

Barley Snyder Year in Review 2013

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Message from the Managing Partner

By: Jeffrey D. Lobach

In the coming year, we expect Barley Snyder to continue to grow our professional staff and enhance the diversity of the services we offer. As we expand to meet changes in the regulatory environment and the evolving needs of our clients, our goal remains to maintain the capacity to provide all the services necessary to those we serve, while staying nimble enough to respond on a timely and cost-effective basis to their requirements. Regardless of the inevitable transformations in our profession and our markets, one aspect of our firm's practice which will never change is our commitment to our clients and friends.

Our ability to provide the high level of service required by our Practice Excellence principles and expected by our clients depends on our receiving and responding to feedback from our constituencies. Please feel free to contact me at any time throughout the year to share any comments, observations or suggestions relating to your experience with Barley Snyder. We look forward to continued collaboration and shared successes in 2014.

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Our Litigation Practice Scores Major Victories for Our Clients

George Werner secured a victorious jury verdict in Lancaster County on behalf of his client, Jeff Smith. George defended his client's ownership of intellectual property against Mr. Smith's former employer, Euramax (f/k/a Amerimax Home Products, Inc.). The case had "bet the company" implications for Mr. Smith and his current company, InvisaFlow, LLC. Remarkably, after a trial of eight days, the jury returned with its unanimous verdict, completely in favor of Mr. Smith, in 45 minutes. George did a terrific job marshalling a great deal of trial testimony and many exhibits to rebut the arguments of a significant corporate adversary, doing it in a way that was clear and easy for a jury to understand, resulting in a significant and decisive victory for our client.

Jeff Lobach, Rick Hackman and Paul Minnich obtained a verdict in excess of \$300,000 in Lehigh County for a regional restaurant franchisee of a major national chain. The case, which was tried over the course of nine days, involved claims against a former employee for breach of fiduciary duty. In addition to seeking monetary damages, the Barley attorneys also sought to head off a threatened wrongful termination claim by the employee for over one million dollars in damages by requesting a declaratory judgment by the court that the employee's wrongful conduct justified his termination. The court ruled that the termination was legally justified thereby preempting the former employee's threatened claim. Additionally, the court found that the former employee breached his fiduciary duty to the company and awarded the full amount of damages of \$310,000 which the restaurant chain sought to recover.

Congratulations to **Lauralee Baker** for two defense verdicts in 2013! In the first case in Montour County, Plaintiff set forth a wrongful death and survival action based on an alleged failure to order proper medications to prevent the formation of a blood clot. After four days of trial, Plaintiff's counsel voluntarily dismissed all claims against Lauralee's physician client.

In the second case, occurring in Dauphin County, **Lauralee** represented a Family Practice Center in a wrongful death case. Plaintiff claimed Defendant failed to diagnose a Staphylococcus Aureus infection following the insertion of a Mediport line used to administer chemotherapy after a diagnosis of breast cancer. Plaintiff asserted claims of negligence, wrongful death and a survival action against Defendant. After a hard-fought one-week trial, the jury returned in 30 minutes with a defense verdict. In addition to Lauralee, Barley Snyder's paralegals, legal assistants and IT department played important roles in these cases.

Mike Mixell and Paul Minnich recently handled a complex fiduciary case involving misconduct by an individual who improperly used a power of attorney to misappropriate the assets of an elderly woman. The misuse of the power of attorney was not discovered until after the elderly woman's death. Mike and Paul assembled a team of experts, including two handwriting experts and a forensic accountant, to build the case. By developing a strong factual and legal position, Mike and Paul were ultimately able to settle the case just prior to trial by recovering \$1.7 million for the elderly woman's estate. The entire estate passed to local charities which were beneficiaries under the elderly woman's will. As a result of Mike's and Paul's efforts in the case, they recently were granted admission to the Million Dollar Advocates Forum, an organization whose members consist of attorneys who have settled or tried to verdict cases in which a recovery has been obtained in excess of one million dollars.

Paul Minnich recently obtained a verdict of over \$275,000 in a trial held in Cumberland County. Paul represented the widow of an elderly gentleman who had allegedly gifted over \$275,000 to his girlfriend just a

few weeks prior to his death. The couple had been married for over 50 years. Paul instituted suit on behalf of his client against both the estate of the late husband and his girlfriend. The case involved claims for conversion, breach of fiduciary duty, undue influence and constructive trust. Following a one day bench trial, the Court ruled in favor of the widow on all claims and entered judgments against both the estate and the girlfriend. No appeal of the verdict was taken.

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The Global Reach of Barley Snyder's Intellectual Property Services

Through our participation with national level Intellectual Property organizations, like the American Intellectual Property Law Association (AIPPLA), Barley Snyder is able to provide connections for our clients to intellectual property service providers from around the world. **Salvatore Anastasi**, Chair of the firm's Intellectual Property group is available to discuss potential connections and opportunities.

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The Benefits of Title Insurance and How Barley Snyder Can Help

When purchasing real estate, it is typically in the purchaser's best interest to obtain title insurance to protect the purchaser from any defects in the title. While title insurance is often considered a settlement cost, it is important to note that the title insurance premium itself is set by state law and it is up to the purchaser or borrower, as the case may be, to select the title insurance provider. Did you know that at Barley Snyder we have several licensed title agents who provide title services all over the Commonwealth of Pennsylvania? Whether you are buying real estate for the first time or refinancing an existing multi-million dollar loan for your business, we can provide the title insurance coverage required, along with the other necessary settlement services.

Although there are many title agencies to choose from, Barley Snyder's title agents provide the added benefit of having an experienced real estate attorney conduct your settlement and review your property's title history. **Jeff Lobach, Dan Frey, Jeremy Frey and Derek Dissinger** are available to assist with any title insurance needs.

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Expanded Immigration Services

We have added two attorneys to our Immigration practice. **David Freedman** and **Justin Tomevi** have joined forces with **Silas Ruiz-Steele** and **Rebecca Munscher**, increasing our capacity to provide immigration services for businesses, individuals, and families.

On the immigration front, **David Freedman** successfully petitioned the immigration court to grant asylum to a gay man from Honduras who escaped to the United States after suffering multiple violent attacks. Barley Snyder took this case as a pro bono referral from the Pennsylvania Immigration Resource Center.

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Barley Snyder Serving Our Communities

In addition to providing financial support to numerous charitable causes, our attorneys are committed to community leadership and volunteerism. We are proud to report that in 2013, we collectively spent more than 4,300 public service hours in our communities. Our attorneys contribute financially, serve on boards and volunteer for more than 125 organizations in the areas of education, social services, the arts, youth athletics and professional associations.

At holiday time each year, Barley Snyder contributes to local non-profits in our communities, and 2013 was no different. Barley Snyder made donations to the Chester County Food Bank, Greater Berks Food Bank, Hanover Area Council of Churches, Lancaster County Council of Churches and the York Rescue Mission in honor of our clients and friends.

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Practice Excellence and Lean Training

In 2011, Barley Snyder implemented an overall process improvement program called Practice Excellence . This program is a firm-wide, pervasive program of continuous improvement with the focus on quality, knowledge and service and is intended to constantly increase our capacity to provide outstanding value to our clients. This initiative is being led by **Paul Mattaini** (who succeeded **John Shirk** in the role) and the Practice Excellence "Champions" of each of our practice groups.

Practice Excellence includes topics such as:

- Checklists
- Templates
- Workspaces
- Uniform practices and procedures
- Quality control (and second person review where appropriate)
- Service Excellence
- Succession planning
- Education

- Risk assessment

Also related to Practice Excellence , Barley Snyder has begun to embrace Lean and process optimization concepts in its practice. Lean is a recognized business strategy for increasing efficiency, identifying and eliminating obstacles, lowering costs and improving the quality of the product or service. The application of Lean principles is relatively unique in the legal profession. In 2013, we rolled out firm-wide training in Lean concepts and trained all levels of the firm with the understanding that complex law is becoming more process-driven. It has already reported increased efficiencies in several areas of our operations.

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Trends in the Mergers and Acquisitions Practice

Despite a choppy deal market, several of our business attorneys have been fortunate to represent a number of clients on M&A transactions in the last several months; tombstone announcements reflecting a representative sample of transactions in which we participated can be found on our website at https://www.barley.com/publications/article.cfm?Article_ID=371.

Notable Trends. Based on both our experience and from comparing notes with others who have been active in the M&A market, we have noted the following trends:

- Transactions that make sense can still get done, but are generally taking longer to close;
- In many cases, "processes" can be more difficult for sellers to conduct on a strict timetable, with potential buyers responding on their own timetables; and
- The level of due diligence conducted by buyers and their financing sources has increased, and parties need to be prepared for a longer process.

A Trend in the Bank M&A Market: MOEs. One type of transaction that has become active in the banking space are so-called mergers of equals (MOEs). Barley Snyder handled two bank MOE transactions, closing both of them in 2013. Our client, Affinity Bancorp, Inc., merged with First Priority Financial Corp. in March of 2013, creating a combined institution with approximately \$450 million in assets and ten locations in four counties. The \$12.7 million transaction was led by Kim Decker. In addition, **Kim Decker** led the representation of Riverview Financial Corporation in its acquisition of Union Bancorp, Inc. Riverview's acquisition of Union closed in November 2013, and resulted in a combined institution with approximately \$440 million in assets. **Paul Mattaini** provided our second person Practice Excellence review of these transactions. Paul and Kim are currently collaborating with an investment banking firm on an article exploring the pros and cons of bank MOEs.

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Did You Know...

Barley Snyder Can Handle Your Litigation Matters in Maryland and New Jersey

Clients who are increasingly doing business on both sides of the Mason Dixon Line and across the Delaware River appreciate Barley Snyder's ability to assist them with cases in Maryland and New Jersey. **Paul Minnich** has been admitted to practice in Maryland since 1995 and **Rick Hackman** gained his Maryland admission in 1997; both are admitted to practice in the state courts, the Federal District Court of Maryland and the Maryland Bankruptcy Court. Paul and Rick handle commercial and consumer debt collection for our banking clients, contract disputes, construction cases and other general litigation matters.

Jill Welch has been admitted to practice in New Jersey since 2000, handling all types of employment litigation matters before New Jersey's state courts, the United States District Court of New Jersey and before administrative tribunals such as the New Jersey Division of Civil Rights.

Barley Snyder Also Provides Mediation Services Outside Of Litigation

In an effort to provide cost-effective resolutions to a dispute, we offer the services of experienced and trained mediators. Mediation generally takes the place of litigation or, in some instances, occurs prior to the parties becoming fully engaged and entrenched in the litigation process. Unlike other dispute resolution processes like arbitration, mediators facilitate discussion between parties with the hope that they can come to an agreement. We believe that the parties directly involved in the conflict are the best suited to make any attempts to resolve it. Mediation is an alternative which parties may wish to consider over the expense of litigation. **Ron Pollock, David Keller, Rick Hackman** and **Jeff Lobach** are available to mediate your dispute.

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We're Honored To Be At Your Service

Six of our attorneys were named 2013 Pennsylvania Super Lawyers and Pennsylvania Rising Stars. Super Lawyers recognizes attorneys who have distinguished themselves in their legal practices. Our Pennsylvania Super Lawyers include: **Salvatore Anastasi** (Intellectual Property), **Jennifer Craighead** (Employment Litigation: Defense), **Jill Welch** (Employment & Labor) and **George Werner** (Business Litigation). Our Pennsylvania Rising Stars include: **Jeremy Frey** (Closely Held Businesses) and **Alex Snyder** (Estate & Probate).

Seven of our attorneys were named to the Best Lawyers 2013 List. The Best Lawyers In America is the oldest and most respected peer-review publication in the legal profession. Our Best Lawyers in America include: **Kathy Gray, Steve Lazun, Jeff Lobach, Christopher Mattson, Mike Mixell, John Reed** and **George Werner**.

Salvatore Anastasi was awarded the American Intellectual Property Law Association Project Award for his leadership of World Intellectual Property Day 2013 celebrations concurrently in seven US cities. As Chair of the Public Education Committee, Sal and his committee worked with the World Intellectual Property Organization (WIPO), the United States Patent and Trademark Office (USPTO) and representatives from participating cities including, Alexandria, VA; Charlotte, NC; Dallas, TX; Denver, CO; Detroit, MI; New York, NY; and Silicon Valley, CA. to raise public awareness of Intellectual Property under the theme, Creativity- the

Next Generation.

David Keller was selected as a 2013 Top Rated Lawyer in Labor & Employment by American Lawyer Media and Martindale- Hubbell. The 2013 Top Rated Lawyers in Labor and Employment were featured in the February 2013 issues of The American Lawyer, Corporate Counsel and The National Law Journal.

Christopher Mattson was honored by the Lancaster General Health Foundation in the category of Excellence in Community Service & Volunteerism. He was officially recognized at the 8th annual Societas Generalis induction ceremony honoring trustees, physicians, philanthropists and community members who have made extraordinary contributions of service and commitment to the health and well being of the Lancaster community. Chris practices in the Health Law and Litigation groups. He is a decorated Vietnam Veteran and held the rank of captain in the U.S. Marine Corps.

Salvatore Anastasi was nominated by the American Intellectual Property Law Association (AIPLA) to become a member of the AIPLA Fellows. The AIPLA Fellows is a special membership category for active members of the Association. The qualifications include: outstanding service to the Association, prominence within the intellectual property profession and observance of the highest standards of ethical conduct. Sal chairs the firm's Intellectual Property group.

David Freedman was named one of Central Penn Business Journal's Forty Under 40 Award recipients. Recipients of the Forty Under 40 award are recognized for their commitment to professional excellence, business growth and community involvement. In October, David was honored during an evening reception and awards ceremony at the Hilton Harrisburg. David is a partner with the firm and practices in the Employment, Litigation, and Immigration groups. He is fluent in Spanish.

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New Faces at Barley Snyder

Ken Charette is an associate in the firm's Business Law group where he works on a wide range of business transactions. Ken received his LL.M from the University of Cambridge in England and he earned his J.D., summa cum laude, from Penn State's Dickinson School of Law. During law school, Ken had the opportunity to gain significant experience by working as a Legal Intern at the Pennsylvania Office of the Attorney General, Bureau of Consumer Protection. He also served as a summer law clerk at both the Michigan Supreme Court and the United Nations' International Criminal Tribunal for the former Yugoslavia.

Derek Dissinger is an associate in the firm's Finance & Creditors' Rights and Real Estate groups. He represents creditors such as banks, credit unions, large and small businesses and professional organizations in a range of commercial loan transactions. He is a licensed title agent and counsels clients through various types of real estate transactions. Derek received his J.D. from Duquesne University School of Law, his MBA from Pennsylvania State University and his B.A. from Lebanon Valley College. He was previously with the law offices of Russell, Krafft & Gruber LLP where he practiced in the areas of Banking and Finance, Real Estate and Business.

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