

# QWarterly Chronicles

Summer 2009

## 3-Peat For Cincinnati!

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When a sports team earns three titles in a row, the fans are proud and excited. They admire the skill and strategy that led to the victory. We feel the same way when it happens to an attorney in the firm!

Rick Quinlivan has obtained the third defense verdict for the same client in less than 15 months.

In the most recent trial, Rick obtained a defense verdict after only two weeks. Rick represented Cincinnati Incorporated in *Miranda vs. Cincinnati Incorporated*, a product liability case. As in the two prior cases, the product involved was a press brake. A press brake is a machine used primarily for bending metal. This machine, made in 1997, was hydraulically powered and had the option of being operated with dual palm buttons or a foot switch control. The plaintiff's expert opined that the machine was defective in design because it could be operated with no point of operation guarding if the foot switch was selected as the mode of operation. It was the opinion of the plaintiff's expert that there should have been an interlock to assure that there was point of operation

guarding in place to provide protection when the foot switch was being used. The plaintiff's attorney emphasized the fact that there had been numerous prior cases against Cincinnati Incorporated and that the company had used the same expert over and over.

The case was defended by demonstrating the tremendous versatility of the machine which made it impossible for the manufacturer to know how to provide point of operation protection. It is impossible for the manufacturer to provide a universally applicable guard or safety device. It is also impossible to provide an interlock that would not only detect the presence of safeguarding but also ensure it was being set up properly. In addition, the manufacturer did provide a substantial amount of warnings and instructions both at the time of sale and post-sale. The defense also emphasized the negligence of the owner/employer who set up the job in a manner that exposed the plaintiff/operator to a high probability of a serious accident. The jury deliberated for just over 2 hours and returned a 10-2 verdict in favor of the defendant.

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## You Be the Judge

During the evening of October 31, 2004, Alexandra Van Horn, Lisa Torti, and a third friend were relaxing in Torti's home and waiting for friends Anthony Watson and Dion Ofoegbu. While waiting, Van Horn and Torti smoked some marijuana. After Watson and Ofoegbu arrived, they all went to a bar at around 10:00 p.m. They remained at the bar until about 1:30 a.m., at which time they all left. Van Horn rode in a vehicle driven by Watson while Torti went in a vehicle driven by Ofoegbu. Watson lost control of his vehicle and crashed into a curb and light pole at about 45 miles per hour. Ofoegbu pulled over to the side of the road. He and Torti got out to assist those in Watson's car. Torti removed Van Horn from the vehicle. Following the accident, Van Horn was paralyzed and claimed that Torti caused her paralysis by the way she pulled Van Horn out of the car.

Testimony was conflicting on some key events. Torti claimed that she pulled Van Horn out because she saw smoke and liquid coming from the car and feared the vehicle may catch fire or "blow up." Others testified that there was no smoke or other indication the car would explode and that Torti laid Van Horn on the ground beside the car. Torti said she removed Van Horn by placing one arm under



Van Horn's legs and the other arm under her head. Van Horn contended that Torti grabbed her by the arm and yanked her out "like a rag doll." Emergency personnel arrived at the scene moments later.

Van Horn sued Torti as well as Watson. Van Horn claimed that she was not in need of help and that Torti was

negligent in the way she pulled her out of the car. After some discovery was conducted, Torti moved for summary judgment claiming that she was immune from liability under the "Good Samaritan" statute. Section 1799.102 of the Health and Safety Code provides: "No person who in good faith, and not for compensation, renders emergency care at the scene of an emergency shall be liable for any civil damages resulting from any act or omission." The trial court granted the motion and Van Horn appealed.

Should the trial court's ruling be reversed? Should the statute be given the broad interpretation that would immunize any action that someone takes in rendering aid in an emergency? Or should a narrower interpretation be given and apply the immunity only when medical aid is provided? What if the injured person can't get out and there truly is a potential for fire?

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A little boy went up to his father and asked: 'Dad, where did my intelligence come from?' The father replied: 'Well, son, you must have got it from your mother, cause I still have mine.'

## SPOTLIGHT ON



## Cooking With Jacqueline

Did you know that Jacqueline Jensen is the author of a cookbook? We asked her to share a favorite summer recipe and the one she selected meets my criteria - easy and delicious!

When I was getting ready to move to Oklahoma from Hazelton, Pennsylvania, my friends put together a recipe box for me with each one's favorite recipe. This flank steak recipe quickly became one of my own family's favorites and they still love it today. Serve with baked or mashed potatoes. If you can't grill the steak on a barbecue, it could be broiled in your oven broiler.

*Jacqueline Jensen*

### GRILLED FLANK STEAK

Flank steak

Soy sauce

Salt

Freshly ground pepper

1 tsp. dried thyme

1 ¼ cup chopped scallions

1 ¼ cup red wine

¼ lb. (1 stick) butter

2 tbsp. finely chopped parsley

Brush steak with soy sauce and sprinkle with salt, pepper, and 1 teaspoon dried thyme. Let steak marinate for at least one hour (can let it marinate all day). Brush steak again with soy sauce and grill. Carve steak in thin slices for serving.

Sauce (this can be prepared earlier in the day if you like): Combine chopped scallions with red wine in saucepan and bring to boiling point. Reduce heat to a simmer and add butter and salt to taste; stir until butter is melted. Add chopped parsley to sauce. Spoon sauce over sliced steak. You can serve additional sauce on the side as well.

*Quinlivan Wexler LLP  
publishes*

### **QWLLP QWarterly Chronicles**

*as a service to clients and friends. This publication is intended for general information and should not be relied upon for any other purpose. QWLLP encourages questions, comments, and ideas for future articles. Please call us; we'd love to hear from you.*

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**The major difference between death and taxes is that Congress can't make death any worse than it already is.**

## The State of the Estate Tax

On June 7, 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001, or EGTRRA, for short. This Act was a sweeping piece of tax legislation and made significant changes in several areas of the Internal Revenue Code, especially in the area of estate and gift tax exclusions and rates. From 2001 through 2009, the amount of money an individual could pass on their death free of estate tax, or the applicable exclusion amount, was increased significantly from \$675,000 in 2001 to \$3,500,000 in 2009 and the estate tax rate was lowered from a top rate of 55% to a top rate of 45%. The most significant change though, was the repeal of the estate tax in 2010. Currently, for 2009, the applicable exclusion amount is \$3,500,000 and the top tax rate is 45%. However, unless further legislation is enacted to make its changes permanent, EGTRRA will sunset on January 1, 2011 and the estate tax provisions

will revert back to the former system with an estimated \$1,000,000 exemption and a top tax rate of 55%.

So the big question we hear from many of our clients is - what is happening with the estate tax? Over the past few years there have been attempts in Congress to either completely repeal the estate tax or set the applicable exclusion amount at a certain amount (a \$5,000,000 exclusion per person was one proposal). These prior proposals have all fallen short of the necessary votes to make any permanent changes in a divided Congress. Now it appears President Obama will honor one of his campaign pledges and advocate for a permanent change to the estate tax possibly before the repeal in 2010. President Obama favors keeping the estate tax at a \$3,500,000 exemption and a top tax rate of 45%. In fact, a line

item in President Obama's proposed budget presented for fiscal year 2010 uses these figures.

The question then becomes what will Congress do? We may have a glimmer of what's to come. On April 29, 2009, Congress authorized budget shortfalls of \$72 billion over the next five years as a result of maintaining the estate tax exemption at 2009 levels (i.e., the \$3,500,000 applicable exclusion amount and 45% tax rate). This, in itself, does not mean that the estate tax exemption will stay at \$3.5 million or the top tax rate will be 45%. However, it is a large step in that direction.

If you would like to discuss the state of the estate tax in further detail or see how it may effect you, please feel free to contact one of the estate planners at Quinlivan Wexler LLP.

**Sarah A. Kirland, JD,  
LL.M.**

In 1909, the average wage was 22 cents per hour. The average worker made between \$200 and \$400 per year. An accountant could expect to earn about \$2,000 and a mechanical engineer about \$2,500.

## Papers Please!

### New I-9 form and rules effective February 2, 2009

The impact of security conscious America, post 9/11, still lingers. Federal law requires employers to verify the identity and employment authorization of each person they hire for employment in the United States within three business days of the employee's first day of work. The form used for this purpose is referred to as an "I-9."

Effective February 2, 2009, employers should start using the new Form I-9 to verify employment eligibility for every newly hired employee. To make sure you are using the current form, the new form's edition indicates "Form I-9 (Rev. 06/05/07)".

The old edition of Form I-9 will not be valid for use on or after February 2, 2009. The good news is that employers are not required to complete new Form I-9s for existing employees on February 2, 2009. Employers are only required to use the new Form I-9 for any new hires, or for any re-verifications of employment (due to expiration of an employee's work authorization), occurring on or after that date.

This new form reflects different requirements. The government has narrowed the list of "acceptable" documents upon which to establish a worker's identity and employment authorization, according to the U.S. Citizenship and Immigration Service (INS). The most significant change to Form I-9 is the requirement that all documents presented during the I-9 verification process must be current and unexpired. One example is that the Employment Authorization Cards are no longer acceptable identification, the reasoning being that the INS no longer issues such cards, and all the older ones have expired.

#### **Office Hours:**

Our normal office hours are 8:30 a.m. to 5:30 p.m. Monday through Friday, Saturday by appointment only.

#### **Closures:**

Friday, July 3  
Independence Day

Monday, September 7  
Labor Day

Previous versions of Form I-9 permitted certain documents, such as U.S. passports, to sufficiently establish identity and employment authorization, even if expired. The new I-9 also eliminates Temporary Resident and Employment Authorization Cards from the list of documents sufficient to establish both identity and employment authorization (referred to as "List A"), since these cards no longer are issued and any outstanding cards would have now expired. The new Form I-9 adds to List A: 1) foreign passports containing certain machine-readable immigrant visas, and 2) valid passports for citizens of the Federal States of Micronesia and the Republic of Marshall Islands, if presented in conjunction with certain entry authorization documents, that is Form I-94 or I-94A.

The new Form I-9 effective after February 2, 2009 may be obtained at the following link: <http://www.uscis.gov/i-9>. So bottom line is all employers need to have your papers in order!

**Julia A. Mouser**

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# QWLLP QUARTERLY CHRONICLES

## About Quinlivan Wexler LLP

Located near John Wayne Airport, QW engages in a general civil practice that includes civil litigation, business and corporate law, estate planning, probate, and conservatorships.

In the litigation department, founding partner **Patrick “Rick” C. Quinlivan** and partner **James F. Henshall** bring over 55 years of combined courtroom experience, the breadth of which assures our clients’ representation by lawyers who fully understand the techniques not only of trial advocacy, but of negotiation and persuasion as well.

Partner **Daniel “Danny” J. Wexler**, named as a Worth Magazine Top 100 Estate Planning Attorney for 2007 and 2008, has 20 years of experience to assist clients from all income brackets with their estate planning needs.

**James Clough**, the partner who chairs the firm’s corporate department, has more than 25 years of experience as a corporate lawyer representing clients ranging from Fortune 500 companies to middle market companies, emerging growth companies and entrepreneurs.

“Ruling”

The Court of Appeal reversed the trial court, finding that the statute applied only in circumstances where someone provides *medical care* at the scene of a *medical emergency*. Van Horn requested a hearing before the California Supreme Court. The court agreed to hear the matter. Unfortunately for Van Horn, the Supreme Court affirmed the appellate court.

The Court reviewed the legislative history in coming to this decision. The Legislature had declared an intent to encourage citizens to learn first aid and CPR techniques. In addition, the code defines “emergency” as “a condition or situation *in which an individual has a need for immediate medical attention.*” The ruling means that one must evaluate whether an

injured person needs *emergency medical attention* before taking any action and then must be sure that the action taken is in the form of *medical care*. Otherwise, the general rule applies – there is no duty to render aid voluntarily, but if you undertake to render aid you must not do so negligently.

**Patrick C. Quinlivan**