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By: Jillian Book – Wheaton, Illinois

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## Sheriff Dart and Querrey & Harrow Challenge Craigslist

By: Christopher Keleher – Chicago Office

It is a rare opportunity for civil litigators to aid in the fight against child exploitation, human trafficking, and prostitution. Querrey & Harrow ventured into this battle when it collaborated with Cook County Sheriff Tom Dart and human rights organizations to take on the largest source of prostitution in the country, Craigslist.

Craigslist is a classified ads website. It is the ninth most popular website in the country. Its 2008 revenues were estimated to be \$80 million – the bulk of which came from \$25 employment advertisements. But there was a dark side to this success. The most popular section on the site was also its most notorious: Erotic Services.

The section's namesake was as transparent as the posts within it. While some posts used thinly veiled code words, many were unabashed ads for prostitution. For two years, Sheriff Dart pleaded, cajoled, and finally demanded Craigslist either shutter erotic services or better monitor it. Citing cost concerns, Craigslist refused. This intransigence, coupled with the heart wrenching experience of meeting with trafficked and exploited girls, convinced the Sheriff that legal recourse was his only option.

Querrey & Harrow volunteered its services to the Sheriff *pro bono*. The firm worked with Sheriff Dart, vice officers, and local, national, and international human rights groups. The result was a 28 page, 24 exhibit Complaint. The Complaint alleged the Erotic Services section of Craigslist was a nuisance and Craigslist should be held responsible for the consequences of creating Erotic Services and its 21 categories based on sexual fetish. The Sheriff asked the court to close Erotic Services. He further sought reimbursement for resources expended in monitoring the site and the incessant arrests that stemmed from Erotic Services.

The Sheriff's suit was not without its critics. Some saw the Sheriff as interfering with online

freedoms. However, the laudable aims of facilitating Internet growth and fostering free speech were not meant to provide cover for criminal conduct. The frailty of Craigslist's position was captured by a single question: How is free speech and Internet growth furthered by a forum used for prostitution? Criminal speech is not free, and it was incumbent on Craigslist to recognize the degrading, dehumanizing, and sometimes deadly consequences of selling sex.

Despite claims by many that the suit would not be successful, on May 13, 2009, the very first day the parties were to appear in court on the matter, Craigslist's counsel dropped a bombshell. Minutes before the hearing, Craigslist's counsel phoned Querrey & Harrow to advise that Craigslist was closing Erotic Services, thus acceding to the Sheriff's wishes. The Sheriff and Querrey & Harrow are elated with this development. However, the Sheriff will continue to monitor the site to ensure it does not again become a haven for pimps and traffickers.

Sheriff Dart and Querrey & Harrow recognize the importance of this victory. While it is one battle in the inexorable war against trafficking and exploitation, it is a positive sign that online companies will decline to facilitate conduct that is not merely criminal, but an abuse of human rights. Querrey & Harrow will continue to support the Sheriff in his endeavors to stop human trafficking and child exploitation.

Querrey & Harrow has served the Chicago area for 70 years and is committed to serving and protecting our clients and the community with innovative and proactive legal representation. For a copy of the complaint, go to:

[http://www.querrey.com/assets/attachments/284.pdf#1398659-v1-Filed Complaint 09 CV 1385.pdf](http://www.querrey.com/assets/attachments/284.pdf#1398659-v1-Filed%20Complaint%2009%20CV%201385.pdf).

## Illinois Freedom of Information Act Changes on the Horizon

By: Jessica Lynn Mok O'Neill – Chicago Office

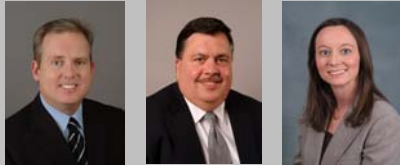
The purpose of the Illinois Freedom of Information Act (“FOIA”), effective since July 1, 1984, is to open governmental records to the light of public scrutiny. *Day v. City of Chicago*, 388 Ill. App. 70 (1st Dist. 2009); 5 ILCS 140/1 (2008). Moreover, FOIA establishes the rights and limitations of the public to obtain and inspect a wide range of documents. 5 ILCS 140/3 (2008). Thus, any potential changes in the provisions of FOIA would effect every public body including, municipalities, school districts, and law enforcement agencies. In recent months, FOIA has been at the forefront of case law and proposed legislative amendments. Therefore, government entities should brace for a change in FOIA, since reform seems inevitable. The likely outcome of the changes may result in more public access and greater participation on the part of government bodies.

In the month of May 2009 alone, the Illinois Supreme Court rendered a verdict in a matter directly interpreting FOIA, the Illinois Attorney

General, Lisa Madigan, released suggested revisions to FOIA, and the Illinois General Assembly staff drafted a different version of revisions to FOIA that has begun circulation through the House and Senate.

Evaluating the current version of 5 ILCS 140/7, the Illinois Supreme Court handed down a decision on May 21, 2009, regarding FOIA exemptions. *Stern v. Wheaton-Warrenville Community Unit School District 200*, Docket No. 107139 (filed May 21, 2009). In 2006, appellant Mark Stern, a Wheaton resident, submitted a FOIA request to his local school district, asking for a copy of the superintendent’s employment contract. The District’s record keeper denied Stern’s FOIA request, stating that the contract was in the superintendent’s personnel file and was therefore exempt from disclosure. The Illinois Attorney General’s Public Access Counselor sent a letter to the District stating that employment contracts are “public information” under FOIA.

### CASE SUCCESS – Q&H WINS TWO WRONGFUL DEATH CASES



Chicago shareholders **Dan Gallagher** and **Terrence Guolee** recently received orders from the Illinois Supreme Court finally dismissing two wrongful death cases involving accidental shootings with the duty weapons of a county Sheriff’s officers. The cases involved separate claims that the employing Sheriff’s department should be held liable for the officers’ failure to properly store their weapons in their homes when off-duty. In both cases

it was conceded that the Sheriff properly trained on the importance of secure home storage of weapons and no direct negligence was alleged against the Sheriff. Rather, the claims were solely based on arguments that the Sheriff should be held liable under the theory of *respondeat superior*, asserting that the storage of the weapon was within the officers’ scope of employment.

Summary judgment orders were granted by the trial court in both cases, but different panels of the First District Appellate Court resolved the plaintiffs’ appeals quite differently, overturning the summary judgment order in the first case and affirming in the second. The cases then proceeded to the Illinois Supreme Court, where Querrey & Harrow successfully obtained leave to appeal the First District’s opinion overturning the first summary judgment. Querrey & Harrow then obtained a unanimous verdict which overturned the First District Appellate Court and reaffirming the summary judgment order of the trial court. The Illinois Supreme Court then denied plaintiff’s Petition for Rehearing of its decision and denied plaintiff’s leave to appeal in the second case, effectively terminating both cases.

Shareholder **Jennifer Medenwald**, Chair of Querrey & Harrow’s Appellate Litigation practice group assisted on this matter.

Stern's request was renewed and again denied. Stern appealed to the school board president, but was again denied his request. Once again, the Attorney General's office reiterated its position to the District, but to no avail. Thus, Stern filed a complaint seeking injunctive relief under FOIA.

The District argued that an employment contract included in a personnel file was *per se* exempt from disclosure under 5 ILCS 140/7(1)(b)(ii). Stern argued that case law found only disciplinary records, and not employment contracts, were exempt from FOIA disclosure. Additionally, Stern argued that the superintendent's contract was relevant to his duties to the public. The circuit court found that the superintendent's contract was part of his personnel file and was, thus, exempt from disclosure under 5 ILCS 140/7. Therefore, the circuit court granted summary judgment in favor of the District.

However, the Second District Appellate Court reversed the ruling and remanded the matter to the circuit court. The District petitioned for leave to appeal and the matter was heard by the Illinois Supreme Court. In its analysis, the court stated that it was clear the District was a "public body" and the contract was a "public record" by virtue of FOIA. 5 ILCS 140/2(a)-(c) (2008). Thus, the court was left to decide whether or not the employment contract was exempt from FOIA disclosure under those exemptions set forth in 5 ILCS 140/7. The court held that the contract was not exempt from disclosure. The Illinois Supreme Court stated:

1. [t]he fact that an employment contract may be physically maintained within a public employee's personnel file is insufficient to insulate it from disclosure. The purpose of the personnel file exemption is to prevent the Act from being used to violate personal privacy, and the Act expressly provides that '[t]he disclosure of information that bears on the public duties of public employees,' such as

employment contracts, 'shall not be considered an invasion of personal privacy,' then a contract's physical location within an otherwise exempt record is irrelevant.

*Stern v. Wheaton-Warrenville Community Unit School District 200*, Docket No. 107139, page 13 (filed May 21, 2009).

In effect, the court's holding in *Stern* supports a broad interpretation of non-exempt "public records" and prevents public entities from denying a request for documents simply based on the documents location within a personnel file. In light of *Stern*, government bodies may have to reevaluate whether or not certain documents within a personnel file are properly exempt from FOIA disclosure before denying a FOIA request.

Almost simultaneous to the *Stern* decision, local lawmakers have taken issue with the current version of FOIA. On May 12, 2009, *The State Journal-Register* reported that Attorney General Lisa Madigan's office had released a revised version of FOIA. The Attorney General's rewrite attempts to address criticized "loopholes" in the law. Eric Naing, *Lisa Madigan proposes FOIA rewrite*, THE STATE JOURNAL-REGISTER, May 13, 2009, available at [www.sj-r.com](http://www.sj-r.com).

The Attorney General's proposal would decrease the number of days that an agency would have to respond to a FOIA request, from seven days to five days, with a possible five day extension. Also, if the agency failed to respond in the allotted five days, it would waive any objection to the request as being "unduly burdensome". *Id.* The Attorney General's proposal would also distinguish requests made for commercial gain by allowing twenty-one days for response to such requests. *Id.*

The proposal also calls for imposition of fines of \$100-\$1,000 against public agencies willfully failing to comply with record requests. Adriana Colindres, *FOIA proposal draws rapid responses*, THE STATE JOURNAL-REGISTER,

May 16, 2009, available at [www.sj-r.com](http://www.sj-r.com). Also, individuals who knowingly willfully violate FOIA could be convicted of a Class C misdemeanor under the Attorney General's proposal. *Id.*

Another feature of the proposal is that each public body would have to designate and train one or more Freedom of Information officer to respond to the FOIA requests. *Id.* The proposal would also address attorney's fees and designate more power to the Public Access Counselor to resolve disputes. *Id.*

The Attorney General's proposal was drafted with input from the Illinois Reform Commission, the press association, law-enforcement agencies, municipalities, and various government watchdog groups. Editorial, *You Call This Reform?* THE CHICAGO TRIBUNE, May 22, 2009, available at [www.chicagotribune.com/news/opinion](http://www.chicagotribune.com/news/opinion).

Still, some concerns were raised over the proposed revisions. For example, government units may find it difficult to place people in the required "FOIA officer" position in light of the suggested criminal penalties and fines. Adriana Colindres, *FOIA proposal draws rapid responses*, THE STATE JOURNAL-REGISTER, May 16, 2009, available at [www.sj-r.com](http://www.sj-r.com). Nevertheless, others herald the proposal as "much needed teeth to the law". Eric Naing, *Lisa Madigan proposes FOIA rewrite*, THE

STATE JOURNAL-REGISTER, May 13, 2009, available at [www.sj-r.com](http://www.sj-r.com).

For government bodies, compliance with the proposed revisions would require a more intricate understanding of the FOIA provisions and careful attention to response times. The Attorney General's proposal was to be outlined in House Bill 1370, with hopes to accomplish legislative change before the session's end (at press time this Bill was in the Illinois House's Rule Committee). Chris Rizo, *Madigan nearing completion on FOIA rewrite*, LEGALNEWSLINE.COM, May 11, 2009, available at [www.legalnewsline.com/news](http://www.legalnewsline.com/news).

Only days after the release of Attorney General Lisa Madigan's proposed FOIA revisions, a different draft of revisions, written by The Illinois General Assembly legislative staff, began circulation through the House and Senate. Phil Kadner, *Time to fight for reform in Illinois*, SOUTHTOWN STAR, MAY 22, 2009, available at [www.southtownstar.com/news/kadner](http://www.southtownstar.com/news/kadner). This draft proposal would require governmental bodies to deliver all information in print rather than electronically. It also includes a provision that "exempts personnel files, medical files and 'similar files'". *Madigan's version of FOIA rewrite needs to be Ok'd*, ROCKFORD REGISTER STAR, May 21, 2009, available at [www.rrstar.com](http://www.rrstar.com).

## CASE SUCCESS – Q&H WINS BOATING ACCIDENT CASE



Chicago shareholder **Christopher Johnston** successfully arbitrated a maritime case in April 2009. The claimant crew member suffered physical injuries and post-traumatic stress disorder following a boating accident that occurred in October 2007 when a sailboat crashed and sunk outside of the Calumet Harbor on the break wall. The boat's owner and two of his other crew members died in the tragic accident.

The surviving claimant argued that the owner of the boat, whose estate Querrey & Harrow represented, was responsible for the wreck. Christopher successfully argued that one of the crew members fell overboard through no fault of the boat owner and it was during the emergency rescue that the boat drifted and struck the break wall causing the fatal injuries to the boat owner and the other two crew members, as well as the injuries suffered by the claimant. Based on these arguments, the arbitrator found in favor of the of the boat owner's estate and against the claimant.

Another provision would “prohibit publishing addresses with police blotter items” and “shield address information on arrestees and public employees”. *Id.*; Editorial, *More secrecy and clout? No, stop it now*, DAILY HERALD, May 22, 2009, available at [www.dailyherald.com/story](http://www.dailyherald.com/story). The draft proposal would also “keep [government] settlements private”. *Id.*

Notably, this draft proposal does not include the criminal penalties for public officials, which are outlined in the Attorney General’s proposal. Chris Rizo, *Newspaper group endorses Madigan’s FOIA rewrite*, LEGALNEWSLINE.COM, May 22, 2009, available at [www.legalnewsline.com/news](http://www.legalnewsline.com/news). Also different, this draft proposal would allow the “public access counselor to resolve disputes “involving the executive branch only.” Editorial, *You Call This Reform?*, THE CHICAGO TRIBUNE, May 22, 2009, available at [www.chicagotribune.com/news/opinion](http://www.chicagotribune.com/news/opinion). In effect, this proposal is apparently more limited in required production under FOIA. It also effectively precludes those penalties that The Attorney General’s proposed revisions seek to add.

While it is currently uncertain which of the proposals will become law, or whether either proposal will be enacted, either proposal would certainly result in changes for government agencies and how they handle FOIA requests.

The proposed changes may require government bodies to perform additional training on FOIA’s provisions. Likewise, the proposed changes of the Attorney General and recent case law under *Stern* may also require broader disclosures. This will force governmental bodies to assure and support any FOIA request denials by spelling out the exemptions protecting the documents.

Since neither proposal has been adopted, it is impossible to determine the certain future of FOIA. However, it seems certain that FOIA will undergo change in the near future. As the legislative session nears its end, government bodies should pay close attention to possible changes in FOIA.

For information on FOIA amendments approved or opposed by the Illinois Municipal League go to [www.impl.org](http://www.impl.org) and click on the link for bill positions. For updates and recent articles on the topic of FOIA go to [illinoispress.org](http://illinoispress.org) or call Querrey & Harrow, Ltd.

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## COMMUNITY SERVICE

Chicago shareholder **Terrence Guolee** is once again serving in the core committee organizing the Midwest I-Child Heritage Camp in Green Lake, Wisconsin, on June 24-28, 2009. This annual camp, now in its seventh year, is held each summer for families that have adopted from India and other countries who have an interest in exposing their kids to Indian culture and meeting and socializing with other families that have adopted, or are in the adoption process. Information on the camp can be found at <http://www.mwihc.org>.

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Chicago office associate **Ari Scharg** was recently elected to the Board of Directors for the Chicago Legal Clinic, which provides legal services in for those unable to afford to retain their own counsel.

## Asbestos: The Nolan Decision and the Reestablishment Of Sanity in Illinois Asbestos Litigation

By: Chuck Blackman – Chicago Office

On April 16, 2009, in a long awaited decision, the Illinois Supreme Court in *Nolan vs. Weil-McLain*, docket no. 103137 (2009) brought Illinois in line with the law of 49 other states in regard to the application of the rules of evidence in asbestos litigation by allowing remaining asbestos defendants at trial to point out to the jury a plaintiff's other asbestos exposures to settled or non sued asbestos manufacturers and/or premises owners in establishing a sole proximate cause defense.

Up until the *Nolan* decision, the seminal case in asbestos litigation had been the 1987 appellate court decision in *Lipke vs. Celotex*, 153 Ill.App.3d 498 (1987) and its interpretations in the subsequent *Kochan vs. Owens-Corning Fiberglass*, 242 Ill.App.3d 781(1993) and *Spain vs. Owens-Corning Fiberglass*, 304 Ill.App.3d 336 (1995). The *Lipke* rule, as it came to be known, stated simply that asbestos, unlike any other potential cause of injury, was unique because it was impossible for a plaintiff to establish which fiber or fibers specifically caused his asbestotic disease, be it asbestosis, lung cancer or mesothelioma. As such, the asbestos plaintiffs' bar had successfully argued for twenty years that evidence of exposure from a settled or non sued asbestos product manufacturer or premises owner would confuse a jury and be highly prejudicial. As a concurrent

cause of decedent's injury, the Illinois courts had consistently held exposures other than that of the litigating defendant would be irrelevant and therefore barred pursuant to *Lipke*.

The practical effect of the *Lipke* rule was that the plaintiff would only have to show that the plaintiff was suffering an asbestotic disease and that, pursuant to the *Thacker vs. UNR Industries*, 151 Ill. 2d 343 (1992) decision, the plaintiff was exposed to friable asbestos from a defendant's product or exposed to friable asbestos on the defendant's premises. The plaintiff could then successfully bar defendants, pursuant to the *Lipke* case as interpreted by *Kochan* and *Spain*, from presenting any evidence that the plaintiff was exposed to any other asbestos products or exposed at any other locations.

In Illinois, at the present time, there are three primary types of asbestotic related disease that are litigated. The two less financially rewarding for the plaintiffs' bar are asbestosis, which requires an extremely lengthy exposure to asbestos in order to develop and is somewhat analogous to black lung disease, and lung cancer which can be caused by asbestos, but whose causation is muddied by the fact that the plaintiff is usually a smoker.

### COMMUNITY SERVICE – Q&H INVOLVEMENT IN CRAIGSLIST SUIT

Chicago office associate **Christopher Keleher** spoke as an invited panel member at a recent forum held by Traffickfree.org, a Chicago-based group dedicated to eradicating human trafficking, prostitution and slavery. Chris was asked to speak about Querrey & Harrow's *pro-bono* involvement as attorneys for Cook County Sheriff Tom Dart in Sheriff Dart's suit filed against Craigslist for its facilitation of prostitution.

In related news, Chicago office shareholder **Dan Gallagher** was quoted in newspaper articles and broadcast reports worldwide following announcement by Craigslist that it was closing down its "Erotic Services" sections in response to the suit filed by Cook County Sheriff Tom Dart, represented by Querrey & Harrow on a *pro bono* basis. The suit asserted that Craigslist had allowed its site to facilitate prostitution, human trafficking and other serious abuses, despite past promises and agreements with authorities to properly monitor their pages.

Finally, there is the disease that is the foundation of the *Lipke* rule, mesothelioma. If one listens to the radio or watches TV, one is aware that the gold standard of plaintiffs' litigation is mesothelioma. Mesothelioma is an extremely rare cancer of the outside of the lung that has been diagnosed with increasing frequency over the last 30 years. The only known cause of mesothelioma that exists in the United States is exposure to asbestos fiber; both plaintiff and defense experts will agree on this fact.

One of the key areas of dispute, however, is the type of asbestos fiber that will cause mesothelioma. The most common asbestos fiber mined, manufactured and used in the United States is chrysotile, a serpentine type fiber which is not thought to cause mesothelioma by most defense experts. It is estimated that 95% of the asbestos products in the U.S. were made with chrysotile type asbestos. Amphibole, or a straight type of fiber, commonly found in South Africa is thought by most defense experts to be the only cause of asbestos-related mesothelioma.

Most plaintiffs' experts maintain that any type of asbestos fiber will cause this disease. Plaintiffs' experts will also contend that only one or two asbestos exposures will also cause this disease. The issue of causation is further clouded by the fact that both defense and plaintiffs' medical experts agree that mesothelioma does not develop from asbestos exposure until 20 to 40 years after the initial exposure.

The practical effect of the *Lipke* rule for asbestos defendants was typically as follows: Plaintiff, possibly an insulator, who had been working 35 years installing asbestos which was admittedly friable, used different products, being exposed at different premises not only to the asbestos he was installing, but also other asbestos products on those premises. Plaintiff would then sue anywhere from 30 to 50 defendants, both product and premises. Most of these defendants eventually will settle out, leaving one or two defendants at trial. Should the matter proceed to trial, though the plaintiff may have been on the remaining defendants' premises for as little as two weeks, or maybe used a particular defendant's product no more than perhaps a

month or less, the defendants would be barred from presenting any evidence of any other exposures under the *Lipke* rule.

The effect was to leave a sole defendant with only the defense, usually presented via a defense expert, testifying that the plaintiff's exposure to its products was primarily composed of chrysotile asbestos, or that the plaintiff's presence on the premises for one to two weeks duration was not a proximate cause of his mesothelioma. However, because of the *Lipke* rule, the defendant could not point out the numerous other products the plaintiff was exposed to over his many years of work as an insulator, nor the different premises on which he worked that could have contributed to his asbestos exposure. This left the jury ignorant of the plaintiff's other asbestos exposures and as a practical matter nullified a defendant's most powerful argument.

In the *Nolan* case, the defendant Weil-McLain faced this very dilemma. Though their experts testified that their product was comprised primarily of chrysotile asbestos and in their opinion did not cause the mesothelioma in the plaintiff, they were barred from pointing to the many other exposures that this particular plaintiff had through his 38-year career to amphibole asbestos.

The supreme court in the *Nolan* decision frequently quoted the trial judge, who wrote a 58-page order citing the flaws that were implicit to the interpretation of the *Lipke* case, but nevertheless granted the plaintiff's motion *in limine* to bar the evidence of other exposures based solely on feeling compelled to do so in light of the *Lipke* line of cases.

On appeal, the *Nolan* court rejected the plaintiff's contention that asbestos cases were completely unlike other tort cases and called for different rules of proof. The court stated *Lipke*, on its face, had different facts than the factual situations in most of its progeny, particularly *Kochan* and *Spain*. The court stated that, according to *Thacker*, a plaintiff must meet the frequent regularity and proximity test for asbestos exposure to establish a legal causation.

The court added that “*Thacker* only allowed the plaintiff in an asbestos case to establish a possible causation and thereby shift the burden of production to the defendant. However, the ultimate burden of proof on the element of causation, remains exclusively on the plaintiff and never shifted to the defendant.” *Nolan*, Docket No. 103137, at p. 15.

The court pointed out that the issue, which was not present in *Lipke* and was misinterpreted in *Kochan* and *Spain* is that the defendant may offer evidence of the plaintiff’s other exposures to contest causation for a sole proximate cause defense. The supreme court further states that the *Kochan* court erroneously extended *Lipke* to hold that other asbestos exposures are *always* irrelevant. The court finally stated that the circuit court relying on the appellate court’s erroneous decisions prevented a defendant from presenting evidence of a plaintiff’s other asbestos exposures in its sole proximate cause defense.

The practical effect of this ruling will be to allow asbestos defendants, be they product or premises, through expert testimony to properly examine the evidence and attempt to establish that exposure to the defendant’s product, or by implication exposure on defendant’s premises,

was insufficient to cause the plaintiff’s current asbestotic disease. Defendants will no longer be blocked from pointing to other potential proximate causes of asbestos diseases in the plaintiff’s work history. This ruling now brings the State of Illinois in line with the rulings of the other 49 states and once again would render through proper expert testimony, asbestos cases defensible in the State of Illinois.

\* \* \*



*A shareholder in Querrey & Harrow’s Chicago office, Charles Blackman is an experienced attorney who has tried approximately 65 cases to verdict. Chuck concentrates his efforts in premises, construction, transportation, and asbestos litigation.*

*As the local counsel for a major American steel company, Chuck handles a variety of cases, including those which involve asbestos, premises and environmental litigation. In addition, he represents the company on contractual issues.*

*If you have any questions regarding this article or Querrey & Harrow’s toxic tort defense practice, please contact Chuck via [cblackman@querrey.com](mailto:cblackman@querrey.com), or via 312-540-7682.*

## COMMUNITY SERVICE – CHARACTER COUNTS! AND ALS CHARITY RUN



Chicago shareholder James Bream was a panelist at the May 14, 2009 “Ethics in Public Service: A Question of Character” event run by the CHARACTER COUNTS! organization in Glenview, Illinois.

Moderated by Glenview Village President Kerry Collins, the discussion included Brian Brady of the Mikva Challenge; Cynthia Canary, the Director of the Illinois Campaign for Political Reform; and Bruce Dold, of the Chicago Tribune’s Editorial Board, among others.

**Jim Bream** also once again worked on the organization of the 9th Annual Lew Blond Memorial 5K Run/Walk, 1 Mile Run, which occurred on May 30, 2009 in Northbrook, Illinois. The event was organized seven years ago to memorialize Lew Blond, beloved Maple School teacher, who passed away from ALS in February 2000.

## Litigation Update: What Are Grounds For An Inconsistent Verdict in Personal Injury Cases?

By: Jillian Book – Wheaton Office

The First District Appellate Court recently decided an important decision in personal injury suits in the matter of *Stamp v. Sylvan*, No. 1-08-1421 (Apr. 22, 2009). It has long been an issue that a jury's verdict may be considered "inconsistent" when comparing the award for medical bills to any pain and suffering or loss of normal life awarded. Although the issue is largely fact based, the court interpreted the Illinois Supreme Court case of *Snover v. McGraw*, 172 Ill.2d 438 (Ill. 1996), the controlling case on the issue.

In *Stamp v. Sylvan*, plaintiff Nancy Stamp was awarded a verdict in her favor for personal injuries suffered in a motor vehicle accident. Plaintiff initially underwent physical therapy for neck, shoulder and headache pain for the four months following the accident. She was discharged while still complaining of pain but did not seek any more treatment for three years. She then treated with a chiropractor for close to one year. Plaintiff's medical doctor also was treating her for Crohn's disease, which he opined was triggered by the NSAIDs taken after the accident.

The defense's medical expert argued that the plaintiff only sustained a soft tissue injury to her neck, which would have resolved within six months. The jury only considered medical expenses for the six month time period following the accident and they declined to

award any pain and suffering or loss of normal life. Plaintiff was granted a new trial on the sole basis as to the pain and suffering and loss of normal life which may have been experienced during the six month time period. Plaintiff appealed that order limiting her new trial.

The court in the 1996 case of *Snover v. McGraw* held that a jury's verdict on damages should not typically be disturbed "unless a proven element of damages was ignored, the verdict resulted from passion or prejudice, or the award bears no reasonable relationship to the loss suffered." 172 Ill.2d at 447, citing *Gill v. Foster*, 157 Ill.2d 304, 315 (Ill. 1993). In *Snover*, the "zero" award of pain and suffering for the plaintiff was upheld because the evidence presented was based on plaintiff's subjective complaints, and not objective symptoms.

However, in *Stamp*, "the uncontroverted evidence was that plaintiff suffered a soft tissue injury to her neck and back that would heal in approximately six months." *Stamp*, at \*14. The new trial was awarded because this was objective evidence of injury, which the jury ignored in determining any pain and suffering and loss of normal life.

The main issue on appeal was the restriction on the amount of damages which could be sought at the new trial. In the circuit court's view, "[t]he

### OTHER NEWS

Merrillville, Indiana attorneys **Galen Bradley**, **John Halstead**, **Teresa Mysliwy** and **Stacey Vasilak** all completed the OneAmerica 500 Festival Mini Marathon half-marathon in Indianapolis on May 2, 2009.

Chicago associates **Jessica Lynn Mok O'Neill** and **Chloe Woodard** are on the Women's Bar Association's 95th Annual dinner committee. The dinner takes will be on June 11, 2009 at The Hilton Chicago at 5:00pm and tickets can be purchased at [www.wbaillinois.org](http://www.wbaillinois.org)

Chicago shareholder **Jennifer Sackett Pohlenz** has been appointed Regional Safety Director for the American Youth Soccer Organization (AYSO) Region 210.

only inconsistency in the verdict, therefore, was the failure to award pain and suffering, and loss of a normal life damages for a period of six months.” *Id.* at \*15. However, plaintiff argued that the granting of the new trial restored the parties to their original positions, and that the entire verdict should be disregarded and therefore, no limitations on damages.

In deciding this issue, the court looked to the Illinois Supreme Court case of *Dillon v. Evanston Hospital*, 199 Ill.2d 483 (Ill. 2002). In *Dillon*, the case was remanded only for the specific jury award for increased risk of future injuries, because of an inadequate jury instruction. The supreme court upheld the remanding just on the matter of increased risk. When it is obvious that only one specific area was unjust or inadequate, there is no reason to require a case to be retried for all matters. The court disagreed, stating that the “verdict was fatally inconsistent only as it pertained to the failure to award pain and suffering, and loss of a

normal life damages for a period of six months.” *Id.* at \*18.

The decision in *Stamp* highlights two important areas of personal injury suits and appeals. First, the courts are willing to remand cases for only retrial on specific damage issues in the interest of judicial economy. And secondly, the difference between subjective complaints and objective evidence is very important. The court pointed out that the jury is free to believe or disbelieve subjective complaints. However, ignoring objective evidence is improper for a jury to do and will be grounds for a reversal.

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*Jillian Book, an associate in our Wheaton office and Co-Editor of this newsletter, concentrates her practice in vehicle and premises liability. If you have questions regarding this article, please contact Jillian via*

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## UPCOMING SEMINARS

### **Understanding Copyright Law 2009**

Chicago, Illinois – June 12, 2009

Chicago shareholder **Beverly Berneman** and of counsel **E. Leonard Rubin** will be faculty and chair, respectively, of the *Practising Law Institutes'* Chicago seminar: “Understanding Copyright Law 2009.” The June 12, 2009 seminar, to be held at the University of Chicago’s Gleacher Center and is certified for attorney continuing legal education credits. Go to <http://www.pli.edu> for details or to register.

### **Residential Construction: Avoiding and Resolving Construction Disputes**

Chicago, Illinois - June 18, 2009

Chicago shareholder **Bruce Schoumacher** will speak on a panel on "Residential Construction: Avoiding and Resolving Construction Disputes" to be presented by the Illinois State Bar Association’s Special Committee on Construction Law at the ISBA CLE Fest Classic 2009.

The panel attorneys will discuss issues which arise from misunderstandings between buyer and seller in

new home construction and remodeling/restoration projects. Strategies for efficiently resolving unavoidable oppositions will also be discussed.

The Conference will be held at the ISBA Chicago Regional Office at 20 S. Clark Street, Chicago, Illinois. For more information about this conference, please visit: [www.isba.org/clefest/june09](http://www.isba.org/clefest/june09).

### **Getting Sued: How to Prepare Your Employees for Deposition**

Peoria, Illinois - June 18, 2009

Chicago office shareholder **Ellen Gibson** will speak at the June Conference of the Illinois Nursing Home Administrators Association at the Par-A-Dice Hotel and Conference Center in East Peoria, Illinois. Her seminar will address common issues which arise and strategies plaintiffs employ in conducting depositions in litigation involving nursing homes. Ellen will also cover risk management strategies in nursing home policies and in documentation procedures.

For more information and registration, please see <http://www.inhaa.org/files/june-conf.pdf>, which outlines the entire 2-day conference schedule.