

## LEGAL UPDATE

A publication provided for the friends and clients of QRG

VOLUME 7 NUMBER 3

550 E. PITTSBURGH STREET, GREENSBURG, PA 15601

SUMMER 2006

## SOCIAL SECURITY & WORKERS' COMPENSATION —

### CAN I RECEIVE BOTH?

By Barbara J. Artuso, Esq. and A. Tereasa Rerko, Esq.

If you're receiving workers' compensation benefits, it may seem that filing for Social Security disability benefits is unnecessary. Nothing could be further from the truth. For someone who may not work for at least a year or more, there are significant reasons to consider filing for Social Security disability benefits, even before workers' compensation benefits end.

Social Security disability benefits are insurance benefits, so eligibility for receiving them has a time limit. Generally speaking, you must prove you are disabled within five years of ending your employment. For example, someone who is injured in 2001, and stops working for wages that year, must usually establish disability by some time in 2006. Waiting until the workers' compensation claim is resolved in 2008 will make it more difficult to obtain the medical evidence and testimony necessary to establish disability before 2006. Therefore, if you expect to

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## MEDICAID ELIGIBILITY FOR NURSING HOME CARE (PART II)

By David S. DeRose, Esq.

*In the previous issue of our newsletter, Attorney David DeRose discussed the effect of the new Medicaid law on paying for nursing home care. The article used the fictitious couple, John and Katie Elder. John was entering a nursing home and Katie was concerned about the impact of the cost of his care on their home, savings and other assets. We continue the discussion here. Please contact us if you would like a copy of Part I of this article.*

### WHAT ABOUT GIVING ASSETS AWAY?

Under prior law, a planning strategy that had been used successfully was to give a portion of the parties' assets to their children. There was risk involved in this strategy since once given, assets could not be regained.

Prior to February 8, 2006, the Medicaid rules dictated that Katie would have to disclose any gift transfer that she or John made within the past three years. Once those gifts were totaled, John would be disqualified from receiving Medicaid assistance for a number of months from the time the gifts were made.

Suppose John and Katie give each of their four children \$10,000. This gift of \$40,000 prevents John from receiving medical assistance for a period of approximately seven months. Under the old rules, this seven-month period began the date the gift was made. The new rules provide that the

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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.*

# SOCIAL SECURITY & WORKERS' COMPENSATION - CAN I RECEIVE BOTH?

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be out of work for more than a year due to your disability, consider filing for Social Security disability benefits as soon as you stop working.

Another reason to apply for Social Security disability benefits at that time is to protect your Social Security retirement benefits. Payroll taxes support the payment of Social Security disability benefits, and payment of these taxes ends when you stop working. This means that if you leave the workforce before age 62, your retirement account will show a number of years of "zero" income. However, when you are declared disabled by the Social Security Administration, your retirement account is not affected by those years of zero income because your earnings record is "frozen" by your receipt of Social Security disability benefits.

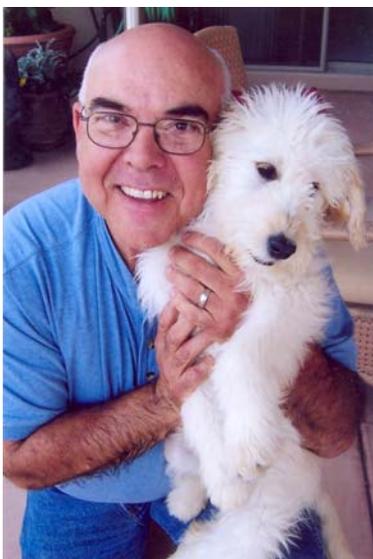
Additionally, if you are awarded Social Security disability benefits, you become entitled to Medicare two years after you begin receiving those benefits. Even while receiving workers' compensation payments, Medicare eligibility can provide access to valuable medical insurance and prescription benefits for non-work-related conditions.

Finally, an award of Social Security disability benefits can provide you with income protection if your workers' compensation benefits are terminated. Also, an award of Social Security disability benefits gives you the opportunity to resolve your workers' compensation claim for a lump sum, knowing that you have another source of income.

Contrary to what you may have been told, it is a good idea to explore the possibility of filing for Social Security disability benefits as soon as you leave the job market due to illness or injury. Contact us to discuss your specific situation.

## LETTERS FROM OUR READERS

We often receive interesting feedback from some of the more than 8,000 clients and friends who now receive this newsletter. The Winter 2006 issue containing the pictures of our pets generated a lot of interest! We are pleased to publish one of those replies here.



Hi Dick,

*Received your legal update for the winter showing you and Vince as Best Lawyers in America. As you know, you're #1 in my book. Also, great pet photos. After seeing your photo and the pets, I thought you should have a photo of me with my dog, Sadie!*

*Paul Kondrich  
(Cave Creek, Arizona)*

## QRG SEMINAR SERIES

### ESTATE PLANNING SEMINAR

Presented by  
Attorney David DeRose

Topics include:  
Nursing Home/Medicaid Planning,  
Wills, Powers of Attorney, Living Wills

**Wednesday, October 4, 2006**  
**9:00 a.m.**

**Breakfast will be served**

Join us at the Sheraton Four Points  
in Greensburg, PA  
for this *complimentary* event

Please RSVP by September 22, 2006:  
Call Diane Miller at 724-552-2733 or  
e-mail us at [news@qrglaw.com](mailto:news@qrglaw.com)

## MEDICAID ELIGIBILITY FOR NURSING HOME CARE (PART II)

*Continued from page 1*

seven-month period begins to run the day that John actually enters the nursing home. This is a significant change since gifts timely made under the old law might not affect John's ability to receive Medicaid help.

In 2006, Congress increased the "look back" period on gifting from three years to five years. This period is the time that must pass between the date of the gift and the date of application for medical assistance for nursing home costs. This further complicates the practice of using gifts to children to become Medicaid eligible.

### MONTHLY INCOME CONSIDERATIONS

If you recall, John receives Social Security and his Timken pension, and Katie receives only her Social Security. What impact does John's entry into a nursing home have on their income?

Under the new law, Katie would be entitled to keep her \$500 per month Social Security check to help her pay her daily living expenses and those associated with the family home. In addition, she can retain a portion of John's income (approximately \$1100).

What happens to this income if John dies? Like many other types of pensions, John's pension dies with him. Likewise, his Social Security benefits cease. Katie will receive an increased Social Security benefit. This scenario is not changed by the new law. However, under the old law, there would have been an opportunity for Katie to legally retain some additional assets when John entered the nursing home. Unfortunately, the opportunity to retain additional assets was stamped out by the February 2006 changes to the law.

### CONCLUDING THOUGHTS

Careful examination of financial circumstances is needed to protect the assets and income of the spouse at home while still providing sufficient money for nursing home care for the other spouse. Each family's case must be individually evaluated to accomplish the best estate plan possible. It is ill-advised to make these decisions in a vacuum. Our office can help you explore the needs, wants, health and financial security of your family, special needs of family members, the value of your assets and other important factors necessary to make proper decisions. (Even your marital status needs to be taken into account—planning alternatives are different for widows and widowers than for married couples.)

An alternative that may be considered is long term care insurance. Depending on health and age, this planning tool may give peace of mind at a reasonable cost. Also, use of a "reverse mortgage" can help increase monthly income for the spouse who remains at home. If these are not options, then gifting, purchasing certain types of annuities, making home improvements, buying a new car, making burial arrangements and other similar strategies may be better.

As I have said in previous newsletter articles, there is no substitute for good planning. Please view the law, even the recent changes, as a planning opportunity, not a planning roadblock. I hope you will contact me with your questions and concerns.

*Attorney David DeRose heads QRG's estate department and has 30 years' experience in the areas of estate planning and administration, real estate, zoning and family law. He has taught law courses at Penn State, Westmoreland County Community College and St. Vincent College, and has presented numerous seminars on legal topics for various groups throughout western Pennsylvania.*



# HOME LOAN HELP FOR THE DISABLED

By Barbara J. Artuso, Esq.

Disability is often a major roadblock to owning a home. The expenses associated with a disability, coupled with a lack of income, can exhaust savings put aside for a down payment on a home. Sometimes lenders deny mortgages to the disabled because of limited income and large medical expenses. The good news is that there are lenders and nonprofit groups who can help.

Fannie Mae, a quasi-government corporation, supports the largest and most comprehensive nationwide loan program designed for borrowers with disabilities. Through traditional lenders, Fannie Mae's Community HomeChoice program provides assistance to low and moderate income people with disabilities, and also to their able-bodied caregivers. Eligible borrowers do not have to meet the more rigorous down payment and income standards imposed on traditional buyers. To find a lender near you who makes HomeChoice loans, go to [www.fanniemae.com](http://www.fanniemae.com) or call 1-800-732-6643.

Another resource helping the disabled buy or refinance homes is the U.S. Department of Housing and Urban Development. For details, visit [www.hud.gov/groups/disabilities.cfm](http://www.hud.gov/groups/disabilities.cfm) or contact your regional HUD office (listed under the "Federal Government" heading of the local phone book).

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## ON THE AIR

The Legal Checkup, QRG's radio series on various legal issues, has been extended through the middle of September.



The series airs every Saturday morning at 9:30 a.m. on WCNS radio, 1480 on the AM dial. Tune in to learn about such legal subjects as long term disability, real estate, workers' compensation, estates, and Social Security disability.

Feel free to contact us at [info@qrglaw.com](mailto:info@qrglaw.com) to let us know what topics you'd like to hear about or to ask questions that we can possibly address on the show!



## WHAT'S THE VERDICT?

By Richard H. Galloway, Esq.

The Huntingdon Hamsters were the new minor league team in town. Everybody was talking about what a great way it was to spend an evening with the family, watching an enthusiastic bunch of young baseball players, fireworks and, of course, the crazy stunts routinely performed to attract fans.

Brent and Heather, a young couple, decided to leave the kids at home and have an evening out. At 6:14 p.m. they arrived at the brand new ball park, bought a couple of hot dogs loaded with mustard and a couple of Cokes, and settled into their seats. Brent had purchased seats on the first base line just behind the home team dugout - great seats where they could see the action up close and personal. All was going well until the 5th inning. Brent was in mid-bite on his hot dog and turned his head away from the batter, who at that moment hit a screaming line drive down the first base line, catching Brent right on the ear and knocking him unconscious.

Heather tended to him until he started to wake up. When it became apparent that he was going to be relatively okay, her emotion changed from concern for Brent to anger at the team and the ball park for letting them have a seat where it was possible that they could get hit by such a foul ball. She began to scream in the general direction of the Hamsters' dugout, calling the team a "bush league, cheap outfit". The team mascot, Happy the Hamster, who happened to be on the roof of the dugout leading a cheer, heard her remarks and took immediate insult. Happy ran over to where she was standing, redfaced and still yelling at the team and the management, and smacked her in the face with his fuzzy paw, knocking her to the ground. That did it for Heather and Brent; they took what was left of their dignity and exited the stadium, vowing never to return.

Two weeks later, still fuming from the incident, Heather called a lawyer and wanted to sue for Brent's injuries, including a concussion, a slight loss of hearing in his left ear, and scarring from the stitches on the baseball which are now permanently imprinted in his left temple. She also expressed interest in being compensated for the assault on her by Happy the Hamster. The lawyer tells her that he'll get back to her. Do Brent and Heather have valid claims?

Answer on Page 7

# QRG COMMUNITY PARTNERS

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Over the years, we have formed relationships with many community leaders, businesses and organizations. From time to time we will feature articles from people and organizations in our community about subjects which we feel may enrich your life. In this issue, we are featuring The Leukemia & Lymphoma Society. Their mission is to aid in finding a cure for blood-related cancers and improving the quality of life for patients and their families.

## ***POLO for the CURE***

*To Benefit*

*The Leukemia & Lymphoma Society*



On September 16, 2006, QuatriniRaffertyGalloway will again team up with The Leukemia & Lymphoma Society for Polo for the Cure. Polo touches the lives of Westmoreland County residents in many ways! As the teams from Düsseldorf, Germany and Ligonier, Pennsylvania gallop into Stom Hollow Farm Field, they bring messages of hope and encouragement in the battle to cure blood cancers.

Polo for the Cure offers fun and excitement for everyone on and off the field, complete with grand buffets, raffles and entertainment. While the traditional stomping of the divots and Parading of the Hounds by the Rolling Rock Hunt at half-time indulge the crowd with the culture of polo, the Silent Auction, Polo shop, and other surprises treat everyone with some great memorabilia from their afternoon.

Underneath the excitement lies a great and noble task force committed to the cause of fighting blood cancers. Leukemia, Hodgkin's disease, non-Hodgkin's lymphoma and myeloma are cancers that originate in the bone marrow or lymphatic tissues. These diseases result from an acquired genetic injury to a single cell, which becomes abnormal (malignant) and multiplies continuously.



2006 Patient Ambassador

An emotional reminder of what we are fighting for quiets the crowd when we honor our Patient Ambassadors between the festivities. The Leukemia & Lymphoma Society in Westmoreland County alone provides aid and information to over 160 patients and their families. This is just a portion of the lives touched across the local chapter's outreach covering 32 counties in Pennsylvania and the Northern portion of West Virginia.

Through the efforts of The Leukemia & Lymphoma Society, sponsors and volunteers, Polo for the Cure hopes to top last year's total of \$120,000. With the passion and dedication put into this cause and a little support from our community, we will further the Society's mission to cure leukemia, lymphoma, Hodgkin's disease and myeloma, and improve the quality of life of patients and their families.

*For more information on The Society or to support Polo 2006,  
call Tina Massari at (412) 395-2872 or log onto [www.lls.org/wpapolo](http://www.lls.org/wpapolo)*

# TAX TALK WITH JIM

TAX CREDIT FOR QUALIFIED HYBRID VEHICLES

*By James A. Horchak, Esq., C.P.A.*



**W**ith the recent rise in gas prices we are all paying, you may be considering purchasing a hybrid - a vehicle that has both a gasoline engine and a battery motor. In addition to saving on gas, the Internal Revenue Service is providing you with income tax savings if you purchase a qualified hybrid vehicle.

The Energy Policy Act of 2005 provides an income tax credit if you purchase a manufacturer's certified energy efficient vehicle, including qualified hybrid vehicles. In order to benefit from the credit, the manufacturer must indicate to you that the vehicle is "certified" as an energy efficient vehicle. To qualify for the credit, the vehicle must be new (not used), and purchased after December 31, 2005.

Qualified purchasers will receive a tax credit of up to \$3,150, which means paying less to the IRS. Act fast, however, because the credit begins to phase out when manufacturers sell 60,000 qualifying hybrid vehicles.

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## WHEN SOCIAL SECURITY SENDS YOU TO "THEIR" DOCTOR

*By Barbara J. Artuso, Esq. and Brian Patrick Bronson, Esq.*

**W**hen applying for Social Security disability benefits, the Social Security Administration sometimes sends you to one of "their" doctors. What does this mean?

When you make an application for benefits, your application is assigned to an adjudicator for evaluation. There are specific rules and regulations that the Administration uses in deciding whether or not to have a claimant evaluated. Generally speaking, if the adjudicator reviewing your claim feels as if there is enough evidence provided by the doctors who treat you, an examination will not be necessary. If your adjudicator feels your medical information is insufficient, an examination will be scheduled with a physician selected by the Social Security Administration. Benefits may be awarded whether or not you are scheduled for one of these examinations.

How does the Administration choose which doctor performs your examination? Doctors apply to be on the list of physicians who see disability claimants, and the doctor who is chosen from the list to evaluate you depends on geographical considerations and what medical information the Administration is seeking.

The doctor who is examining you is paid a relatively small sum by the Social Security Administration to provide medical information about you. The doctor may or may not give you a thorough examination, spend much time with you, or be sympathetic to your circumstances. You will probably not receive any treatment recommendations; this examination is merely designed to provide information to the Social Security Administration.

Keep in mind that this physician does not tell the Social Security Administration whether or not to pay your claim, and has no idea whether your application will be granted. The rules regarding payment of disability claims are complex and involve issues in addition to your health. Therefore, do not be encouraged or discouraged by anything that the doctor says about your likelihood of getting benefits, since his evaluation is just one of the steps in the process.

An examination ordered by the Social Security Administration can often provide additional evidence in support of a claim. However, it is not the only medical evidence used to reach a decision. Based on my experience, this step in the process should not cause additional anxiety. As always, we are available to discuss any questions or concerns about your application for Social Security disability benefits.

# WORKERS' COMPENSATION HEARING OFFICES RELOCATE

Two hearing offices of the Pennsylvania Bureau of Workers' Compensation recently relocated. The **Greensburg** office has moved to **599 Sells Lane** in Greensburg, and the **Uniontown** office relocated to **108 North Beeson Boulevard** in Uniontown. For complete directions to these new locations, please see the workers' compensation section of our website at [www.qrglaw.com](http://www.qrglaw.com), or call our office at 724-837-0080.

## QRG PERSONAL NOTES

**Connor Monzo**, grandson of attorney **Dick Galloway**, placed first in his class at the Annapolis Sailing School and was named to his Little League all-star team.

Attorney **David DeRose** has been named to the Board of Directors for the Westmoreland County Chapter of the American Heart Association.

**Ryan Carmen**, son of legal secretary **Donna Carmen**, recently became engaged to Ashley Bridges. The happy couple will wed on July 7, 2007 with a reception to be held on the Gateway Clipper Liberty Belle.

**Lydia Herrholtz**, daughter of paralegal **Angela Herrholtz**, graduated from preschool in May 2006 and will begin kindergarten this fall.

**Cassidy Chappell's** softball team finished second in the recent tournament held in the Norwin PAL Complex. Cassidy plays shortstop and is the daughter of paralegal **Rhonda Chappell**.

**Matthew Cirelli**, son of file manager **Betsy Nicksich**, graduated from Greensburg Salem High School, where he received many academic awards, including acceptance into the National Honor Society.



# WHAT'S THE VERDICT?

*Continued from page 4*

**ANSWER:** When it comes to a lawsuit, Brent, unfortunately, has struck out. Pennsylvania law generally recognizes that certain risks are inherent in various games, and when you attend a game, you assume the risk of being hurt by those particular activities. One of the risks you assume at a baseball game is that if a foul ball is hit, you may be struck and injured by that foul ball. For that injury you are not entitled to be compensated - you have assumed the risk of that errant foul ball. As if that weren't enough, a notice on the back of the tickets Brent bought clearly set forth that the holder of the ticket assumed all risks inherent in the game of baseball, including foul balls.

Heather is another story. Despite the ticket disclaimer saying that she assumed the risks inherent in baseball, she will probably prevail in her lawsuit based on the assault by the overzealous mascot. It is not an inherent risk of baseball that someone dressed in an animal costume will punch or, in this case, "paw" you. Therefore, Heather has a good claim against Happy for any injuries that she sustained. Since Happy was working for the ball club at the time (he's since been fired when it was discovered that on the night in question he was about half-drunk), the ball club will have to pay for his acts. Even though his acts were illegal, and probably criminal, he thought he was furthering his employer's business, putting a stop to people saying nasty things about the ball club. Therefore, his employer would be vicariously liable; that is, the ball club would have to pay any verdict that was rendered against Happy and the ball club for Happy's actions against Heather.

MORAL OF THE STORY:

If you want to be "Happy", don't drink.

## QRG LAUNCHES NEW WEBSITE!



QUATRINI RAFFERTY GALLOWAY  
ATTORNEYS AT LAW

HOME

FIRM OVERVIEW

PRACTICE AREAS

ATTORNEY PROFILES

ARTICLES & NEWSLETTERS

LINKS

CONTACT US

We are proud to announce the debut of our new expanded website that has been designed to inform our clients and friends about our firm and the various legal issues that people may face. Please visit us at [www.qrglaw.com](http://www.qrglaw.com) and let us know what you think!

## MEET THE STAFF

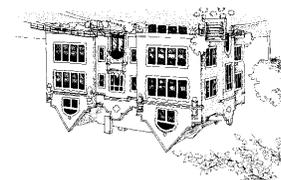
### TERESA M. ROSS AND BETSY J. NICKSICH

**T**eresa Ross ("Terri" as we call her) has been with the firm 10 years. She is our client care representative, greeting our clients, answering the telephone, coordinating our marketing activities and completing a variety of related tasks. She resides in Greensburg with her children, Amber, 24, and Joshua, 18. Amber is an assistant manager at Ollie's in Greensburg, and Josh, who recently graduated from Hempfield Area High School, will major in physics at WCCC this fall. Both Terri and Amber coach the Connellsville Area High School color guard. Terri spends every weekend from September through November and from January through April judging band, color guard, majorette and dancing competitions. Terri and her father, Martin Altman, have been members of the National Judges Association for 17 years, and both were recently presented awards for their time, dedication, and hard work as judges, touching the lives of many students.

**B**etsy Nicksich has been with the firm since October 2002, managing the firm's files as well as acting as office courier and assisting in phone duties. Betsy lives in South Greensburg with her husband, George, who works for Allegheny Energy, and two of her sons, Robert and Matthew. Robert is a junior at the University of Pittsburgh at Johnstown, majoring in accounting, and Matthew will be a freshman at St. Vincent College, majoring in political science and accounting. Betsy's third son, Richard, lives in Mount Pleasant and is the father of her only grandchild, Abigail. In her spare time Betsy enjoys sewing, exercising, swimming, and traveling. She and George are planning a Caribbean cruise in September and a trip to Disney World with Abigail next year.

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