

STATE CIVIL LITIGATION SECTION

Minutes of Quarterly Meeting

March 9, 2011

The first quarterly meeting of the Philadelphia Bar Association State Civil Litigation Section was called to order at 12:00 p.m. in the Conference Center of the Philadelphia Bar Association by Co-Chair, Robert T. Szostak, Esquire. Bob introduced the officers of the Section and recapped programming of the various Committees of the Section throughout the first quarter of 2011. He discussed the founding of the Section and its objectives and goals, the most fundamental of which is to promote and improve the application of justice in Philadelphia and throughout the Commonwealth of Pennsylvania.

Bob then introduced Jeff Dashevsky, Esquire, who discussed and explained the Greenleaf Bill and the Corman Bill, both of which involve proposed changes to the current landscape of joint and several liability in Pennsylvania. By way of short explanation, the Greenleaf Bill allows joint and several liability except against any defendant whose percentage share of fault is less than the percentage share attributed to the plaintiff, in which case, the plaintiff may not recover damages from such a defendant in excess of that defendant's percentage share. By contrast, the Corman Bill allows joint and several liability only for five enumerated reasons, most particularly, where a defendant has been held liable for not less than 60% of the total liability apportioned to all parties. A vote was taken among the more than 100 attendees of the meeting, of which 87 voted in favor of proposing a Resolution to the Board of Governors to urge the Pennsylvania General Assembly to support the Greenleaf Bill and reject the Corman Bill.

Co-Chair Mark Cohen, Esquire, announced a CLE seminar to be held on March 14, 2011, by the Professional Responsibility Section as well as the 30th Anniversary Gala for Philadelphia VIP to be held on March 19, 2011.

Bob then introduced the topic of discussion for the meeting - Medicare and Medicaid liens - which was requested by the Honorable Judges Manfredi, Moss and Abramson. The panelists and their respective topics of discussion were as follows.:

- **Glenn A. Ricketti, Esquire** of Margolis Edelstein discussed the mechanics and requirements of the Section 111 of the MMSEA statute, whose purpose is to enable the Centers for Medicare and Medicaid Services to determine who should pay for medical services between a primary and secondary payer. A major area of concern is litigants' and their attorneys' responsibility to protect future exposure in liability and no-fault claims, for which there are NO regulations, unlike in workers' compensation cases, which specifically requires litigants to "set aside" funds to repay future Medicare expenses.

- **Will Shapiro** of The Plaintiff's Resource (Austin, TX) provided helpful information and practice tips on how to "have control while cooperating" with the new regulations, scheduled to become effective January 1, 2012 for cases settled after October 1, 2011. The key message from Will was to start collecting information early, e.g. find out a client or adversary's Medicare status at the beginning of the case, and stay on top of continuing Medicare-eligible care.
- **Charles Becker, Esquire** of Kline & Specter discussed current relevant case law interpreting the regulations and then moved on to discuss reimbursement to state agencies, e.g. the Department of Public Welfare. States are federally required to seek reimbursement of funds paid through DPW, but unlike with Medicare and Medicaid, DPW only has a "cause of action," and not a lien to recover its funds.

After a short question and answer session between the panelists and attendees, the meeting concluded at approximately 2:00 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Kari Samuels".

Kari B. Samuels, Esquire
Secretary, State Civil Litigation Section