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## Schiavo Case Raises Awareness for Living Wills

The recent drama of the Terri Schiavo case publicly aired a private matter in court, Congress, and the media. At the age of 26 her heart stopped - severely damaging her brain - leaving her in a persistent vegetative state without hope of recovery. She received hydration and nutrition through a feeding tube for nearly 15 years.

Schiavo had not signed a living will before the medical calamity. Her husband claimed that she stated she would not want to live in a vegetative state and sought to remove the feeding tube. Her parents objected, and a seven-year legal battle ensued.

The tragedy could have been avoided if she had

signed a living will. A living will is a directive in writing which states in advance an individual's wishes for medical treatment in the event they are terminally ill and unable to express themselves.

It is estimated that 75 percent of American adults have not executed living wills, leaving difficult decisions for family members and the possibility of bitter, drawn-out court battles over a very private matter.

A living will is a critical component of good estate planning. We are glad to respond to your questions regarding living wills and other key estate planning documents.

## Dangerous Dogs and Pennsylvania Law

Any person who has been attacked by a dog or whose domestic animal has been killed or injured by a dog, without provocation, may commence an official action to declare the dog dangerous. The action also may be brought by a dog warden or a local police officer, but the involvement of a police officer or a dog warden is not necessary. The case is heard and the determination is made by a local magisterial district judge. The magisterial district judge need not wait for the conclusion of any police or dog warden investigation.

A dog may be declared dangerous by a magisterial district judge based on the dog's history, which must include one or more of the following:

- (a) infliction of severe injury on a human being without provocation,
- (b) killing or severely injuring a domestic animal without provocation,
- (c) biting or pursuing a human without provocation, or
- (d) being used in the commission of a crime.

If a dog is determined by a magisterial district judge to be dangerous and the owner chooses to keep the dog, the owner must obtain a proper enclosure to confine the dog and must post a sign on his or her premises warning of the presence of a dangerous dog. The warning sign also must include a symbol designed to inform children of the danger posed by the dog. Where the owner of a dangerous dog is a minor, the minor's parents are liable for the dog's conduct and must comply with the duties imposed on the owners of dangerous dogs.

In addition to properly confining the dog, the owner of a certified dangerous dog must post a \$50,000 bond or provide the Commonwealth with ongoing confirmation of adequate insurance for at least \$50,000. The owner of a certified dangerous dog must notify the authorities within 24 hours if the dog is loose, unconfined, dead, sold, donated, or has attacked a person or a domestic animal.

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## Dianne Lenig Retires After 28 Years

Dianne Lenig, who served as Johnson Duffie's receptionist over the last several decades, announced her retirement effective June 23, 2005. Dianne was the "voice" of Johnson Duffie since 1977. During her tenure, she formed many close ties with our staff and our clients.

"I have so many wonderful memories to take with me," says Dianne. "Anyone who knows me, knows how working with everyone - the clients, staff and attorneys - has been just a great satisfaction."

We at Johnson Duffie thank Dianne for her many years of service, hard work, and commitment, and wish her much happiness as she begins this new chapter in her life. She surely will be missed.



# Dauphin County Civil Jury Verdicts – A Five Year Analysis

The following is an analysis of the reported civil jury verdicts from the Court of Common Pleas of Dauphin County, located in Harrisburg, PA, for the five-year period between the years 2000 and 2004. The verdicts tracked fall into three general case categories: medical malpractice, automobile accidents, and slip and fall accidents. Generally speaking, the verdicts from Dauphin County are representative of those from many other counties in central Pennsylvania.

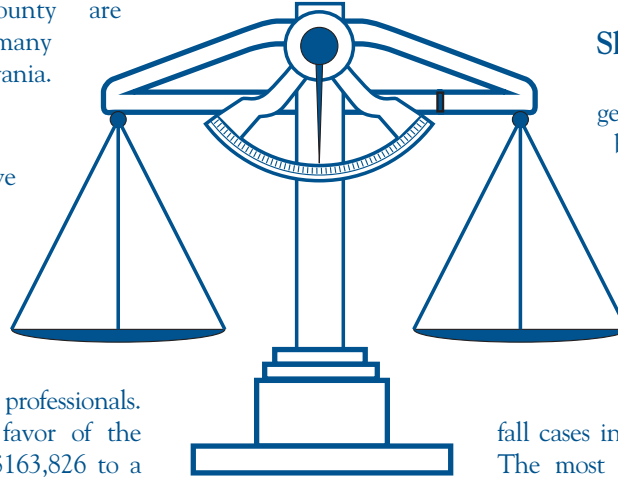
## Medical Malpractice Cases

In the last five years, there have been 50 medical malpractice cases tried to jury verdict in Dauphin County. Verdicts resulted in 38 of the 50 cases (76%) in favor of the defendants, who were comprised of doctors, hospitals, and other health care professionals. The remaining 12 verdicts in favor of the plaintiffs ranged from a low of \$163,826 to a high of \$3,072,426. Half of those verdicts were in excess of \$500,000; three verdicts exceeded \$1 million.

## Automobile Accident Cases

Since the year 2000, juries in Dauphin County have returned verdicts in 84 automobile accident cases. The juries found in favor of the defendants in 54 of the 84 cases (64%).

In the 30 cases in which a verdict was returned in favor of the plaintiff (injured party), the verdicts ranged from a low of \$1,000 to a high of \$625,000. More than half of the plaintiff's verdicts were for amounts less than \$20,000. The highest verdict of \$625,000 reportedly involved damages including an unsuccessful lumbar fusion.



## Slip and Fall Cases

Dauphin County jurors have generally not sided with plaintiffs bringing slip and fall cases in the last five years. In the period between 2000 and 2004, Dauphin County jurors returned defense verdicts in 16 of 21 slip and fall cases (76%). (Note: Over the past nine years, the overall rate of defense verdicts in slip and fall cases in Dauphin County is 84 percent.) The most recent plaintiff's verdicts ranged from a low of \$10,500 to a high of \$257,878.

If you have any questions about these recent cases, please feel free to contact any of the following Johnson Duffie litigators who regularly handle medical malpractice, automobile accident, and slip and fall cases throughout central and eastern Pennsylvania: Roy Weidner, John Statler, Jeff Shipman, John Ninosky, or Wade Manley.

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## Dangerous Dogs

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A dangerous dog may not be outside its enclosure unless muzzled and restrained by a substantial chain or leash and under the physical control of a responsible person.

When a certified dangerous dog attacks a person or a domestic animal, its owner may be convicted of a misdemeanor, and the dog is to be immediately confiscated, quarantined, and "destroyed in an expeditious and humane manner." A dog may not be declared dangerous if the injured victim was a trespasser on private property, was tormenting, abusing, or assaulting the dog, or was committing a crime when attacked.

The owner of any dog who negligently, recklessly, or intentionally permits the dog to aggressively attack and cause severe injury or death to another person is guilty of a misdemeanor of the first degree. In addition, the dog shall be immediately confiscated by a state dog warden or a police officer, placed in quarantine for the proper length of time, and thereafter humanely killed in an expeditious manner, with the costs of quarantine and destruction to be borne by the dog's owner.

Townships and cities may enact ordinances that prohibit dog owners from permitting their dogs to run freely. These ordinances are sometimes referred to as "leash laws." The state Dog Law also requires that all dogs be confined within the premises of the owner and be firmly secured by means of a collar and chain or other device so that they cannot stray beyond the premises.

It is unlawful to poison a dog or to leave poison in any place, even on your own premises, where it may be easily found and eaten by a dog. If you feel threatened by a dangerous dog, give the dog's owner written notice of your concerns. Consider commencing an action under the Dog Law. Even if the dog's conduct does not meet the Dog Law's standards for dangerous dogs, its owner may still be responsible for injuries caused by the dog. Putting the owner on notice of your concerns is the first step in proving that he or she knew or should have known of the dog's dangerous tendencies.

# Car Manufacturer Could Be Negligent

After suffering a violent assault by a stranger, a Pennsylvania woman won the right to sue General Motors Corporation for the negligent design of her new car's door-locking system.

The woman was driving a 1995 GMC Grand Am. The Grand Am's doors automatically unlock when the gear shift is placed in park and the ignition is turned off. While the woman was aware of this automatic unlocking feature and also was concerned about a particular individual she noticed in the shopping center parking lot, the woman did not relock her doors after they automatically unlocked. As she was preparing to leave the car, the stranger opened the driver's door, entered the car, and violently assaulted the woman.

The woman sued GM, claiming that the car was dangerously defective and that the company was negligent in manufacturing and selling cars that have doors with an automatic unlock feature. GM defended the action by focusing on the fact that the woman knew that the doors would unlock when she turned the ignition off, and it also argued that automatic unlock systems are not by nature defective or dangerous. GM noted that the automatic unlock feature can be disabled by the removal of a fuse. The jury that heard the case decided that the car was not dangerously defective, and the judge did not permit the jury to consider the woman's claim for negligence.

The woman appealed the verdict and the Pennsylvania Superior Court ruled that she was entitled to another trial. The

court emphasized that the woman's claim of negligence deserved the jury's attention. When a consumer product is dangerously defective, the manufacturer can be held "strictly liable" for injuries caused by the product. Consumers are also entitled to pursue claims of negligence against the manufacturer of a product. In a negligence claim, a consumer must show that the manufacturer was careless and that the consumer was injured as a direct result of that carelessness. While GM was not guilty of making a dangerously defective product, it might be guilty of negligence, and the woman deserved her day in court to try to prove this claim.

More and more automatic features are being built into new cars. Some new cars have doors that automatically lock when the car begins to move. Other new cars have automated interior and exterior lights, and windows that open completely after the power switch is touched. Overriding these features by removing fuses or rewiring can be tricky and may result in the loss of the full use of those features.

Consumers should carefully review the automated functions of a new car before buying it. Depending on the ultimate outcome of the lawsuit described above, manufacturers may start to rethink the extent to which their newer car designs are increasingly removing a consumer's ability to control the functions of his or her car.

## Legal Myths

One of the more common questions which Family law attorneys are asked is whether a woman may keep an engagement ring if the engagement is broken. The tradition of giving an engagement ring as a symbol of the pledge to be married dates back to A.D. 860. The custom at the time provided that a party who broke off an engagement forfeited their claim to the ring. However, the current approach in Pennsylvania views the ring as a gift conditioned on the wedding taking place. In 1999, the Pennsylvania Supreme Court considered whether it made a difference when the donor was the one who broke the engagement. In *Lindh v. Surman*, the Supreme Court adopted a no-fault approach, rather than a fault-based approach that would consider the reason for the termination of the engagement. The Supreme Court determined that, if the engagement is broken, the donor is entitled to the return of the ring, regardless of who broke the engagement.

## Hired Guns



Four Johnson Duffie litigators, (l-r) John Statler, John Ninosky, Roy Weidner, and Jeff Shipman teamed up at a recent sporting clays shoot at the Carlisle Fish and Game Club. The event was sponsored by the Pennsylvania Motor Truck Association to benefit the PA TruckPac. Johnson Duffie serves as counsel to numerous trucking companies and their insurers throughout central and eastern PA.

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Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

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## Practice Areas

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Hospital Law

Real Estate and  
Land Development

Litigation

Administrative Law

Municipal and School Law

Estate Planning  
and Administration

Family Law

Insurance Law

Transportation Law

## Firm Highlight



**BRUCE GROSSMAN**, Of Counsel, is busy teaching Business Law at **LEBANON VALLEY COLLEGE**, in Annville, PA, three mornings each week. He brings over 30 years' experience in all phases of business law to his class. "I not only explain what the law is, but also how it is actually used," says Grossman. "I enjoy watching the students understand that some business event which they might be hearing about in the news actually involves what they've just learned. I also enjoy the chance to help our community by teaching its business people of the future. It's an exciting opportunity for me."

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