini  
*President 1989-1990*

About 15 years ago, I tried a case to verdict against a lawyer who had graduated from college with my father in 1935. He had had a long and distinguished career as an insurance defense

lawyer. By the time we tried our case, he was a caricature of his former self. He had long hair which he dyed jet black. His skin was pasty white, creating a ghostly if not ghoulish appearance. The case itself was a routine auto with the entire focus on damages and value.

This defense lawyer (many years deceased at this point in time) practiced with a style that served him well 20 years earlier but which seemed overly theatrical and inappropriate to the current culture. I knew that he had the habit at final argument of pulling some “surprise” out of a black doctor’s bag. He kept the bag under the defense table. During argument he would snap it open and pull out items to demonstrate his major point. Of course, these items were never marked as exhibits but rather were hand-selected props that he felt would drive home a point.

During my final argument, I anticipated this ploy and emphasized to the jury (and judge) that the lawyers were restricted to those facts and exhibits admitted during the trial. I told him that if either myself or defense counsel tried to use or refer to anything outside the admitted evidence, it would be the responsibility of the other lawyer to alert the judge. Even with this prologue, half way into his final argument out came the black bag. He plunked it in front of the jury, popped open the top and began to pull out the props to “illustrate” his argument. I jumped to my feet and quietly asked the judge to order defense counsel to put the items back in the bag as they were not properly before the jury for consideration. He protested long and vigorously that the items were only for illustration, but to no avail. Restricted, he became completely unhinged. He lost the thread of his argument. He concluded his argument by throwing all the papers on his table to the floor (a theatrical flourish that he also used many times before) and proceeded to mock my client’s physical ailments by performing sit ups and other postures on defense counsel’s table (many years earlier he had delivered a memorable final argument in a defective ladder case while standing on the top rung of the ladder). On rebuttal I simply told the jury that I would not insult their intelligence by performing a side show such as the one that they had just witnessed.

Two seasoned claims adjusters had watched the final arguments and one later told me that as they drove away from the courthouse they discussed the fact that not only did they expect to get whacked in the case, but that also it had become apparent to them that this lawyer who their carrier had used to defend their “clients” so many times in the past, had lost his edge. I believe that may have been the last case that he ever tried for that carrier.

Over the years, I have often thought back to that case as a cautionary reminder: When is it prudent to bring in a younger associate to assist with the trial? (My adversary was a loner.) Obviously, how one person ages in the profession varies widely. Some trial lawyers peak and burn out at a very young age, while others in their 70s and even 80s are still effective advocates in the courtroom. But how many Roger Clemenses are there (with or without performance boosters)? Even Gerry Spence seems to have finally hung up his spurs.

One of my former colleagues and mentors once remarked that “every trial is a nail in your coffin.” How many nails have you pounded in so far? How many more before the lid is hammered shut?

Each of us has been given the opportunity to represent people whose lives have been dramatically and tragically altered. Each of us carries the responsibility to represent these individuals at a level of professionalism that is demanding and often exhausting. We need to look in the mirror and ask the hard questions: When is it time to share the heavy lifting of a complex trial with an associate? When is it time to step back? And when is it time to say goodbye?



## A Trial is a Drama, Not a Play

By Richard A. Silver  
*President 1991-1992*

When I first started trying cases a number of years ago, cases were tried *mano a mano*.<sup>1</sup> Oftentimes witnesses were called without any prior notice, and without deposition. Trial lawyers

had to rely on their instincts and judgment.

Over the years, with the advent of greater formal discovery, stricter disclosure rules, and the development of technology, trial lawyers increasingly rely on their pre-prepared outlines and power-point presentations. However, a trial is a drama, but not a scripted play. Too much reliance on a scripted presentation can at times impede taking advantage of the moment. To add drama to a case and to tell a story, one must be prepared to respond to the unexpected events that arise during trial.

In this era of jury and trial consultants, and power-point presentations, it is important to remember as a trial lawyer, that no matter how much time and care you put into preparing your strategy and theme of the case, there will be moments when the best advocacy requires that you deviate from that theme. The “deviation” allows the advocate to capitalize on the golden opportunities that arise unexpectedly, as the drama of the trial unfolds.

Examples taken from a most recent trial illustrate that dramatic change in strategy can change the dynamics of the trial. The trial concerned a medical malpractice case against an obstetrician for negligence during delivery. The claim of negligence was that the defendant obstetrician failed to appropriately respond to an emergency condition of an abnormally low fetal heart rate and a compressed umbilical cord by performing a “stat” emergency cesarean section. Instead, the defendant obstetrician inappropriately continued to attempt to deliver the infant vaginally for an extensive period. The defendant obstetrician finally performed a c-section, but failed to perform it as a “stat” emergency. These errors cause the child permanent brain damage and cerebral palsy.

Counsel for the defendant obstetrician used a power point presentation to highlight a major part of his opening statement, the exact weights of each baby. He emphasized that the infant (the second born of twins), had failed to thrive in utero, as evidenced

<sup>1</sup> *Mano a mano* is a Spanish construction meaning “hand to hand.” It was used originally for bullfights where two matadors alternate competing for the admiration of the audience. This term has been adopted in English with similar meaning, possibly by Ernest Hemingway. The English adoption can be likened to the phrases “one on one,” “head to head,” or “single combat.”

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## A Trial is a Drama, not a Play

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by the fact that he was significantly smaller (4 lbs, 12 oz), compared to his stronger twin sister (5 lbs, 7.4 oz at birth — an 11 oz difference) and that the disparity in weights justified continuing with vaginal delivery in the face of a compressed umbilical cord. He argued because the first twin was almost a pound larger, she had paved the way for her smaller twin brother, and thus the defendant had every reason to expect the second, significantly smaller twin would be delivered vaginally. Unfortunately for defendant's counsel, he had relied on incorrect and inaccurate data. The second twin actually weighed approximately 11 oz more than the first twin.

Defendant's counsel's mistake opened up an opportunity to discredit the opening presentation. It was important to capitalize on this error while defendant's counsel's opening statements were still fresh in the jury's mind.

The first significant witness scheduled was the circulating nurse, who was the head nurse during the labor and delivery. The outline for her examination had been prepared over days, and the plan was to cover her background and experience first, in order to lay the groundwork for her knowledge in interpreting fetal monitoring strips, to establish that the baby had no pre-existing medical problems prior to delivery.

In the face of this golden opportunity, the outline was abandoned. Instead of covering the nurse's background, training and experience first, as originally planned, within the first few minutes of direct examination it was established that the nurse was responsible for charting the medical record, that the infant was transported to the neonatal unit, where he was weighed, and his weight was 11 oz more than the first twin. The correct weight was further highlighted by going through every note on the day of birth in which the weight was recorded. Under the circumstances, there was no opportunity to prepare a formal demonstrative exhibit. Only old-fashioned methods were available — a large easel pad and thick black magic marker. I wrote the weights in large print as the nurse testified. Just minutes into the examination, the marker and pad destroyed one of the major parts of defendant's counsel's argument. The same information would have been presented to the jury if the outline had been followed, but it would not have had the same impact.

One must be prepared to deviate from the "script" even with one's own witness. Plaintiff's expert obstetrician was expected to take the stand immediately after lunch recess in the afternoon. The witness was extremely prepared, and was ready to commence the examination with the prenatal history through to time of delivery. However, the resident who had participated in the "emergency" c-section was on the stand before her, and his testimony went longer than expected, so ultimately there was only one half hour left to commence with plaintiff's expert obstetrician at the end of the day. With so little time left, it would have been easy to just follow the outline, which required going through the expert's background and establishing her qualifications.

But in light of the resident's testimony, this was a compelling opportunity to really drive home the point that the c-section was not performed in a "stat" emergency manner. The resident had just finished testifying about how the c-section was performed "meticulously," and how he did not think it was a "stat" emergency section, rather he thought it was performing an urgent section. An urgent section, he explained, needs to be done quickly, but there is more time than in a "stat" section. He also testified

that he had performed essentially half of the surgery. The obstetrician would cut half of each layer, and then pass the instrument to the resident so that he could cut through the other half. Obviously a slow and tedious process.

Prior to taking the stand plaintiff's expert had been clear that performing a "meticulous" surgery and passing instruments with a second year resident was not performing a "stat" section. Instead of covering the expert's background with the 30 minutes we had left that afternoon, I decided to "cut to the chase," and begin with her opinions relating to the performance of the c-section.

I began my examination by saying "we only have about a half an hour, so I just want to ask you a couple of questions about your background and then a couple of points and then I will get back to your background," in order to signal to the jury that her background would be covered in detail later. Only a few minutes were allotted to her specialty and the fact that she had delivered thousands of babies. Then the examination immediately delved into the difference between an urgent section and a "stat" emergency section. She explained that a resident would not participate in a "stat" section. Instead, the most experienced surgeon should perform the entire incision herself, cutting through each layer in one stroke, as quickly as possible. A "stat" section is not performed in a slow, meticulous manner.

Our case was best served by taking advantage of the juxtaposition of our expert's testimony with the resident, who had just described the factual essence that the c-section had not been performed in a "stat" manner. By the end of the half hour, our expert established the point that the defendant obstetrician had failed to perform a "stat" c-section by utilizing the hospital resident testimony.

While it is always important to prepare and plan your main themes and outline your examinations ahead of time, it is crucial to be prepared to abandon the "script" to take advantage of these dramatic moments and then weave in these new sub-themes into the main theme of the case.

In the case of the weights, this became a continuing theme of the case. We asked each fact witness about the respective birth weights of the twins, so that by the end of the seven week trial, the jury certainly remembered defendant's counsel's incorrect facts and theory used in his opening statement.

The ability to make significant changes in your presentation, and to adapt to unexpected dramatic unfoldings during a trial can change the outcome of a trial. The one major advantage is to "strike while the iron is hot." When the opportunity arises, the trial lawyer needs to be prepared to go mano a mano and not rely on a script.

### *Remember the Forum*

**Each Case is unique!!**

Before you close the file after a trial or settlement convert a brief into an article, including your insights, so we can all learn.



## The Sunny Side of Apportionment

By Bob Adelman  
*President 1990-1991*

In 1986 in response to a manufactured insurance rate crisis, the Connecticut Legislature passed Tort Reform I. The legislation was designed to curtail tort liability in order to stabilize insurance rates. One of the principal provisions was the substitution of apportionment for joint and several liability. The concept of apportionment, that each defendant would only be liable for his percentage of the total negligence causing the injury, struck a cord of fairness with the legislators which made it impossible to block its passage.

After the act passed there was much gnashing of teeth by plaintiffs' lawyers who saw apportionment as a step in the systematic destruction of our practice. My mentor and friend, Paul Tremont, was sanguine. He predicted that with good lawyering, sensible judges and the common sense of juries, we would continue to find a way to obtain fair compensation for our clients. As usual, he was right. Not only has apportionment been largely ineffective in protecting negligent defendants, it turns out that apportionment has provided some benefit to our clients.

One benefit of apportionment is that in a case where the plaintiff is contributorily negligent, apportionment decreases the negligence attributed to the plaintiff and increases the odds of winning the case. It is a matter of mathematics and where the jury's attention is focused.

Imagine a case in which there are three defendants and one plaintiff, all of whom the jury has found negligent. Before apportionment, the jury was instructed to assess the plaintiff's comparative negligence as against the defendants', collectively. Thus, once the jury got to this stage of the deliberations the negligent conduct of the individual defendants was no longer the focus of the jury's attention. The question in the jury room was what was the plaintiff's percentage of negligence compared to the defendants? If the plaintiff's negligence was greater than 50%, the jury was instructed to return a defendants' verdict.

With apportionment, the jury is asked to assess a percentage of the negligence to each of the four parties: the three defendants and the plaintiff. Now the deliberations do not focus solely on the plaintiff. The jury must assess the respective fault of each of the defendants. On the verdict form the three defendants are listed before the plaintiff. Most juries will consider the fault of each party in that order. By the time they get to the plaintiff, there is less likelihood that there is more than 50% left to apportion.

Another benefit of apportionment is that it causes real headaches for defense counsel. Defense counsel are not comfortable making arguments regarding the respective fault of their codefendants. Not facing this issue robs their final arguments of some of their force.

The most important benefit of apportionment is that it feels right to juries. Juries want to allocate responsibility and with apportionment, juries feel they get closer to this goal.

The bottom line, as my friend Paul predicted, is that each time the insurers come up with a plan to prevent people injured as a result of the wrongdoing of others from receiving fair compensation, we find a way around it. We do it with good lawyering and through the strength of the Connecticut Trial Lawyers Association. We do it with the help of good judges and sensible juries. As long as doing the right thing for our clients remains our primary goal, we will continue to be successful.



## “Civil” Procedure

By Garrett Moore  
*President 1993-1994*

There has been a time in each of our lives when we decided we wanted to become lawyers. Early in my life, I found the idea of practicing law very appealing. Television programs portrayed attorneys as respected and professional members of society.

Surrounded by law books and rich mahogany bookcases, the lawyer advised a client who listened intently to the legal advice and justice prevailed at the end of the day. Despite courtroom drama, attorneys would shake hands at the end of the day knowing they would again meet to secure justice for different clients on the next case. It was not uncommon to hear people say, “if you set your mind to it, you can be a doctor or a lawyer.” Parents hoped their children would become doctors or lawyers because it ensured their futures would be secured.

I have enjoyed 27 wonderful years practicing law and had the distinct pleasure of working with many talented lawyers, judges and commissioners as well as support staff. I have had the honor of representing countless clients who have been grateful for my efforts toward achieving justice. I have witnessed changes in the law that reflect the evolution of society. I have also been privy to the successes of many of my peers as they rose from the ranks of law students to lawyers, then Legislators, Judges or Commissioners. The journey has been quite gratifying.

While many changes in the practice of law have been positive, others have threatened to undermine the legal process. Civility among lawyers seems to have taken a turn for the worse. This seems true with some of the newer members of the bar who are sent out to practice law with little or no training. Whether attending a pretrial conference or deposition, it is becoming increasingly common for lawyers to behave aggressively and use tactics that jeopardize the perception of the profession. Historically, even the hardest fought legal battles were handled with civility, integrity and dignity. Despite intermittent episodes of emotional discharge, lawyers treated each other with respect, making sure tempers were checked. The trend of winning at all costs and taking no prisoners has caused many bridges to be burned along the way. Lawyers seem all too willing to walk the precipice of unethical conduct in the name of victory.

We need to appreciate the havoc being wrought on the legal profession by lawyers who will stop at nothing to win and act accordingly. We all have a responsibility to ensure attorneys from our firms understand not only the law, but appreciate the importance of practicing with decency and honesty. Being an attorney means not only knowing the facts of your case, but also knowing how to be a professional and realizing there are lines not to be crossed solely in the name of winning. Some of the tactics lawyers employ today are collectively jeopardizing the reputations of us all as legal professionals. The wise Sir Isaac Newton said, “Tact is the knack of making a point without making an enemy.” We have an obligation as attorneys to teach the less experienced members of the bar to learn from our experiences so that, in the end, civility and ethics are restored to our revered profession.





## What has CTLA Meant to Me

By Bill Sweeney  
*President 1994-1995*

*Camaraderie* — I have met and become friends with some of the great lawyers of our day. When I was a new lawyer I found that CTLA was the only lawyer group that really cared about

my clients. It was also an organization that was responsive to my needs as a lawyer and got things done for lawyers generally. I had been involved with other bar organizations, but CTLA didn't have the pretense or narrowness of those organizations. In the late 70's tort reform became the mantra of the business community and I quickly realized its effect on our profession and our clients. What was remarkable in my mind was that the Connecticut Bar Association was noncommittal on this issue of great import because of all the conflicting interests reflected in their various committees. I also realized that their inaction really meant support for the bill. I led an opposition in the CBA House of Delegates, which was successful and very shortly thereafter was invited to join the CTLA Board. There I was exposed to the likes of Leon RisCassi and Teddy Koskoff two giants in our field. Throughout the years I have met and in some cases became friendly with all the top trial lawyers in the state. This proved to be invaluable, not only because I was able to learn from them about the law, I also came to realize the importance of the trial lawyer in the local and state and national community.

*Professional Support* — As a young lawyer the thing that impressed me the most about CTLA, and what I will never forget, was the support I got from other more senior lawyers that I will never forget. There were many occasions when I found myself in some situation that needed the advice of wiser counsel, Paul McQuillan and Dale Faulkner among others come to mind. No one ever turned down my inquiries of inexperience. I'll always remember going to a CTLA seminar that featured one of the best trial lawyers in my lifetime, Bill Davis, lecturing on "How To Win By Losing." Bill was sharing his experience after trying a difficult products liability case for months and getting a defendant's verdict. Here was one of the best trial lawyers in Connecticut talking about losing a case but learning how to turn it into winning strategy. Bill's message was very acute for me, as I had received a Defendant's verdict the day before in a much smaller and less time consuming case. We, as lawyers today, need role models like Bill Davis to remind ourselves periodically that it's not about us, its about our clients. This willingness to share his experience showed this young lawyer that coping with defeat was part of the world of a trial lawyer especially when taking on new and novel theories. It has guided me all of my professional life.

*A Voice* — CTLA has become a powerful voice in the halls of the Connecticut General Assembly and now in the United States Congress. In my term as President of CTLA ,1994-95, with the Newt Gingrich revolution in Congress, conservatives who had generally supported states right in areas like civil and criminal actions became federalists who wanted to federalize product liability and medical malpractice, among other things It was also the first time we saw activity in Congress relating the leasing of automobiles. Richard Bieder first approached me about this the day I was sworn in and little did I know how involved we would get in Washington politics. It was a great personal experience; I had always been involved in politics but this experience exposed me to issues and people I never thought I would ever have to deal with.

I welcome the changes that CTLA has undergone since my

term a more professional staff more woman and minority involvement in our process, staying in the vanguard of new legal issues, but when I think of CTLA it will always be the people I have met, and for that I am eternally grateful.



## Musings About Jury Selection

By Gene Swain  
*President 1999-2000*

It has been said that the system here in Connecticut for picking juries is the best there is. Among the reasons for this opinion is that individual voir dire outside the presence of other jurors

allows a dialogue that results in understanding the juror, his or her belief systems, and thus how the juror may respond to issues at trial. I have my doubts. How well can you truly know a person after a 20 – 40 minute dialogue in a court room? I offer three (actually four) experiences I have had in my practice that suggest the answer is, not too well.

I have always thought of myself as a progressive person, sensitive to issues of race and gender. Sometime in the late 80's, I was representing a client in a fall down case that occurred at an apartment. I noticed the deposition of both the owner and the maintenance man to take place, one after the other. The two arrived for the deposition before defense counsel. I was alerted that they were there, and went to the waiting area to let them know that their attorney was on his way and would be there shortly. When I arrived into the waiting area, there were two males, an African American and a Caucasian, both in casual dress. Without a care in the world, I greeted the Caucasian as the owner, and the African American as the maintenance person. When I learned I was wrong, I was stunned and very disappointed in myself. I vowed that this beneath- the -surface prejudice would never occur again.

Fast forward 20 years . . . I was recently at the very same law office (Faulkner & Boyce) where I was waiting with others for one of several depositions in different cases to begin. I was talking to opposing counsel as we waited for our court reporter. A young woman in business attire with a black case being pulled on wheels walked in. I announced that our court reporter has arrived. Wrong! The young woman politely told me that although our court reporter might have arrived, it certainly was not her. She was sorry to disappoint me, but she was a lawyer involved in a different deposition. It had happened again!

Twenty years ago, I had a client in an auto case that was to be tried in Windham County. Windham County had, and has, the reputation of being a venue with very conservative and cheap jurors. My client was in his 50's, a very rugged looking outdoors type. He was also a very good guy. In preparing him for his deposition, I noticed that he had a small hoop in one of his ears that had obviously been there for a long time. It looked as though his earlobe had grown around it. I told him about Windham County jurors. That they certainly would disapprove of a man wearing an earring (remember this was 20 years ago). I asked the client if it would be a problem if he removed the earring and, much to my surprise, he said that actually it would. Come to find out, when he was 8 years old, he traveled extensively with his father. His father was a sea captain and often took his son with him to sea. When our client was 8, he was on such a trip and, for the first time, passed the equator. It was tradition that such a seaman be "keel-hauled" and that a hoop be inserted in the earlobe. His earring had never come out since. I told him to leave it be. (The case

settled before jury selection.)

About 12 years ago, I was trying a products liability case in Federal Court in Providence. The claim was that a Mercedes Benz was defective because the particular car that injured my client did not have an interlocking key safety system. The client had borrowed the car from her daughter; the key was removed when the car was not in park and then rolled and ran over the client. The expert testifying for me was well known in the auto safety world. I had met with him several times in preparing him for his deposition and also before his trial testimony. His direct testimony went beautifully, and I was quite pleased with myself and the way the case was going. The defense lawyer, a very fine trial lawyer by the name of Jerry DeMaria, did not come close to touching him on his cross. As Mr. DeMaria was sitting down at the end of his cross, he said, "Oh, I almost forgot. Doctor, I have several more questions for you." Mr. DeMaria then asked the expert if he had any children. The expert answered that he did. Mr. DeMaria asked him if he loved his children. The expert replied, "I do." Mr. DeMaria then asked the expert if he would ever provide anything that was dangerous and defective to his children. The expert replied he would not. Of course, the expert had purchased each of his children a smaller version of the Mercedes Benz that was the subject of this particular case. My fine products liability case had just gone up in flames.

The point of all of the above is that you can spend hours with someone in individual voir dire, and still lack the information you need. Indeed, a person cannot admit to what is in the subconscious, as illustrated by my slight to the African American apartment owner or to the female lawyer. The way a person dresses or appears may or may not be indicative of the type of juror they will make. Even in individual voir dire, outside the presence of other jurors, questioning about a juror's body piercings, tattoos, or dress in general most likely is inappropriate. Finally, in the case of the expert who forgot to mention that he had purchased his children a similar "dangerous and defective product" from the one he is condemning in court, after hours of preparation, is but one example that regardless of the amount of time you are given to ask somebody questions, there will always be an important question unasked or answered.

I have long had the opinion that our current system of jury selection is more a waste of time and effort than a help. I believe it serves the defense more than us. There is a better way — still individual voir dire, but in the box and in the presence of the jury pool. It works in other states. It would work here.



## Listening

By Ernie Teitell  
President 2005-2006

*"I know that you believe you understand what you think I said, but I'm not sure you realize that what you heard is not what I meant."*

— Robert McCloskey

One of the most memorable compliments I've received in the thirty years I've been a trial lawyer came as a result of a case I felt compelled to turn down. I was gentle as I told the prospective client the case was not actionable. Nonetheless, she expressed her deep appreciation and gratitude that somebody, somewhere was willing to truly listen and hear her story. What I did is called "witnessing" and when it is done right,

that simple act can sometimes help to heal hearts and lives and broken spirits.

As lawyers, we are often very self-assured in terms of our professional demeanor and ability to put on our best "Yes, go ahead and tell me all about it," face when in fact we are listening with only one side of our brain. The other side is engaged in a myriad of other thoughts about what needs to happen later that afternoon, tomorrow or the next day.

This is all not only understandable, but one might consider it inescapable, considering the world in which we move and live and have our professional being.

There is virtually no other profession where one is required to become so immersed in profound trauma and the dark side of human tragedy. Doctors might balk at this statement, but they are generally in that shared place of damage and its consequences for a far briefer time than we are. Psychologists see a patient for an hour, on their own time, on their own turf.

In order for us to do our jobs, we have to slog right into the quicksand alongside our clients. To really understand, we need to sit in their kitchens, travel to the sites of the incidents, stand watch in hospital rooms as figures who used to be active people, remain motionless and inert.

Sometimes just having a cup of coffee at someone's home, talking about their lives, and leafing through photo albums allows us to share our humanity before we have to dig into the tough stuff.

We are surrounded by broken pieces of people's lives often for long periods of time, so it is necessary, to some degree, that we create appropriate psychological boundaries. The issue is one of timing.

When as lawyers, we are gathering the facts of the case, it is imperative to remember that our most powerful tools are compassion and attention. We are the ones who know how to get the answers we seek. We all know this from our own lives. I recall times when I was relating an important moment and aware that I was being given short shrift, and I also remember the times when a compassionate friend kept pace next to me as I traveled through a really rough time, helping to keep me sane.

In addition to the humane aspect of that crucial interaction is the reverberation of your radar. Being fully present when a child shows you his teddy-bear that is now wearing a pair of jeans made from the one's that her deceased daddy used to wear, or standing in a nursery that has become a microcosm of a ghost town, there are clues and questions that will form in your subconscious that may inform the case and your ability to win recompense for your clients.

Because the relationship in many of our cases continues for years, there is a very particular intimacy that is forged with the family, their friends and colleagues. Through using single point-of-focus attention when listening to them through time, we metabolize their stories in ways that will allow us to utilize our skill-set as lawyers on their behalf. The kind of vulnerability that the defendant's negligence creates in clients reverberates for years. The bond that we have created and our ability to act as a champion on their behalf is not just a job, it is an honor.

We carry that deep understanding about who these people are and what they go through each and every day. Even though when proceedings begin, we may need to detach from the sorrow and despair, it has come to be part of us and impacts our performances at depositions. It is evident through our conviction at pretrial conferences, it underlies our discussions with our adversaries and, importantly, it is a very real piece of who we are when it comes time to communicate with judges and juries.

*(Continued on page 186)*

## Listening

(Continued from page 185)

As a father, husband, friend, and now grandfather, there isn't one moment throughout the crazy, sometimes manic, lead up to a case I don't think, "There but for the grace of God." However, before the case actually goes to trial, it is important to shift the focus. It isn't about us lawyers. In order to make that transition complete, I go through a small ritual to help me ground myself and remember what is truly at stake.

If it is a death case, I will go and visit the grave. If it is a life-damaging injury, I will visit the individual, and, if that is not possible, I will sit and contemplate their photographs.

When we perfect the art of listening and understanding, of forming a unique bond with the people we represent, we elevate our profession to the highest degree. This commitment to caring is why we are so often able to achieve the justice our clients truly deserve.



## First Jury Trial

By Carl D. Anderson  
President 2006-2007

I was admitted to the Connecticut Bar on July 10th 1967 and tried my first civil jury trial to conclusion in May 1968. Every trial lawyer remembers that fateful, challenging and somewhat frightening event.

The site of the trial was the Norwich City Hall, a venerable building which housed three tier courts; namely, the Circuit Court, Court of Common Pleas, and Superior Court. My case was in the Circuit Court with a seven thousand five hundred jurisdictional limit.

The case involved a prominent Stonington farmer who claimed damages against Stonington for the death of dozens of his sheep and hundreds of his turkeys caused by roaming dogs. The defense was ably handled by the Hon. Joseph Purtil, who served as town counsel and has served as a Superior Court Judge with distinction for several decades. The trial judge was the Hon. Frank J. Monchun, a passionate sportsman.

This case was defended on a basis that the losses sustained by my client were the result of marauding coyotes and not roaming dogs. The statute giving rise to the cause of action provided damages caused by roaming dogs. Very few folks knew of coyotes being present in Connecticut at the time.

My client and several neighbor farmers testified that the town land fill was in close proximity to my client's farm and, further, they had seen "packs" of dogs in the area over the years. The town had paid my client's similar claims over the previous five years.

The defense was vigorous. The State Canine Control Officer testified that coyotes had entered Connecticut from upstate New York and he had photographs of a litter of ferocious looking animals, taken in Eastern Connecticut. A curator of Natural History from the University of Connecticut came to court with a series of skulls, and pointed out the difference between normal dogs (*canus familiaris*) and coyotes (*canus latrans*). Two of the skulls offered into evidence were from coyote carcasses located in Connecticut.

The defense also called a young man who testified he was hunting on my client's property with permission. The witness testified that he shot and killed a fox-like animal that was so unique

that it was brought by the hunter to a taxidermist. A large cardboard box was brought from the cloak room and placed on counsel's table in front of the jury. I peered into the box and objected to admissibility based on the lack of testimony of the taxidermist and the issue of chain of custody. The Judge promptly overruled my pleas and ordered the contents removed. A moment later a ferocious critter with a long bushy tail and gnarly teeth was before the jury marked as a full exhibit. I asked my client what the critter was and he shrugged his shoulders and said "it must be a coy dog half breed."

I was desperate and thought the case was lost. I was now convinced that coyotes existed in our state.

We had one final witness, a farm worker, who worked down near the University of Rhode Island. He had been around sheep and turkeys over the course of his working life. My client found him the night before and I had not had a chance to interview him prior to his taking the stand.

As luck would have it he had experience with dogs and coyotes and testified that a coyote killed to satisfy hunger and dogs would kill for the thrill of it. None of my clients' animals were eaten but rather met their demise consistent with a dog's killing habits.

After two days of jury selection and three days of evidence the jury returned a plaintiff's verdict, in the amount of \$956.23. Without my prompting, my client stood up and stated "ladies and gentlemen of the jury, I thank you."

That verdict came in about 2 o'clock on a Friday afternoon, and by 5 o'clock I was on an Amtrak train to New York City to attend a practicing law institute trial seminar. A great feeling of satisfaction and accomplishment had engulfed me. I knew at that moment that I would spend my career as a trial lawyer.

## Membership Alert; direct solicitation

We've come to learn from our members of a practice that originated in Bridgeport, moved to Waterbury and is now beginning to find its way into New Haven and Hartford.

There are several groups who are buying police reports in bulk on a daily/weekly basis, then contacting injured victims by phone, or going to their homes and providing "assistance" in securing medical care and treatment. There have also been reported cases of individuals being approached at an accident scene.

As we know, lawyers are prohibited by law to directly solicit accident victims — but this prohibition may not apply to third parties.

During this last legislative session, CTLA offered language to prohibit this practice by non-lawyers — unfortunately — during this short session our measure failed to advance. Between now and the next legislative session, we will be approaching several agencies to elicit their support in an attempt to stop these practices.

The harm is that most victims do not know better and, in the end, maybe compromising their rights.

**How can you help?** If you have clients that have been directly solicited please pass this information along to CTLA. If you've learned of any practices of this nature please share that information with us.

Forward the information directly to Executive Director Neil Ferstand at the Association office or email to [nferstand@cttriallawyers.org](mailto:nferstand@cttriallawyers.org).

Thank you  
Joe Mirrione, President



# VERDICT AND SETTLEMENT REPORT

By Kathleen L. Nastri, Associate Editor

Please submit your Verdicts & Settlements reports online at [www.cttriallawyers.org/forum](http://www.cttriallawyers.org/forum) or via email to [forum@cttriallawyers.org](mailto:forum@cttriallawyers.org). Please include the date on which the case was resolved and the insurance carrier, if any.

## JURY VERDICT:

### **Product Liability Claim; Defective Stool; 63-Year Old Male; Aggravation of Pre-Existing Hip Condition; Verdict of \$490,000**

In the case of *George Holloway v. Steelcase, Inc.*, Docket No. CV-00-0440346, filed in the Superior Court for the Judicial District of New Haven at New Haven, a jury returned a verdict in favor of the plaintiff in the amount of \$490,000 on March 13, 2003.

The plaintiff, George Holloway, was injured at work when a stool on which he was sitting suddenly collapsed and threw him to the floor. At the time of the accident, Mr. Holloway was 63 years old and was working as a supervisor in the paint department at Sikorsky Aircraft in Stratford. As a result of his fall, Mr. Holloway suffered a serious exacerbation of a pre-existing arthritic hip condition. Mr. Holloway's medical bills totaled approximately \$5,000.00. Mr. Holloway did not receive a disability rating; however, all of Mr. Holloway's doctors agreed that he could no longer work at his job, which paid him about \$40,000.00 a year in net wages.

During discovery, an employee engineer of the defendant-manufacturer, Steelcase, Inc., made several incriminating statements about the defendant's manufacturing process of the model stool at issue. At the start of the trial, Steelcase admitted liability.

With regard to damages, the defendant argued that the plaintiff would have retired in 1 1/2 years at 65, thus limiting his lost wages to \$60,000.00. The plaintiff argued that he could have worked to the age of 70, and therefore suffered lost earnings of \$260,000.

The defendant's last offer to settle was \$125,000. Plaintiff's last demand to settle was \$200,000.

The jury returned a verdict for the plaintiff in the amount of \$490,000, which consisted of \$265,000 in economic damages and \$225,000 in non-economic damages.

*Submitted by Gregory E. O'Brien, Esq. of Moore O'Brien, Jacques & Yelenak, Cheshire.*

## VERDICT OF \$100,000:

### **Motor Vehicle Accident**

In the case of *Tatyana Prishchep v. Dora Moscosco, et al*, Docket No. FST-CV-5000386-S, pending in the Superior Court at Stamford, the jury returned a verdict of \$100,000. Allstate offered \$3,000 to settle before trial. The plaintiff filed an Offer of Judgment for \$19,999.

The case arose out of the following facts:

On September 20, 2004, the plaintiff (28-year-old female) was traveling home from work at approximately 5:00 p.m. She was stopped at a red light while facing east at an intersection in Stamford, Connecticut. When the light turned green, the plaintiff began to move into the intersection. The defendant drove her Ford Explorer through the red light and struck the plaintiff's vehicle. At that time, the plaintiff was three months pregnant.

The defendant denied going through a red light and claimed that her light was green. An independent witness confirmed that the plaintiff had a green light.

The plaintiff testified that following the collision, she felt fear for her unborn child; she struck her knee against the dashboard and she developed pain in her neck.

The plaintiff contacted her OB-GYN that evening and saw her OB-GYN the following day, who indicated that her child would be okay. However, she had significant pain in her knee and severe pain in her neck.

The plaintiff's vehicle sustained approximately \$9,500 in property damage.

The pain in the plaintiff's knee resolved over the following two months. The pain in the plaintiff's neck did not resolve. Notably, the plaintiff was involved in a rear end collision in October of 2000. At that time, she underwent a course of chiropractic treatment, wherein she was given

a 10% permanent impairment to her cervical spine. Over the course of the following years, the pain in the plaintiff's neck improved to the point where she was pain free at least one year before the subject collision.

One week after the subject collision, the plaintiff continued to experience significant pain in her neck, and she presented for chiropractic treatment. Over the course of two months, she continued to experience significant pain in her neck (all while she was pregnant). She went to an orthopaedic surgeon who determined that the plaintiff had sustained a cervical strain/sprain. The orthopaedic surgeon recommended further physical therapy and/or chiropractic treatment.

Upon her final treatment, approximately two years before this matter went to trial, the plaintiff was given a 7% whole person impairment because of the injury to the cervical spine.

Since the date of the collision and following her course of her treatment, the pain in the plaintiff's neck improved to the point where she was only experiencing pain in her neck once a month and occasionally once a week.

As a result of the collision, the plaintiff incurred \$9,466 in medical expenses (chiropractic treatment and consultation with orthopaedic surgeon (\$300)).

The plaintiff also lost two weeks of work following the collision, thereby resulting in lost wages of \$1,662.00.

The jury deliberated for approximately an hour and a half and returned a verdict of \$100,000.

*Submitted by Eric G. Blomberg, Esq., Berkowitz & Reinken, Stamford.*

## JURY VERDICT:

### **Underinsured Motorist Claim; Verdict of \$425,000; Motor Vehicle Accident**

In the case of *Stephanie Smiley v. Middlesex Mutual Assurance Company*, Docket No. CV-04-0100145-S, pending in the Superior Court at Norwich, the jury returned a verdict in the amount of \$425,000.

Stephanie Smiley was rear-ended on

August 23, 2002. She settled her claim against the tortfeasor for the policy limit of \$20,000.00. She filed an underinsured motorist claim against Middlesex Mutual. Middlesex offered \$30,000.00 to settle the case. The available coverage was \$80,000.00. Stephanie Smiley rejected the offer and the case went to trial. The jury returned a verdict in the amount of \$425,000.00, consisting of \$225,000.00 in economic damages and \$200,000.00 in non-economic damages.

The main point of contention in the case was Stephanie Smiley's claim that her syring from T7-T10 was caused by the accident. Dr. Healey, the defense expert, testified that the syring was not caused by the accident. Dr. Healey's opinion was based on the fact that Stephanie Smiley did not have any neurological symptoms for five months after the accident. The syring was diagnosed five months after the accident, when she began to have neurological symptoms. The plaintiff's expert, Dr. Tauro, testified that a traumatically-produced syring does not necessarily cause immediate neurological symptoms. Dr. Tauro's opinion was supported by the medical literature.

The verdict was reduced to judgment in the amount of \$80,000.00. Offer of judgment interest in the amount of \$16,227.10 was added to the judgment.

*Submitted by Dennis A. Ferdon, Esq., Norwich.*

**SETTLEMENT:**

**Dram Shop Claim;  
Settlement After Partial Trial;  
Motor Vehicle Accident**

The case of *Lawrence Yovino v. Big Bubba's BBQ, et al*, Docket No KNL-CV-05-4002497-S, was settled after a partial trial in the Superior Court at New London.

On November 18, 2004, at 1 a.m., the plaintiff was driving with his fiancée on Route 2 in North Stonington past the Foxwoods Casino toward Norwich. A drunk driver rear-ended the plaintiff, pushing him off the road and overturning his car. His fiancée in the passenger's seat was ejected and the car landed on top of her, crushing and killing her. The drunk driver was tested at 2:48 a.m., with a blood alcohol content of 0.11% and at 3:28 a.m., again at 0.11%.

The drunk driver and his three passengers all testified that the last place they had anything to drink was at Big Bubba's

BBQ, located at the Mohegan Sun Casino. They testified that they had left there about 10 p.m. the previous evening, but had nothing to drink afterwards. Although they went to the Foxwoods Casino between 10 p.m. and 1 a.m., they each testified they had nothing to drink there.

The plaintiff sustained a severe laceration of the forehead and scalp, requiring 30 stitches, and a badly sprained ankle, which still bothers him. He had donated a kidney to his fiancée one year earlier. The plaintiff testified that he has had to seek psychological counseling due to the trauma of the accident itself, as well as the psychological trauma of losing his fiancée.

The plaintiff filed suit in 2005, claiming a violation of the Dram Shop Act, reckless and wanton misconduct on the part of the defendant, and bystander emotional distress. A Motion to Strike the bystander count was denied by Judge Jones.

The plaintiff claimed that there was no evidence of any alcohol consumption after the driver and his companions had left the defendant bar and, therefore, any intoxication was the result of Big Bubba's violation of The Dram Shop Act, and also constituted reckless and wanton misconduct. The plaintiff's expert, Dr. James O'Brien, testified that a 0.11 reading at 2:48 a.m. would have rendered a reading of 0.146 at the time of the accident and a 10 p.m. reading of 0.196. He also testified that this would have rendered most people visibly intoxicated and having problems with balance and coordination.

The defendant countered that there was no evidence of any intoxicated behavior on the part of the drunk driver while at the defendant bar. In addition, their expert, Dr. Richard Pinder, testified that it was likely that there was alcohol consumption just before the 1 a.m. accident or immediately after the accident before the drunken driver was apprehended and, therefore, one could not extrapolate from 0.11 to any levels of intoxication prior to the test. In addition, the defendant, Big Bubba's, was prepared to show that the relationship between the plaintiff and his decedent fiancée was not all that harmonious.

After settling the claim against the drunken driver for his minimal insurance policy, the plaintiff then settled with Big Bubba's BBQ for an additional \$57,000, upon completion of the plaintiff's case.

One of the issues was whether the

blood alcohol concentration (BAC) levels alone would be sufficient to allow the jury to make an inference that the service of alcohol to such a person was reckless and wanton misconduct or whether more evidence is needed. The plaintiff would have argued that service of alcohol to a person who "more likely than not" was visibly intoxicated, even without "direct" proof of visible levels of intoxication, is sufficient to serve as a foundation for a finding of reckless and wanton misconduct without any Dram Shop limitations. Severe visible effects of intoxication without a BAC are sufficient to sustain a finding of misconduct. The other issue was whether this unique case of bystander emotional distress was sufficient under the standard announced in *Clobessy v. Bachelor*, 237 Conn. 31,52 (1996).

*Submitted by Matthew Shafner, Esq. of O'Brien, Shafner, Stuart, Kelly & Morris, P.C., Groton.*

**SETTLEMENT:**

**Medical Malpractice;  
Confidential Settlement of \$850,000**

In the case of the Estate of *John Doe v. Hospital* (the settlement contains confidentiality provisions), the parties settled the claim for \$850,000 before suit.

John Doe sought medical attention at the emergency department of the Hospital at 5:07 p.m. on March 9, 2006. He reported several days of weakness, difficulty eating and sleeping, feelings of agitation and burning in his chest. Evaluation at the emergency department revealed elevated blood pressure (initially 235/118), elevated blood alcohol at 0.103, and an abnormal serum sodium level of 120. Despite his complaint of "burning in his chest" recorded by the triage nurse, no EKG was obtained, no cardiac monitoring was performed and no cardiac laboratory studies were obtained. Mr. Doe was discharged from the emergency department at 10:45 p.m., with a written diagnosis of "Hyponatremia, Depression, Alcoholism, Hypertension."

Mr. Doe had been treated with a single administration of 500 ml of intravenous fluid (for his low sodium level) and 1 mg of oral Ativan (for his depression/anxiety), and he was instructed to follow-up with his regular physician within two to three days. Later that night at 1:30 a.m., Mr. Doe became unresponsive and, despite immediate CPR by family members and after prolonged efforts of resuscitation by

paramedics, he had no response. CPR was discontinued in the field and Mr. Doe was pronounced dead on arrival back at the Hospital. Plaintiff alleged that the emergency department medical staff of the Hospital did not meet the standard of care in their evaluation and treatment of Mr. Doe on March 9, 2006, by failing to evaluate his complaint of chest pain and treat him appropriately. The plaintiff claimed that a complaint of chest pain reported by a 53-year old male with a known history of hypertension must be investigated. Such an investigation would typically

include additional history taking, the performance of an EKG, and ordinarily the obtaining of a chest x-ray and cardiac lab tests. The plaintiff contended that this departure from the standard of care directly contributed to Mr. Doe's death due to cardiac causes within hours of his discharge from the Hospital. The plaintiff argued that if the medical staff had performed basic medical tests on Mr. Doe, his acute cardiac condition would have been identified and he would have received appropriate treatment, most likely resulting in his survival.

Upon presentation of a report from an expert certified by the American Board of Emergency Medicine, who had served as full-time faculty in the teaching of both clinical and academic emergency medicine at the Johns Hopkins School of Medicine and at Harvard Medical School, the Hospital quickly negotiated a settlement of the case for \$850,000. Although the plaintiff was still a young man, he had little in terms of economic losses, because his work history and income was limited.

*Submitted by Kerry M. Wisser, Esq. of Weinstein & Wisser, P.C., West Hartford.*

### IN MEMORIAL

#### Marshall S. Feingold

*CTLA President 1970-1971*



**Marshall S. Feingold**, 89, of Naples, FL, and Old Saybrook, passed away peacefully on Wednesday (April 23, 2008), in Naples. Born November 5, 1918, in Hartford, Marshall was the eldest son of Dr. Gustave A. Feingold, the first principal of Hartford's Bulkeley High School, and Etta R. Feingold. He attended Hartford Public

High School (Class of 1936), Tufts University and the University of Connecticut School of Law. He practiced law for many years in Hartford and Westbrook. Mr. Feingold was an active member of the Hartford County Bar Association, the Middlesex County Bar Association, the Connecticut Bar Association and the American Trial Lawyers Association. He was a founder of the Connecticut Trial Lawyers Association. Mr. Feingold was a trial lawyer and a counselor in the truest sense of the word; if a lawsuit would lead to heartache and stress a client's family, he would counsel the client not to sue but to apologize or otherwise make amends. Marshall's beloved wife of 53 years, Frances S. Feingold, passed away October 20, 1996. Their years together were marked by extensive world travel and a love for life on the Connecticut shoreline. He and Frances explored Long Island Sound and the Connecticut River in a boat they moored in Westbrook. During Mrs. Feingold's final illness, Marshall was a model of compassion, showing extraordinary love and devotion. Marshall lived life to the fullest and had many interests. He cultivated and exhibited orchids as a member of the Connecticut and American Orchid Societies. He was a member of the Rolls Royce Club of America, the American Philatelic Society, the Sarawak Specialists Stamp Society (London, England), the Singapore

Stamp Club and the Malaysia Stamp Club. At the age of 78, he took up golf and became an avid golfer in Naples and Old Saybrook. At 86, he took up painting and sculpture, and exhibited his work through the Naples Art Association. Mr. Feingold served for years as a volunteer in the library at the von Liebig Art Center in Naples. He worked as a volunteer at Naples Community Hospital. He was a member of Temple Beth Israel in West Hartford and Temple Shalom in Naples. Mr. Feingold never took his education and good fortune for granted. He gave back much through pro bono legal work; volunteer activities; scholarships at Bulkeley High School, Trinity College and the University of Connecticut, School of Law; and active support of religious and charitable organizations. Marshall leaves three children, Robert Feingold of Kota Bharu, Malaysia; Gail Feingold Giesen of West Hartford; and John Feingold of Larchmont, NY. He also leaves a son-in-law, Thomas Giesen; a daughter-in-law, Nancy Seligson; and grandchildren, Jonah Takagi, Kenneth Takagi, Jill Feingold, Dana Feingold and Margo Feingold. He is survived by two brothers, Richard Feingold of Banning, CA and Albert Feingold of Cambridge, MA; brothers-in-law and sisters-in-law, Leonard and Gloria Rich, and Lawrence and Joan Selwyn; and many nephews and nieces. Finally, he leaves his soul mate, Elizabeth B. Hyder, who gave him love and affection during his final years, and his good friend, Janet Hildebrand, with whom he explored Southeast Asia. Memorial contributions may be made to The Gustave and Etta Feingold Scholarship Fund, c/o Bulkeley High School Alumni Association, PO Box 4275, Hartford, CT 06147-4275, to perpetuate the scholarship Marshall established to help deserving Bulkeley High students attend college.



# Workers' Compensation Review October 5, 2007 through April 1, 2008

Robert F. Carter, *Vice Chair, CTLA Workers' Compensation Sector*

## SUPREME COURT

### Benefits Slashed ("Apportioned") for "Concurrently Developing" Diseases

In a bizarre decision without statutory basis, the Court departed from the long-settled law to hold that where an occupational disease and non-occupational disease "concurrently develop," benefits are reduced in proportion to the degree of incapacity caused by the "concurrently developing" disease, even though the same bodily function, breathing, is impaired by both pathologies. *Deschenes v. Transco, Inc.*, 284 Conn. 479 (November 27, 2007). Asbestosis and smoking-related emphysema combined to cause impairment of the claimant's respiratory function, which is usually the case with asbestotics. The trial commissioner, without specifically finding that the emphysema was a pre-existing condition, awarded benefits for 25% permanent partial disability; there was evidence, but no finding, that the asbestosis contributed about a quarter of the impairment. The Court adopted wholesale the respondent's whole-cloth argument that there is a statutory "gap," never previously encountered in the last ninety years, in workers' compensation benefits for "concurrently developing" diseases, and that workers' compensation benefits should not be awarded for any effects of cigarette smoking. The Court proceeded to legislate its "apportionment" rule. Such an apportionment scheme was rejected by the legislature in 1995, when Second Injury Fund liability under Sec. 31-349 was eliminated. The date of injury rule for determining the rights of the parties was wholly ignored: whether, on the date of the injury, the claimant had a pre-existing condition which, when combined with the compensable second injury to the claimant's lungs, caused a material and substantial worsening of the claimant's condition; whether, on the date of the injury, the employer took the claimant in his physical condition at that time; or whether, if the emphysema emerged after the asbestosis, the asbestosis contributed significantly to the claimant's respiratory disability.

As best I could tell, despite the Court's pronouncement adopting the defense lawyer's assertion, there was actually no evidence that the diseases were "concurrently developing," or when or over what period each disease developed; there was merely evidence that the exposure periods for cigarette smoking and asbestos overlapped. The Court seemed to assume, erroneously, that exposure equates with disease development, which is far from the truth. The actual development of these diseases, medically speaking, ordinarily begins only after many years of exposure, if the diseases develop at all. Temporally pinpointing "development" is usually clinically impossible.

The Court, upon request of the claimant, the CTLA and others, has agreed to reconsider the decision. Let's hope so. If it does not restore the actual law, we will have a real mess to deal with. The Court did not limit "apportioned" benefits to permanent partial disability. What doctor or hospital will treat a

patient for 25% of the fee? How administer such a mess? Connecticut would be an egregious minority of one among the states if stuck with this wholly judge-made Draconian "apportionment" rule.

### Preclusion Applies to Extent of Disability, But Claimant May Still Bear Burden of Proof

In a confusing decision, the Court held that under Sec. 31-294c(b) a late disclaimer by the employer precluded the employer's contesting not only liability for the claim but "extent of disability," at least with respect to the need for surgery contemporaneous with the notice of claim. *Harpaz v. Laidlaw Transit, Inc.*, 286 Conn. 102 (Mar. 18, 2008). The Court, after painstaking analysis of the legislative history, concluded that the effect of preclusion includes barring the contest of extent of disability.

What the Court understands the effect actually to be, however, is unclear to me. Nine months after the claimant's motor vehicle accident he had low back surgery; shortly afterwards he filed a notice of claim which was not timely contested. After the late disclaimer was filed, the claimant had a second back surgery. The preclusion provision has been given effect by the Court previously to establish, without more, the compensability of the claimed condition. *Menzies v. Fisher*, 165 Conn. 338 (1993) (death). However, the Court allowed contest of the payment of permanent partial disability where the original condition was an accepted claim and the estate made a separate posthumous claim for permanent partial disability benefits in *Adzima v. UACINorden Division*, 177 Conn. 107 (1979). But the Court has been pretty clear that, with respect to what was on the table at the time of the original notice of claim of injury, the statute meant what it said: that the employer is conclusively presumed to have accepted compensability. In *Tucker v. Connecticut Winpump, Inc.*, 4492 CRB-5-02-2 (2003), the CRB attempted effectively to eliminate preclusion by holding that an untimely disclaimed lung disease claim could be contested on causation, the only effect of the preclusion being that the claimant's exposure to chemicals could not be contested. The *Tucker* case has rightly been largely ignored and is now overruled by *Harpaz*. But surely the *Harpaz* decision doesn't mean that the employer, years after compensability is established by preclusion, must accept any claim, however wild, in the case. The decision is unclear to me in this respect.

Much more bewildering, however, is the wholly new interpretation of preclusion delivered by the Court in a bombshell at the end of the *Harpaz* opinion. Having determined that the extent of disability could not be contested (apparently including even the second surgery, which was post-claim and post-disclaimer!), the Court suggested, contrary to much precedent, that although the employer is precluded from contesting the claim, nevertheless the claimant must "establish the predicates to compensation by 'competent evidence,'" citing non-preclusion cases. The Court stated that on remand, although the employer could not contest the need for surgery (with its own expert or evidence), the claimant would be left "to his burden of proof" to establish that he has suffered a compensable injury, i.e., an injury that arose out of and in the course of his employment. Presumably the respondents' lawyer will simply stand there with a sock in his mouth while the claimant has to "sustain his burden."

This holding, that the claimant still has to prove his case on the merits, is directly contradicted by the statute, which says that the employer is not merely precluded from contesting liability, but "shall be conclusively presumed to have accepted the compensability for the alleged injury or death." It is also directly contradicted by the case law, some of which the Court cites but does not overrule: the prior cases have been clear that, to establish

compensability by preclusion, the claimant need not prove anything but a timely notice of claim served by certified mail or hand-delivered; an employment relationship; and an injury within the ambit of the Act. In *Ash v. New Milford*, 207 Conn. 665, 672 (1988), the Court held that the employer's failure to provide a timely notice contesting liability "triggers the conclusive presumption of acceptance of compensability for the employee's injury or death," in that case a death from a heart attack, and that the commissioner could not inquire further into the details of the case, except for those facts necessary to establish jurisdiction. See also *Bush v. Quality Bakers of America*, 2 Conn. App. 363, 373, 479 A.2d 820, cert. denied, 194 Conn. 804, 482 A.2d 709 (1984), where the Court found that preclusion established liability for the death, even though the trial commissioner had specifically found that the death did not arise out of and in the course of employment. (Bush was modified later only to impose the "jurisdictional" requirements cited above.) See also *DeAlmeida v. M.C.M. Stamping Corp.*, 29 Conn. App. 441 (1992), cited favorably by the Court, where the court rejected the respondents' argument that the claimant, despite preclusion, was required to establish causation of his injuries at an evidentiary hearing. And see *Russell v. Mystic Seaport Museum, Inc.*, 252 Conn. 596, 623 (2000), where the Court, after finding that preclusion established the compensability of the shoulder injury, held specifically that the only issue before the commissioner was the amount of compensation due to the claimant. And see *Menzies v. Fisher, supra*, *semble* (preclusion held to establish compensability of death). The Court's holding appears to overrule these cases *sub silentio*, leaving confusion in its wake.

If the *Harpaz* holding is limited, as it is not on its face, to a requirement to prove, without opposition from the employer, the need for surgery (the "extent of disability") but imposes no requirement to prove causation or "arising out of" for the underlying condition, it would be consonant with the statute and case law now on the books. But on its face it is baffling indeed. As of press time, the respondents had petitioned for reconsideration, which the claimant opposed.

#### **Volunteer firemen covered for injuries during roof repair**

In a good decision fixing a difficult situation, the Court held that where volunteer firemen were injured while repairing

the roof of their Danbury firehouse during a "work party" organized by the fire department board, their injuries were compensable as "fire duties" under Sec. 7-314a(a). *Evanuska v. Danbury*, 285 Conn. 348 (Feb. 5, 2008). Participation in such work parties was a required duty, failure to perform which could result in disciplinary action. The Court held that "fire duties," which under Sec. 7-314(a) include any duty "ordered to be performed by a superior or commanding officer," encompassed obligations of firefighters to repair the fire house. As we have counseled previously, volunteer firefighters might want to amend their bylaws specifically to deem all duties performed by the volunteers both "fire duties" as well as to deem all duties "mandatory under order of the commanding officer," and when in doubt, to seek an order from the chief.

#### **Self-insured Employer May Reach CIGA for 299b Contribution**

The Connecticut Insurance Guaranty Association must contribute its apportioned share under Sec. 31-299b to a self-insured employer which is the last relevant respondent on the risk. The contribution is not a reimbursement to an employer, which is barred by C.G.S. Sec. 38a-838(5). *Esposito v. Simkins Industries, Inc.*, 286 Conn. 319 (Apr. 1, 2008). The Court also rejected a looney argument which has been made recently by the Guaranty Fund, that there is an administrative remedy (hitting up the other apportionment carriers) which must be exhausted before CIGA could be approached.

#### **No Health Insurance for Widows of Municipal Employees**

Section 31-306 does not provide health insurance coverage for widows of municipal employees, and Sec. 31-284b applies only to employees. Thus the widow of a policeman who died of a compensable heart condition does not receive continued health insurance coverage. *Vincent v. New Haven*, 285 Conn. 778 (Mar. 11, 2008). Nathan Shafner filed an amicus brief for the CTLA.

#### **APPELLATE COURT**

#### **Knee Award Reversed in Dubious Evidentiary Ruling; Egregious Argument on Significance of Voluntary Agreement**

In a dubious decision, the Appellate Court reversed a finding of compensability of a knee injury caused when a claimant, because her fragile right arm had been very badly injured at work (RSD, 41% ppd, much hardware), reached over with her

left arm to grab a stair railing when she started to fall backwards; in the contortions she twisted her knee. Her orthopedist had confirmed causation but did not recite in detail the role played by her bad right arm in her knee injury, that the claimant was afraid to grab the rail with her bad arm. The Court found that his clear report on causation was speculative, presumably because it failed to recite the underlying facts. Judge Mihalakos dissented admirably. *Marandino v. Prometheus Pharmacy*, 105 Conn. App. 669 (Feb. 5, 2008).

Even worse, the Court appeared to countenance a disingenuous argument made lately by defense counsel who ought to know better: that the signing of a voluntary agreement on permanent partial disability is a concession that the claimant is not totally disabled. This argument is utterly without legal basis: reaching maximum medical improvement carries no implication that a person can work, and never has. A claimant may wish to have permanency established, or even paid, for a variety of reasons, and yet be in fact realistically unemployable: he may desperately want to try to keep working, in denial of his actual incapacity; he may desire to vest permanency for his estate; or he may need to eat while temporary total disability is being litigated. But establishing a degree of permanency in a voluntary agreement, without more, never implies legally that a person can work. For example, a serious disease or orthopedic injury may result in a very high degree of permanent partial disability, for which the claimant is at maximum medical improvement, and yet the person may remain totally disabled forever. Maximum medical improvement means only that the condition won't likely get better. The Court here, however, countenanced the respondents' underhanded argument, but found that the claimant had deteriorated after the signing of the voluntary agreement, therefore there were "changed conditions" which justified the award of total disability.

#### **COMPENSATION REVIEW BOARD**

#### **Causation of Asthma by Chemicals Establishes it as Occupational Disease "Peculiar to" the Claimant's Occupation**

The claimant's asthma was caused by chemical exposure at Pfizer, where he worked as a machine operator in the fermentation department. The CRB held that the asthma was caused by a risk in excess of the ordinary hazards of employ-

*(Continued on page 192)*

## Workers' Compensation Review (Continued from page 191)

ment and was thus a compensable occupational disease. *Chappell v. Pfizer, Inc.*, 5139 CRB-2-06-10 (Nov. 19, 2007). This is a good and important decision by the CRB: "peculiar to the occupation" means caused by exposure to risk-elevating substances in the course of employment, not epidemiology based on a job title. The decision is true to the Connecticut case law flowing from *Lelenko v. Wilson Lee Co.*, 128 Conn. 499 (1942), which defines "peculiar to" in terms of causation by workplace risk factors in excess of background risk, not by job title.

### More Scientific Evidence Required for Effectiveness of Surgical Procedure "Not Well-Established in the Medical Community"

In a disturbing opinion in which the commissioner had authorized a three-level disc replacement after hearing extensive medical testimony, the CRB legislated a prejudicial and burdensome rule without statutory basis, that

. . . in the case of a contested surgical procedure that is not well-established in the medical community, the evidence must include enough information for the trier to grasp the concepts and methods that support the procedure, and to anticipate that it will be effective for individuals comparable to the claimant.

The commissioner's decision to allow the surgery was overturned and the case was remanded for more evidence; one expects that epidemiological evidence sufficient to satisfy the CRB is not yet extant, since epidemiology requires a lot of experimental procedures to review, even for retrospective studies. *Vannoy-Joseph v. State of Connecticut*, 5164 CRB-8-06-11 (Jan. 29, 2008).

The Act, after all, is designed to let claimants chose their treatment. It specifically allows treatment by faith-healers in Sec. 31-275(12). Section 20-1 includes in the recognized healing arts naturopathy and chiropody; and psychologists are recognized as medical providers. The disc replacement procedure has been used in Europe for quite a while; the treating Connecticut physician here had in fact participated in 65 three-level replacements there and 165 one- and two-level replacements locally. While this procedure may or may not ultimately turn out to be great (as hysterectomies, for example, have declined in more progressive parts of

the country), the medical decision should be between the claimant and his physician and, if reasonable, approved by the commissioner; it should not be based on the CRB's notion of what it, the members of which are not scientists or physicians, would like for scientific proof of efficacy. One wonders what the CRB hears from respondent insurers or their representatives outside the record with respect to such new and expensive procedures. Here, the trial commissioner had in fact heard a lot of evidence pro and con, and made his choice.

The CRB, citing *State v. Porter*, 241 Conn. 57 (1997), adopting *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), further held that "a commissioner must also take steps to verify that a physician's methodology is reliable." But *State v. Porter* has been squarely held not to apply to workers' compensation hearings. *Mulroy v. Becton Dickinson Co.*, 48 Conn. App. 774 (May 26, 1998). A normal physician has virtually no grasp of the "methodology" used to evaluate the efficacy of outcomes; in fact the development of medicine is, and perhaps must be, in part incremental, anecdotal, and hit-or-miss.

Commissioners are paid to exercise their good judgment based on what they hear from the doctors in the case. They are not equipped to evaluate scientific methodology, nor is the system intended to require claimants to put on a trial of scientific evidence to establish the efficacy of the procedure to prove "that it will be effective for individuals comparable to the claimant." In contrast, the CRB easily affirmed the denial of a four-level disc replacement surgery. *Jolicoeur v. Dunklee, Inc.*, 5150 CRB-2-06-10 (Nov. 8, 2007).

### Commissioner May Not Bar Future Claims

Where the trial commissioner had ruled that the claimant could not make any claims in the future for wage loss benefits, the ruling was set aside as beyond the power of the commissioner. *Russell v. State of Connecticut*, 512 CRB-5-07-3 (Mar. 18, 2008). The claimant had a bad back but was found to have some work capacity, and the commissioner denied her claim for Sec. 31-308a benefits; but the commissioner also attempted, erroneously, to bar any such claim in the future. Circumstances may change.

### Omission of Widow's Name Does Not Bar Widow's Claim

Where the timely 30c named the claimant as "Robert D. Berry, deceased," the hint was strong enough that a depend-

ent of the decedent might actually be making a claim, so that the notice of claim was sufficient. *Berry v. State of Connecticut*, 5162 CRB-3-06-11 (Dec. 20, 2007). Good for the CRB, rejecting silly nit-picking in favor of common sense and decency; at least the widow gets a chance to win or lose her claim on the merits.

### Findings of State Pension Board Need Not Be Admitted and Are Not Binding in Workers' Compensation Hearing

The findings of the State Medical Examining Board that a claimant's work caused him to suffer a stroke were held not merely not to be binding on the state, but not even necessarily admissible in a workers' compensation formal hearing on the same issue. Curious, and without much basis in the law. *Dzienkiewicz v. State of Connecticut*, 5211 CRB-8-07-3 (Mar. 18, 2008). The CRB relied somewhat on the even more curious *Hill v. State Employees Retirement Commission*, 83 Conn. App. 599 (2004), where the admission by the State in a voluntary agreement that a claimant's condition was caused by work was held not binding on the State in proceedings before the Medical Examining Board with respect to pension rights. Collateral estoppel? Admission against interest?

### Second Injury Fund May Not Relitigate Issues

Beating a dead horse, the Second Injury Fund in Sec. 31-355 no-insurance cases continues to attempt to relitigate *de novo* issues previously decided in the case. The CRB continues to deny the attempts: where the Fund is noticed and participates in the first litigation, usually against an uninsured respondent, it cannot refuse to pay and relitigate the issues later. But since it is the State, operating with apparent impunity and utter arrogance, it keeps trying anyway, despite *Matey v. Dember*, 256 Conn. 456 (2001), to the contrary. In *Stec v. Raymark*, 5156 CRB-4-06-11 (Nov. 21, 2007), and *Dechio v. Raymark*, 5155 CRB-4-06-11 (Nov. 28, 2007) liability for asbestos-related deaths was litigated and lost long ago, but the Fund just keeps squirming; in fact we understand that these latter two decisions have been appealed by the Fund. Penalties don't seem to have much effect. The trouble is that real people suffer needlessly.

### Injury While Walking During Unpaid Lunch Break Not Compensable

The claimant usually didn't take a lunch break. When she did, she punched out on the time clock and took a walk on

the employer's property. An injury from a fall during such a walk was held not compensable. The employer was not shown either to have received a benefit or to have acquiesced in or encouraged the practice. The CRB did not reach the issue of whether the walk was recreational. *Brown v. UTC/Pratt & Whitney*, 5145 CRB-8-06-10 (Oct. 23, 2007). Close, but it looks correct to me.

### **Mail Carrier's Wages Don't Count for Concurrent Employment**

Since the U.S. Post Office is not an "employer" under the Act, the wages of a postal worker do not count as concurrent employment in determining the average weekly wage of a claimant injured in a second job. *Lopa v. Brinker Int'l, Inc.*, 5166 CRB-6-06-11 (Oct. 23, 2007). The definition of employer in the Act, of course, would cover any employer; and the CRB acknowledged that *stare decisis* is about the only justification for this series of cases. What about a Rhode Island concurrent employer? The policy represented by the concurrent employment provision of Sec. 31-310 is needlessly flouted by these holdings; the identity of the concurrent employer is irrelevant, since the payments represented by the concurrent employment are always made by the Second Injury Fund. Maybe the Supreme Court or legislature will fix the problem some day.

### **Practice Tip: Have the Doctor Say "Substantial"**

Where the claimant's physician found that parenchymal asbestosis contributed to the claimant's heart failure and death, the physician's opinion was held not to substantiate causation, since it did not rise to the level of finding a "substantial" factor. *Voronuk v. Electric Boat Corp.*, 5167 CRB-8-06-12 (Jan. 17, 2008). However clear the evidence, it is wise to have the doctor say "significant" and "substantial" contributing factor. When determined to deny liability, however, a commissioner can simply disregard all the evidence as not credible to him. But might as well touch all the bases.

## **SUPERIOR COURT**

### **Future Benefits Held Assignable**

Future payments due from a structured settlement of a workers' compensation claim were held assignable to a "legal funding" company which buys at a deep discount, and the sale of his rights by the claimant was approved under Sec. 52-225g because he wanted to start an oil

business. The Court simply said the assignment was not barred by Sec. 31-320, which says workers' compensation benefits are not assignable. *Settlement Funding LLC v. St. Paul Travelers Co.*, CV07-4026340S (New Haven 12/20/07), 14 Conn. Ops. 105 (2/4/08), 44 Conon. L. Rptr. No. 18, 658 (2/25/08). Here the payments under a structured settlement contract were arguably not payments under the Act. However, the analogous problem of a desperate claimant wanting to borrow money from a company which lends against a future settlement is growing, in response to advertisements; the rates and fees are awful. Chairman Mastropietro recently indicated that he believes such loans (which are characterized by the lenders as not being loans) are barred by Sec. 31-320, which would make life easier for claimants' lawyers. Otherwise it is often hard to convince desperate clients to hang on and not take the bad deal offered by the loan company, when one can't tell when, if ever, the case will settle.

### **Post-sale Service Suspends Running of Product Liability Statute of Repose**

A work-related machine injury gave rise to a product liability action under Sec. 52-572a(a), which for workplace injuries has a ten-year statute of repose running from the date possession and control of the machine passes to the buyer. Sale of the machine in 1991 was alleged by the defendant on summary judgment to bar the 2005 action against the product seller. The Court held that post-sale service by the seller in 1996 gave rise to a question of fact as to whether the service constituted possession and control sufficient to trigger a new 10-year repose period beginning in 1996, and thus denied the motion for summary judgment. *Martinez v. Timken U.S. Corp.*, CV05-5000162S (Waterbury, Aug. 16, 2007), 44 Conn. L. Rptr. No. 2, 53 (Oct. 22, 2007).

### **Employer May Sue Claimant to Recover Third-Party Proceeds**

Where the claimant had settled a third-party action but failed to repay the employer for the compensation lien, the employer could bring a civil action to recover the lien amount, which in this case exceeded the civil recovery. The claimant had argued that the Workers' Compensation Commission had exclusive jurisdiction. *Rudy's Limousine Service, Inc. v. Aspinwall*, CV07-4008248S (Milford, Sept. 6, 2007), 44 Conn. L. Rptr. No. 4, 122 (Nov. 5, 2007). Interestingly, the employer also sued claimant's counsel, even though

fees and costs have priority over the lien under Sec. 31-293.

### **Sec. 290a Protection Against Retaliation May Be Triggered Where Employer Knows That Claimant is "In Process of Exercising" Rights Under Act**

The plaintiff alleged that he was subjected to discrimination (change of shift) and then discharge after being run over by a fellow employee and seeking medical treatment for his foot injury. The defendant's motion to strike the complaint was denied, even though the claimant hadn't filed a claim for compensation prior to termination, on the ground that the allegation that the employer knew of the injury, knew that the claimant sought medical treatment for it, and was aware that the claimant was "in the process" of exercising his workers' compensation rights pled sufficient basis for a finding of exercising workers' compensation rights. *Lombardi v. Tilcon Connecticut, Inc.*, CV07-4007485 (Meriden, Oct. 3, 2007), 13 Conn. Ops. 1130 (Oct. 29, 2007). Good decision in a difficult area: often the claimant is fired right after the injury, before he actively pursues workers' compensation, except for medical treatment.

### **Filing Hearing Request on 290a Claim is Irrevocable Election of Remedy**

Where a claimant filed an objection to a Form 36 and request for an informal hearing which mentioned retaliatory discharge as well as a claim for indemnity benefits, but never filed a 290a claim with the Chairman as required by statute, the claimant was held to have made an irrevocable election to pursue her claim in the Commission and was barred from pursuing it in a civil action. *Ricketts v. Middlesex Hosp.*, CV07-5002634 (Sept. 27, 2007), 44 Conn. L. Rptr. No. 8, 278 (Dec. 10, 2007). Nobody likes these claims.

### **Department of Myopic Literalism**

Where employee was killed in a motor vehicle accident, the decedent's estate could not sue the decedent's fellow employee, the driver, for reckless, malicious and willful misconduct (and multiple damages under Sec. 14-295) because the motor vehicle exception in Sec. 31-293a allows only actions for the negligent operation of a motor vehicle. Sic. The same sentence of Sec. 31-293a, however, also allows actions against fellow employees for all wrongs which are "wilful or malicious." What? *Ducharme v. Villaneuva*, CV05-4005477S (Waterbury, 12/4/07), 44 Conn. L. Rptr. No. 16, 580 (2/11/08).

# Resolving ERISA Subrogation Liens

Betsy Greene, TLC '05

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Often it seems as though the most difficult part of resolving an injury case is resolving the medical liens after settlement or verdict. If your client is fortunate enough to have health insurance, the bulk of the medical bills are paid, but frequently the plan asserts a lien on the third party recovery. Subrogation liens are both a boon and a burden, but if properly handled can greatly enhance the client's net recovery. Resolving subrogation liens for your clients is just as much your obligation as is getting a lot of money for them from the defendant.

Health insurers now regularly claim to be self-funded plans governed by the Employment Retirement Income Security Act of 1974 (ERISA), insisting on 100% reimbursement of benefits paid, usually medical bills. This article offers a brief survey of some of the law in this area and, hopefully, some practical strategies for resolving ERISA subrogation liens.

Subrogation is the right of an entity, usually an insurance company or governmental agency, to be repaid benefits from personal injury recoveries. Often, clients are unaware of the rights of an insurance company to recover benefits and are dismayed to learn that the healthcare plan will be repaid from any personal injury recovery. Subrogation works a particular hardship to grievously injured people where there are low policy limits or there is comparative fault.

Subrogation is an equitable remedy. At common law, there were equitable defenses that ameliorated the harsh effects of subrogation, such as the common fund doctrine and the made whole doctrine. The common fund doctrine provides that one who benefits from a fund of money established through the efforts of others must contribute to the cost of obtaining the fund. In the subrogation context, the fund is usually created by the efforts of the plaintiff's attorney. The common fund doctrine requires the insurance company seeking repayment to contribute to attorney fees, thus reducing the amount to be repaid. The made whole doctrine holds that there is no right to subrogation until the injured person has been made whole. In cases where there are low policy limits or other reasons limiting the injured person's recovery, a subrogation lien can be greatly reduced or eliminated entirely under this doctrine.

State subrogation laws vary greatly from jurisdiction to jurisdiction. Some states have statutes prohibiting subrogation in some circumstances while others recognize equitable defenses through case law. When confronted with a subrogation claim of any kind, research into the applicable law is essential. In Indiana, for example, the lien reduction statute requires that an insurance company reduce its lien by a pro-rata share of attorney fees and costs, requires that liens be reduced pro-rata for uncollectibility of the injury claim because of inadequate policy limits or other reasons, and requires that liens be reduced by comparative fault.<sup>1</sup> (Subrogation liens can be created by statutes as well. Medicare liens are created by federal statute, for example).<sup>2</sup>

The result in federal cases concerning ERISA subrogation liens has varied widely from court to court, depending upon which circuit the case was brought and when. In order to make sense of the conflicting case law in this area, some history and an overview of the three U.S. Supreme Court cases on ERISA liens is necessary. ERISA (the Employment Retirement Income Security Act of 1974, 29 U.S.C. §§1001 — 1461), regulates employee benefit plans. ERISA applies to two types of employee benefit plans: (1) pension plans, and (2) employee welfare plans, including hospital and medical benefits. The purpose of ERISA was to standardize employee rights in benefit plans throughout the country and to offer tax incentives to employers and employees for employee benefit programs. The Act says nothing about subrogation or reimbursement of health plans in injury cases, but does authorize equitable remedies.

For injured plaintiffs, the trouble began with the U.S. Supreme Court decision in *FMC Corporation v. Holliday*, 498 U.S. 52, 111 S. Ct. 403 (1990). The Court considered the question of whether a Pennsylvania state statute prohibiting reimbursement from a claimant's tort recovery was preempted by ERISA. The Court distinguished between self-funded plans and insured plans in holding that state regulatory schemes over benefit plans that are self-funded are preempted by the ERISA statute and the Pennsylvania statute prohibiting subrogation in automobile injury cases did not apply. After this decision, self-funded plans, usually administered by

insurance companies, became much more aggressive in demanding 100% payment of subrogation liens.

The Court did not discuss the common fund or made whole doctrines in this case. There is, however, some good news for plaintiffs in this decision for those who practice in jurisdictions with favorable subrogation law. Employee benefit plans that purchase insurance are not covered by ERISA and subrogation or reimbursement claims from insured plans are subject to state law.

Following *FMC Corporation v. Holliday*, there were numerous federal trial and appellate court decisions discussing ERISA preemption, subject matter jurisdiction, and the application of equitable defenses. Across the country, there were conflicting decisions about whether federal subject matter jurisdiction existed in ERISA subrogation disputes. The sheer volume and variety of decisions make it impossible to cover them in this article. Companies, like Primax, are hired by benefit plans to collect liens. These companies often refuse to negotiate for any reason. Some plans, like the Wal-Mart plan, litigated relentlessly.

The Supreme Court granted certiorari in *Great-West Life and Annuity Ins. Co. v. Knudson*, 534 U.S. 205, 122 S. Ct. 708 (2002). At the time, it was hoped that the Supreme Court would clarify the issues involving subrogation liens. In that case, Jeanette Knudson was rendered quadriplegic in a car accident. Her husband's health benefit plan, Great-West, paid the enormous bills associated with her medical care. Knudson filed a state court personal injury tort action and settled her case. The state court approved the settlement that paid attorney fees, reimbursed Medicaid, and put the remainder of the money in a special needs trust for Jeanette. Great-West was given notice of the settlement hearing, but did not appear. Great-West sued Jeanette Knudson for injunctive and declaratory relief under ERISA.

The U.S. Supreme Court found that Congress limited the relief that the fiduciary could obtain under ERISA to equitable relief only in §502(a)(3). The Court found that Great-West's claim was simply a claim for money damages which was legal in nature, not equitable, and that there was no federal subject matter jurisdiction for the district court to grant the relief sought.

Following *Great-West*, some courts read Knudson to mean that ERISA plans do not have a right of reimbursement at all. Others read it to mean that ERISA plans could still pursue equitable remedies, such as equitable liens in constructive trusts, against certain parties, but Knudson involved neither the correct remedies nor the correct parties. The decision was very fact specific and resulted in yet more litigation and a split in the circuits on whether an ERISA plan had the right to reimbursement.

In some federal circuits, notably the Fourth and the Ninth, there was no federal subject matter jurisdiction to enforce subrogation liens claimed by self-funded ERISA liens. Other circuits, notably the Seventh Circuit, found that subject matter jurisdiction did exist.<sup>3</sup> Some of the circuits recognized the made whole doctrine as part of federal common law, but found that the language of the plan trumped its application. In the spring of 2006, the GOP controlled Congress was seeking to add a provision granting the right to reimbursement to an ERISA amendment in a conference committee report. Following the *Sereboff* decision, the provision was no longer needed and not pursued.

In May, 2006, the Supreme Court handed down another ERISA case, *Sereboff v. Mid Atlantic Medical Services*, 126 F. Ct. 1869 (2006), an ERISA subrogation case from the 4th Circuit. The United States Supreme Court heard the case in order to resolve the split in the circuits regarding subject matter jurisdiction. Writing for the Supreme Court, Chief Justice Roberts stated that the sole issue for the Court to decide was whether the relief sought by the self-funded plan was equitable in nature and, therefore, authorized under ERISA. Chief Justice Roberts reviewed the facts and the holding in *Great-West* and noted that the only difference in the facts was that the funds in the *Great-West* case had been placed in a special needs trust and were not in Knudson's possession. In *Sereboff*, the disputed funds had been placed in an investment account pending the outcome in the case and all appeals.

That was enough of a difference for the Supreme Court to find that the impediment to characterizing the relief as equitable in the *Great-West* case was not present in this case. The Court found (in a strained analysis) that, in this case, Mid Atlantic did not seek to impose personal liability for a contractual obligation to pay money, but rather was seeking to enforce a constructive trust against an identifiable fund. Then, the Court went on to find

that there was an equitable basis for Mid Atlantic's claims and found that actions to enforce ERISA subrogation liens were equitable in nature and permissible. Depending upon the jurisdiction, this decision drastically changed the law in this area. Whether the made whole and common fund doctrines applies to a subrogation claim made by a self-funded ERISA plan has not been specifically addressed by the Supreme Court. In *Sereboff*, the issue of whether the deduction for attorney fees and costs incurred in the state court (the common fund doctrine) was not specifically addressed by any court because the plan language provided for such a reduction. The plan did, as noted by Chief Justice Roberts, contain a provision stating that Mid Atlantic's share of the recovery would not be reduced because the beneficiary had not received the full damages claimed, unless agreed to by Mid Atlantic in writing (the made whole doctrine). The appropriateness of that language was not addressed by the Supreme Court.

Unfortunately, there appears to be a trend developing in this area. Even before *Sereboff*, the U.S. Court of Appeals for the 7th Circuit ruled that specific plan language overrides the equitable defense of the made whole doctrine.<sup>4</sup> In that same case, the Court found that it is the attorney only who has the claim under the common fund doctrine. This seems to mean that so long as the attorney doesn't take any fee (or at least any fee on the disputed funds) until the plan's lien is resolved, the common fund claim can be made by the attorney. Courts have been unwilling to adopt common law defenses to subrogation where the benefit plan has language to the contrary. Where the recovery is limited, why should a contractually obligated benefit plan be able to take all of the money and leave the individual who was hurt with nothing? Lawyers need to be prepared to fight to repay as little as possible.

There has been one U.S. Court of Appeals decision since *Sereboff*. In *Moore v. Capital Care*, 461 F.3d 1 (D.C. Cir. 2006), the Court specifically rejected the application of the made whole doctrine. The D.C. Circuit held that it need not decide to adopt the made whole doctrine because the plan language unambiguously established a plan priority to any third party recovery the beneficiary obtains regardless of whether the beneficiary had been made whole. A number of other issues were addressed, including whether an award of attorney fees was appropriate. The D.C. Circuit remanded the fee question to the District Court for further findings. This

decision is bad for injured consumers and, unfortunately, there is no sign that the U.S. Supreme Court is inclined to help injured consumers, either. This is by no means an exhaustive survey of ERISA lien law. A good understanding of the law in a particular jurisdiction is essential to dealing with plan attorneys. The fact that the law is still in flux is useful to a fair resolution of these liens. There are a number of web sites that discuss the law in this area from the perspective of both the injured party and the benefit plan.<sup>5</sup>

### ***Tips on Handling ERISA Subrogation Claims***

It is fundamentally unfair for a self-funded benefit plan to demand 100% reimbursement of medical bills with no contribution towards the cost of obtaining that reimbursement. Why should the injured party bear the costs of obtaining reimbursement for benefits that the injured party or his or her family paid for? The plan has no risk and does not have to negotiate with the injured person. Where the recovery is limited, why should a contractually obligated benefit plan be able to take all of the money and leave the individual who was hurt with nothing? Lawyers need to be prepared to fight to repay as little as possible.

Many ERISA plans recognize the need to compromise and do routinely reduce liens for attorney fees. If circumstances warrant it, some plans will agree to further reductions in order to resolve a case. It is never too early to begin working toward a favorable resolution for your client. Consider the following questions:

#### ***1. Is the plan claiming expenses it should not?***

Request an itemization of bills paid and review carefully. Are there items claimed that are arguably not related to the incident at issue in the lawsuit? Be prepared to document your request that bills be removed for lack of causation. If you are relying upon comparative fault or problems with liability to negotiate a lien reduction, send police reports or deposition excerpts. Subrogation "specialists" have supervisors.

Generally, state law will be more favorable to your client than federal law. Consider the following:

#### ***2. Is the plan an ERISA plan and is it self-funded?***

Verify that the plan is funded by employer contributions, not by an insurance policy. If there is an insurance policy,

*(Continued on page 196)*

## Resolving ERISA Subrogation Liens

(Continued from page 195)

state law applies. Unfortunately, there are cases that hold that stop-loss or excess insurance does not render an otherwise self-funded plan insured.<sup>6</sup>

### 3. Is the plan exempt from ERISA?

If your client is employed by a governmental entity or a church, the plan is exempt from ERISA and state law will apply. Governmental plans have been found to include cities, counties, school corporations, and universities.<sup>7</sup>

### 4. What does the plan language say?

Review the plan language. Does the plan give your client any relief? Even if the ERISA plan is self-funded, the plan must provide for subrogation. Some plans exempt uninsured and underinsured motorist insurance from subrogation rights. Some plans provide for contributions towards attorney fees. If the plan is silent on the issue of attorney fees or the made whole doctrine, those principles may apply by default.<sup>8</sup>

### 5. What language applies?

ERISA plan documents are typically voluminous. The plan is only required to provide an employee with a summary of the plan. There are cases that suggest that the employee may rely upon the language in the plan summary if it is more advantageous to the plan participant.<sup>9</sup>

Another issue that has been litigated is whether the plan language in effect at the time the tort occurred or the language in effect at the time the third party case is settled applies. In the 7th Circuit, the language in effect at the time of the tort controls.<sup>10</sup>

### 6. What about telling the plan to get its own lawyer?

In *Varco*, the 7th Circuit Court of Appeals suggested that an injured party disclaim any demand for medical expenses in tort suits and assign the right to recover the medical bills to the plan.

### 7. Does the plan administrator or trustees have discretion to reduce the lien?

If the injuries are severe and circumstances are compelling, ask the plan trustees to reduce or waive the lien. Make the request in writing and set forth all of the factors that justify a waiver. If possible, appeal to the trustees directly. Typically, the recovery company is simply

a collection agency working for a percentage of the lien recovered and has no incentive to waive a lien where the trustees are typically associated with the company and may even know about the injured employee's dire circumstances.

### Conclusion

In summary, the best practice is to keep abreast of the current case law in this area and aggressively represent your client's rights. Remember that if you choose to litigate, a plan will ultimately have to hire an attorney to pursue its claim with the injured party. Both parties need to evaluate the economics of going forward with litigation where there is an ERISA reimbursement dispute. Even after *Sereboff*, there may be an argument for state subject matter jurisdiction on where there is an action pending in state court to apportion liens.<sup>11</sup>

Fully advise your clients of the potential for reimbursement at the initial meeting or as soon as possible thereafter. Be sure to collect the plan documents and review the plan language to determine whether the claim for reimbursement is valid. Determine whether the plan is self-funded or insured. If the plan is aware of your client's claim and the plan's claim is substantial, consider negotiating with the plan before the case is actively pursued. Provide information about out-of-pocket expenses, permanent injuries and policy limits early in the case.

If the plan will not offer you an acceptable compromise, consider assigning the medical bills claim to the plan for collection or consider inviting the plan to intervene in the case. This was the procedure suggested in *Varco*. The fund will have to hire counsel and pursue its own reimbursement. At that point, the plan is subject to the same considerations as the personal injury plaintiff as to liability.

Aggressively fight for your client's

interests. It is wrong for a self-insured benefit plan to collect 100% of its damages when the injured party must pay an attorney fee to collect his or her damages. In some cases, the self-insured plan will insist on 100% repayment even where the plaintiff receives nothing after fees and liens. It is wrong for the plan to influence the outcome of litigation where it has no risk. Having a firm grasp on the law and being persistent will carry the day in dealing with ERISA plans.

*Betsy K. Greene, TLC 2005, practices personal injury law at the Greene & Schultz firm in Bloomington, Indiana. Ms. Greene has been Board Certified as a Civil Trial Advocate by the National Board of Trial Advocacy since 1995. She is the Past President of the Indiana Trial Lawyers Association and was named a Top 50 Superlawyer by Law & Politics Magazine for 2007.*

<sup>1</sup> I.C. 34-51-2-19.

<sup>2</sup> 42 U.S.C. § 1395y(b)(2).

<sup>3</sup> *Administrative Committee of the Wal-Mart Stores, Inc. Associates' Health and Welfare Plan v. Varco*, 338 F.3d 680 (7th Cir. 2003).

<sup>4</sup> *Administrative Committee of the Wal-Mart Stores, Inc. Associates' Health and Welfare Plan v. Varco*, 338 F.3d 680 (7th Cir. 2003).

<sup>5</sup> [www.erisaontheweb.com](http://www.erisaontheweb.com) and [www.mwl-law.com](http://www.mwl-law.com).

<sup>6</sup> *Gray v. Gourley*, 248 F.3d 206 (3rd Cir. 2001).

<sup>7</sup> 29 U.S.C. §1003(b)(1) and defined at §1002(32).

<sup>8</sup> *Wal-Mart Stores, Inc. v. Wells*, 213 F.3d 398 (7th Cir. 2000).

<sup>9</sup> *Springs Valley Bank & Trust v. Carpenter*, 885 F.Supp. 1131 (S.D. Ind. 1993), *Hamilton v. Pilgrims Pride Employee Health Plan*, 37 F.Supp.2d 817 (E.D. Tex. 1998).

<sup>10</sup> *Wal-Mart Stores, Inc. v. Wells*, 213 F.3d 398 (7th Cir. 2000).

<sup>11</sup> *Hart v. Wal-Mart Stores, Inc.*, 360 F.3d 674 (7th Cir. 2004).

## Writers

CTLA Forum is looking for writers to supply original content to be considered for publication.

Expand on a brief or expound on a frustration.

Let it out by putting it in writing.

# CTLA Staff Stalwart Set To Retire

By Neil Ferstand, *Executive Director*

Debby Kreitner, CTLA Administrative Assistant and Bookkeeper since 1982, set to retire in November of 2008.

When I came to CTLA in 1995, Debby had already been with the Association for over 13 years. There was no one, but Debby, who had more of a grasp of the organization, its operational procedures, the equipment, the personalities of its leaders (past and present) members and, of course, the remaining staff and those service providers who helped to make CTLA run. There was only Debby.

As many of you have experience with long time staff people you have come to respect and, in many cases love, as an extension of your own family, it's not too difficult to understand the dynamic, the reliance and the impending loss. Debby leaving CTLA is quite an emotional experience.

Since more space would be required then this column to tell you of Debby's contribution to CTLA, let me just give you some highlights. More than twenty years ago CTLA entered the computer age by utilizing a new (at the time) database system that kept our member and financial records straight. Debby was the programmer. She learned the system from the bottom up and no one was more proficient at getting at the data than Debby. If we needed something different it was



Debby who reconfigured the system to produce the needed data. When the system became outdated, it was necessary to upgrade and it was she who took the lead in working with the programmers to develop a more workable and useful product that we could all use and learn — A task that continues today.

People often say that no one person is indispensable to an operation but that statement lacks credibility when applied to Debby Kreitner, it's just simply wrong. And it wasn't just the computer system that made Debby that indispensable part of the life of this Association. It is her indefatigable good humor that meets you every new day when you walk through the

door or her dealing with members, attending seminars and events, keeping the records straight and greeting attendees with that same humor and that same proficiency. It's always been . . . "ask Debby."

None of us were particularly stunned to hear Debby was leaving; after all, she's been talking about retiring for years — or actually threatening to retire. We were all use to hearing the refrain. That is, until the reality set in.

The realization that Debby would be leaving began when she switched to a part-time schedule. By that time, her husband Dick had retired, her daughters were out of the house starting their own families and Dick and Debby wanted to accomplish their longtime goal: Travel and lots of it. China, Russia, Europe. No continent left untouched. There was no time that the Kreitners were not planning their next trip. As I write this, they are sweeping through Holland with a thorough survey of Amsterdam as their key goal. Her absence leaves us all feeling vulnerable.

There's so much more about Debby Kreitner then space allows me to fill or my emotion, in check, allows me to reveal. She's not difficult to describe she's just damn difficult to replace. There will never be another Debby Kreitner at CTLA and we will all miss her when she leaves.

## 2008 CTLA REGIONAL MEMBERSHIP MEETINGS

*Mark your calendars — meet with colleagues — make your voice heard*  
*Watch for Details*

9/11/08 Thurs. 6:00 p.m.	Stamford Emmett & Glander	10/8/08 Weds. 6:00 p.m.	Milford Citrus
9/18/08 Thurs. 6:00 p.m.	New Haven Law Office of Joseph Mirrione Firm	10/16/08 Thurs. 6:00 p.m.	Norwich Anderson Law Firm
9/23/08 Tues. 6:00 p.m.	Danbury Ventura Ribeiro & Smith	10/21/08 Tues. 6:00 p.m.	Hartford RisCassi & Davis
9/25/08 Thurs. 6:00 p.m.	Bridgeport Tremont & Sheldon	10/28/08 Tues. 6:00 p.m.	Middletown TBA
10/7/08 Tues. 6:00 p.m.	Waterbury/Litchfield D'Amico, Griffin & Pettinicchi	10/29/08 Weds. 6:00 p.m.	Windham/Rockville TBA

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# CTLA CLUB MEMBERSHIP

## *THE VOICE FOR CONNECTICUT TRIAL LAWYERS!*

### ***DID YOU KNOW THAT...***

- **No other organization in CT represents the interests of the trial bar.** CTLA has one of the most respected lobbying teams working at the Capitol fighting for your clients and your practice.
- **CTLA members have identified lobbying, on both the state and national levels, as *the most important membership service provided, directly impacting their practices.***
- CTLA utilizes full-time contract lobbyists, polling, statistical and actuarial professionals, plus fund development and public relations professionals – ***all to support an agenda engineered to preserve your clients' rights!***
- Each year, CTLA defeats up to sixty immunity bills and legislative attempts to threaten the civil justice system. ***These bills continue to be a yearly threat!***
- Club Contributions also support CTLA's political advocacy arm, the Connecticut Association for Justice. These funds will be used to support Connecticut candidates who support CTLA's mission to protect the Civil Justice System.

## CTLA CLUB MEMBERSHIP BENEFITS

- Club Membership of \$1800 or higher includes Membership in *CTLA and AAJ*.
- Pay monthly, **not** the lump sum required for CTLA and AAJ Membership dues.
- Recognition in CTLA's quarterly magazine, *The Forum*, and the *CTLA Membership Directory*.
- Peace of Mind that comes from knowing that CTLA and AAJ PAC will have the necessary resources to protect your clients' rights ~ ***and your practice.***

**CALL (860) 522-4345 TO LEARN MORE ABOUT CLUB MEMBERSHIP**

***Joining together to preserve and  
strengthen the civil justice system.***

# THE CONNECTICUT TRIAL LAWYERS ASSOCIATION

## EDUCATION.

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### CONTINUING LEGAL EDUCATION

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## EXPERIENCE.

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### NETWORKING

The Workers' Compensation Section, New Lawyers Group, Women's Caucus, Membership Dinners with fascinating speakers, Golf Tournament, and CTLA's Annual Meeting offer great opportunities for members and families to get together!

## RESOURCES.

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### THE FORUM

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## ADVOCACY.

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### LOBBYING

**No other organization in Connecticut represents the interests of the trial bar.**

CTLA has one of the most respected lobbying teams working full-time at the capitol to protect the rights of your clients – *and your practice.*

### AMICUS ACTIVITY

**Advocating for you and your clients in the Courthouse.** Our Amicus Committee and CTLA Members participate in a significant number of important cases impacting our members and their clients - at both the Appellate level and in the Supreme Court.



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