

# QUATRINI RAFFERTY GALLOWAY

ATTORNEYS AT LAW

## LEGAL UPDATE

A publication provided for the friends and clients of QRG

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## LIMITED TORT - A BAD DEAL

By Joyce Novotny-Prettiman, Esq.

Lower car insurance premiums may sound like a good idea. Statistics show that over 40% of car insurance consumers are opting for "limited tort" coverage in western Pennsylvania; however, as the saying goes, there is no such thing as a free lunch. While it is true that you may save money if you select limited tort, you should realize what you are giving up by choosing limited tort rather than full tort coverage.

What does a personal injury claim involve? First of all, it is not designed to make you rich. In fact, the law does not permit this to happen; the law attempts to get you back to where you were before the accident happened - to make you "whole" again. A lawsuit generally allows recovery for pain and suffering, the loss of life's pleasures, lost wages and unpaid medical bills. How much is this process affected by limited tort? Drastically!

Limited tort is a choice you make that limits your legal options after an auto accident. Limited tort prevents you from collecting for the inconvenience, stress, discomfort, pain and suffering caused when you are injured in an auto accident. For example, with limited tort, where a motorist has run a red light and crashed into the side of your vehicle, and you have been absolutely without fault, you may not receive any compensation for months or even years of lingering injuries, inconvenience and stress.

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## FREE CREDIT REPORTS

### NOW AVAILABLE

A recent change to the Federal Fair Credit Reporting Act mandates that all of us are entitled to a free copy of our credit report, upon request, once every 12 months. You can request a copy of your credit report via the internet, telephone or by mail. To request your report by telephone, call 1-877-322-8228. To obtain your report online, or to obtain the official mail-in request form, visit [www.annualcreditreport.com](http://www.annualcreditreport.com). The mail-in form should be sent to:

Annual Credit Report Request Service  
P.O. Box 105281  
Atlanta, GA 30348-5281

There are three nationwide reporting companies that provide this information and all three are obligated through this service to provide you with a free copy of your credit report every twelve months. Please take advantage of this offer to make certain that the information on your credit report is accurate. If entries appear in the report that are inaccurate or misstated, you should immediately contact the credit reporting agency directly to discuss the matter.

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*The LEGAL UPDATE is prepared by the staff of QRG for its friends and clients. The UPDATE sets forth general principles and should not be acted upon without specific advice.*

# ALL DISABILITY POLICIES ARE NOT CREATED EQUAL

By Brian Patrick Bronson, Esq.

*In the previous issue of Legal Update, we discussed the connection between Social Security disability and private disability insurance. This issue's article will provide more information about private disability insurance coverage.*

**D**isability insurance is one of the most important forms of insurance that you can have because it protects you from financial disaster when you are most vulnerable due to illness or injury. Despite the cost, it is essential that you have some type of income protection in the event of unexpected disability.

There are two basic types of coverage, ERISA plans and non-ERISA plans. ERISA is short for The Employee Retirement Income Security Act of 1974. This federal law dictates a worker's entitlement to benefits, a worker's right to obtain information, and a worker's remedies if a claim is denied. ERISA plans are those typically provided by an employer or an employee organization such as a union. Generally, all it takes to subject a policy to ERISA is an employer's endorsement of the policy or plan.

Non-ERISA plans are disability insurance policies purchased by individuals on their own and not endorsed by an employer. These private policies are governed by basic contract law principles and often have more lenient definitions of disability and other terms which can benefit you. Although these types of policies may offer important advantages over ERISA plans, such as more liberal definitions of disability and longer benefit periods, they often come at a higher price.

It is important to understand the terms of your disability insurance policy. Some policies provide that for the first two years, you are entitled to benefits if you are disabled from your regular occupation. After that first two years, you are entitled to benefits only if you can show that you are disabled from all occupations. For example, the insurance company may cut off a coal miner's disability benefits by showing that he still has the ability to be a greeter at a local store. It can be extremely difficult to meet the requirements of such a policy on a long-term basis.

The difference between the two types of policies is significant if you are denied benefits:

- Under an ERISA plan, you first file your claim with the insurance company's administrator, who makes the initial determination as to whether you are disabled and entitled to benefits. If the administrator denies benefits, you must file an action in federal court, where the judge decides not whether you are disabled, but whether the administrator reached the decision in a reasonable manner. In this case, even if the insurance company is wrong, you will not recover benefits unless you can show that your claim was reviewed in some unreasonable manner.
- Under a non-ERISA policy, if benefits are denied, a claim is filed in state or federal court. The court will decide all of the issues, including disability, under ordinary contract law.

If you currently have a disability policy, we would be happy to review it and give you our advice. Older policies may have better terms and benefits than can presently be obtained. You need to be fully informed before either canceling a policy or deciding that your employer's policy is sufficient to cover any potential disability.



*Attorney Brian Patrick Bronson joined QRG in 2002 and concentrates his practice in criminal law and in representing disabled individuals in long-term disability, ERISA and Social Security matters.*

# LIMITED TORT - A BAD DEAL

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Limited tort does not apply and you will be considered to have full tort if:

- you are killed
- you are permanently disfigured
- a body function is seriously impaired
- the person causing the accident was driving under the influence
- the vehicle causing the accident is registered out of state
- you are not riding in a private passenger motor vehicle



*Attorney Joyce Novotny-Prettiman joined QRG in 1998 and concentrates her practice in personal injury and school law.*

The most common scenario we see is where someone has limited tort coverage and the question is whether a body function is seriously impaired. While this sounds simple, statistics show that judges and juries have ruled against limited tort claimants in most cases where the question has been submitted. The following are two actual cases where injuries were determined NOT to be serious enough to move a person past the limited tort selection:

- arthroscopic knee surgery, three months of physical therapy, reduced range of motion, pain on walking and standing for long periods and one month of missed work
- broken collarbone and wrist, lacerations and bruises, but all lifting restrictions removed six weeks post-accident

So many of our clients who have lost months out of their lives due to injuries and have continuing health problems because of injuries they sustained in a car accident say to us, "That is not how I thought limited tort worked. I did not understand what I was giving up when I chose limited tort." The few hundred dollars per year you save on limited tort now may prevent you from recovering thousands of dollars later for a lingering lifestyle-changing injury.

Moral of the story: Always choose full tort; never agree to limited tort coverage. If you choose limited tort, we may not be able to help you or your loved ones make a claim for anything beyond economic losses.

## QRG IN THE COMMUNITY

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Attorney **David DeRose** and registered nurse Kay South visited the Green Meadows Nursing Home in Latrobe in July to make a presentation on advance directives and living wills. The discussion focused on the importance of giving direction on end-of-life issues to guide family members at that difficult time.

Attorneys **Barbara Artuso** and **Tereasa Rerko** recently presented a seminar to case managers, therapists, and resource coordinators at the Community Guidance Center in Indiana. They addressed the process of applying for Social Security disability and Supplemental Security Income, the obstacles to a successful claim, and how the Guidance Center employees can help their clients maximize their chances of obtaining disability benefits.

In September, QRG participated as a sponsor in the 12th Annual Polo for the Cure charity event for The Leukemia and Lymphoma Society. This annual event raises money for local patient aid and research programs, and this year raised \$128,000, the highest total to date. Attorney **Joyce Novotny-Prettiman** is a member of the event's Steering Committee, which is responsible for the overall coordination of the event.

Attorney **Vince Quatrini** is serving as co-chair of the organizational committee of the Latrobe Revitalization Project. This comprehensive project is designed to give this 150-year-old community a new look and lease on life and is expected to take five years or more.



## WHAT'S THE VERDICT?

By Richard H. Galloway, Esq.

The summer of 2005 had been an eventful one for the Parry children, Karen and Janice. Both were in their early 20's and starting careers and families. Since it was time to get their own auto insurance, they went to the same agent their father used. Neither knew very much about insurance, so when the agent outlined a policy that would have \$100,000 of liability insurance, \$15,000 of uninsured and underinsured motorist coverage, and had the limited tort option, they simply nodded their heads, signed on the dotted lines and forked over the first premiums. The policy also contained collision coverage. They were assured they had "full coverage" and they went happily on their way.

On June 25th, Karen was driving along minding her own business when a young man, showing off for his friends, ran a stop sign and plowed into the passenger side of her car. The impact totally demolished the car and sent Karen and her two-year-old son, Evan, to the emergency room. Karen had a broken bone in her right forearm which needed to be put in a cast, but which the doctor promised her would be as good as new in a few months. Because it was her dominant right arm, she was unable to do her work as an interior designer for three months. After that time, the doctor assured her she had no long-term disabilities. Evan had suffered a concussion and seemed to have hurt his neck. He continued to show lingering signs of something wrong for the next several months. X-rays and an MRI showed no broken bones. He had severe headaches, but his neurologist pronounced that the concussion had resolved within several weeks and that the neck injury was a muscle sprain.

Meanwhile, on July 4th, Janice was returning home from visiting some friends when a man coming from a party at the lake, drunk as a hoot-owl, crossed the center line and side-swiped Janice's car, forcing it off the road and into a gully. She and her two children, Rick and Lisa, were shaken up but didn't go to the hospital that day. The next day all of them were sore and went to the local emergency room, where they were found to have cervical strains (soft tissue neck injuries). In addition, Rick had a soft tissue injury in his low back. All three were ordered to have physical therapy for several weeks. The doctor predicted that their stiffness, soreness and pain would gradually subside over six months, and it did. He also predicted that from time to time they might have flare-ups after certain vigorous activities and, again, he was right. Janice missed two weeks of work as a registered nurse but then was able to function, though with occasional pain.

Coincidentally, the girls' mother, Peg, was stopped in traffic when she was hit from behind by a cowboy who was driving his Texas-registered pick-up, singing along to a country song and not paying attention to traffic in front of him. As a result of the collision, Peg had to go to the hospital but was released that day. The doctor felt that she had aggravated her arthritis and would have some nagging problems for a number of years, but there wasn't much that could be done other than taking pain killers and muscle relaxants. Needless to say, Peg had used the same insurance agent as her daughters and had the same coverage.

Can these ladies and their children sue for injuries sustained in these accidents?

*Answer on Page 7*

## QRG PERSONAL NOTES

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**Joshua Ross**, a senior at Hempfield High School and son of client care representative **Terri Ross**, was recently honored by being named to the Westmoreland County Band, where he will play first trumpet.

During a visit to Italy in June, **Michael Quatrini**, son of **Vince & Patty Quatrini**, became engaged to Megan Grote. Megan, a graduate of Penn State University, is employed as a field representative for Congressman John Murtha and is attending the University of Pittsburgh Graduate School of Public and International Affairs. Michael graduated from Dickinson College and is currently a second-year student at Duquesne University School of Law.

# REAL ESTATE BUYER - BEWARE !!

*By David S. DeRose, Esq. and Joyce Novotny-Prettiman, Esq.*

It can be an exciting time when you decide to buy a home. Maybe you just landed a new job, just got married, or are expecting a new baby. Sometimes real estate transfers become necessary because of stressful events in your life such as when the care of your home becomes too much to handle. Regardless of why you enter the real estate market, most people do so without a great deal of experience.

As you start this journey, we hope that you research your options and consider contacting your attorney right at the beginning - before you sign a sales agreement. While many people move through a real estate purchase safely with the assistance of real estate agents, bankers and closing agents, we want you to consider their interest in your particular transaction and their role in this process.

The real estate agent, who customarily represents the seller, is responsible for securing a buyer and then closing the deal. The agent will help a seller value the property, advertise it and market it for sale, show the property to prospective buyers, and then help place the property under contract to a buyer who is willing to meet the seller's demands. The real estate agent is also there to answer questions about the quality of school districts, the tax rates of various municipalities, character of neighborhoods and the travel time involved in commutes to work or local stores. This is a real estate agent's area of expertise, but remember, typically, the real estate agent represents the seller.

A banker's role is to loan prospective buyers money to finance the purchase of a home. Bank representatives deal with questions about mortgage financing, interest rates, loan origination fees, title insurance and closing costs. The banker does not represent the buyer since the banker is chiefly concerned with making an appropriate type of loan to a qualified buyer and thereafter securing the bank's position with regard to the repayment of that loan.

The closing agent is responsible to collect the purchase price, record all of the documents at the courthouse and complete, in a timely fashion, all of the paperwork that may be required by the lender to complete the deal. The closing agent may have been suggested to the buyer by either the real estate agent or the banking institution. Again, the closing agent's role is to make certain that title to the property passes to the buyer and that the bank's loan documents are in order and are properly recorded to insure the bank's security interest in the property.

The roles of the real estate agent, banker and closing agent are important roles and are pieces of a larger puzzle, but they do not represent all of the pieces of the puzzle. None of these people protect the interests of the buyer in a real estate transaction the way an attorney can. Since purchasing a home is one of your biggest investments, you should bring an attorney into the picture as soon as possible.

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## QRG DIRECT DIAL NUMBERS

*By Terri M. Ross, Client Care Representative*

QRG has a direct telephone system to enable you to reach your attorney's office more easily. This system is designed to ensure that your call is routed directly to the support staff of your attorney instead of to the receptionist. We encourage you to use the numbers listed here whenever you contact our office.

VINCE QUATRINI: 724-552-2700  
DENNIS RAFFERTY: 724-552-2705  
DICK GALLOWAY (PERSONAL INJURY): 724-552-2733  
DICK GALLOWAY (CRIMINAL): 724-552-2710  
TEREASA RERKO: 724-552-2720  
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DAVID DEROSE: 724-552-2725  
JOYCE NOVOTNY-PRETTIMAN: 724-552-2735  
JIM HORCHAK: 724-552-2745  
PETE GOUGH: 724-552-2740  
BRIAN BRONSON: 724-552-2755

# HEART ATTACK - ACT WITHIN THE "GOLDEN HOUR"

*By David S. DeRose, Esq.*

A little over four years ago I was asked to join the Golden Hour Committee of the Latrobe Area Hospital (now Excelsa Health-Latrobe). I became a citizen member of this committee not because I had some other affiliation with organizations providing health care or health related educational services to people, but because I had a heart attack at age 49. I am one of the very fortunate survivors of such an event and a living example of what the Golden Hour message encompasses.



Ironically, one week before my heart attack, I read an article in the local newspaper about the Golden Hour. The content of that article, emphasizing the necessity for prompt treatment, ran through my mind that December evening as the symptoms of my heart attack grew increasingly more intense.

Treatment of a heart attack victim within the first hour - the Golden Hour - can make the difference between life and death. Prompt treatment in that hour can also prevent irreparable damage to the heart leading to a lifetime of incapacity or disability. The Golden Hour Committee was created a number of years ago by former emergency room director, Dr. Richard Kunkle, for the purpose of educating the public about the critical importance of prompt and professional treatment for someone who is experiencing the signs and symptoms of a heart attack.

You should immediately seek treatment at an emergency room if you experience any of these symptoms, lasting more than fifteen minutes: chest discomfort with pressure or fullness in the center of your chest, potentially extending into your shoulders, neck, jaw, arms or back, or shortness of breath, sweating, dizziness, vomiting, and overall weakness.

While symptoms sometimes differ between men and women, heart disease remains the leading killer of both genders. When you have a heart attack, as I did, your heart muscle begins to die within minutes. Part of our committee's message is "time is muscle"; the quicker you secure medical treatment, the more likely you will make a full recovery, keeping heart damage to a minimum.

Many of us are reluctant to acknowledge that we are not feeling well. We become embarrassed about winding up in the emergency room with nothing more than nausea, or we don't want to trouble family or medical personnel unnecessarily. My advice is to put such thoughts out of your mind and get to the hospital immediately.

I consider myself extremely blessed to have survived this experience and privileged to help educate others about a message that could save their life or the life of a loved one. I continue to be an active member of the Golden Hour Committee. If you are interested in having our committee speak to your group or organization, please contact me.

I realize that you normally expect to find me authoring articles in our newsletter about various legal topics, but this subject is as important to me as anything else that I have communicated to you over the last several years. It is my sincere hope that you will take a moment to think over this message.



## WHAT'S THE VERDICT?

*Continued from page 4*

### ANSWER:

Janice and Peg have valid claims, but Karen and her son are probably out of luck.

When Karen chose limited tort coverage, she gave up her right to sue unless she suffered catastrophic injuries or there were unusual factors. Since no unusual factors occurred in her case, and her broken arm, although painful, healed in several months, she could not sue because she did not suffer a serious impairment of body function, required under limited tort.

The same limited tort coverage chosen by his mother applied to Evan. His concussion and neck sprain did not meet the criteria for limited tort. Therefore, neither would have a claim, even though both were riding along, minding their own business, when a hot shot ran that stop sign and caused them months and months of grief.

Janice likewise chose limited tort, but in her case there is an exception. When the person causing the accident is convicted of drunk driving or accepts ARD (a pre-trial program for first-time DUI offenders), limited tort does not apply. In that instance, the coverage automatically jumps to full tort and Janice is allowed to make a claim on behalf of herself and each of her two children for the injuries that they sustained.

In Peg's case, another exception applies. Limited tort coverage automatically becomes full tort coverage when the person causing the accident is driving a vehicle registered in another state. Since she was hit by a Texas vehicle, she also is able to make a claim.

Although Karen's and Evan's injuries seem to be the most serious, they unfortunately selected limited tort and found that limited tort coverage is virtually no coverage at all.

After this experience, Janice and Karen found a new agent and obtained full tort coverage. Peg stayed with the old agent and continues to have limited tort coverage - old habits (even bad ones) die hard.

## REAL ESTATE BUYER - BEWARE !!

*Continued from page 5*

We are distressed when we see how devastating a real estate deal gone bad can be for all parties concerned. If a septic system is not in working order, a house is damaged or infested by termites or is discovered to have mold in the basement, then these are problems that a buyer owns after the transaction is completed. The cost of correcting these home repair disasters can be extremely expensive, especially if it results in litigation.

Many times we review what has happened during the process of closing a real estate deal after it has gone bad and realize that, if an attorney had been involved in that process, the bad situation may very well have been avoided. That is the attorney's part of the puzzle. The attorney is your advocate and can work hand in hand with the realtor, banker and closing agent to hopefully minimize your risk and potential for difficulty.

Your attorney can help you negotiate the terms of your sales agreement, including contingencies such as the sale of your present home, securing appropriate financing, and performing inspections and tests. You also need advice regarding the time deadlines and the waiver language contained in these agreements.

Further, the attorney can give the buyer a voice in securing good and marketable title. As a buyer, you are responsible for obtaining a title search. A title search is a record search of the property and all previous owners to make certain that there are no outstanding claims or liens filed against the property, that ownership of the property is clear, taxes have been paid, and rights of way or restrictions have been explained. With this advice, you have protection that would perhaps not have existed if the title search and closing were simply handled by the bank's closing company.

The need for legal counsel as part of a real estate transaction applies equally to buyers and sellers. At QRG, we have experience helping both buyers and sellers and want to help you avoid making a costly mistake during your real estate transaction.

## GIVING THANKS

Often the pressures of business and life distract us from appreciating our blessings.

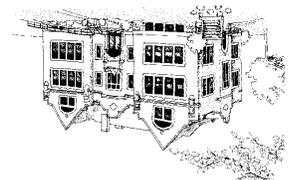
At QRG, we are very blessed by the trust and loyalty placed in us by our clients.

Now is a good time to step back and reflect upon the many things for which we can be grateful.  
Please join us this season in giving thanks and sharing this sentiment with others.



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