

# SMS Quarterly

Shuman, McCuskey & Slicer, PLLC

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## SMS Firm News

### SMS Announces Redesigned Website

While the web address itself has not changed, [www.shumanlaw.com](http://www.shumanlaw.com), the SMS website has a new appearance with fresh content. The site provides clients with detailed information about the SMS lawyers, practice areas, and latest news.

Founding member William Slicer, who was heavily involved in the design, layout and content of the website, stated, "Our clients often recognize SMS and its attorneys for proven litigation representation and results in a variety of civil litigation areas. However, it is equally important that people be made aware of the numerous other areas in which we have skilled lawyers ready and willing to assist our clients such as administrative and regulatory law, appellate advocacy, bank operations law, constitutional law, domestic litigation, health care law, natural resources law, workers' compensation law, and the list goes on. The website was redesigned with an eye toward providing information not only about our lawyers, but also about the many different practice areas of the firm."

The SMS website features links to its attorney profiles, practice areas, firm overview, firm news, legal resources, and contact information for both of the firm's two convenient locations in Charleston and Morgantown. The website also provides information about its lawyers licensed to practice in states other than West Virginia.

SMS encourages its clients and anyone else seeking representation to visit the redesigned website.

### SMS Associates Recently Admitted to Practice in WV Northern District

On September 21, 2007, The Honorable Irene M. Keeley, Chief Judge of the US District Court for the Northern District of West Virginia, granted a Motion for the admission of two SMS associates to practice before the WV Northern District Courts.

Margaret "Molly" Miner of the SMS Morgantown office and John "Jack" D. Hoblitzell, III of the SMS Charleston office were then sworn in and welcomed to the practice of law in the Northern District by Judge Keeley.

SMS has multiple members and associates who are capable of providing a wide range of representation and who are admitted to practice law in all West Virginia state and federal courts.

### SMS Lawyers on a Roll in 2007 with Successful Trials and Dispositive Motions

While it has only been three months since the last installment of the SMS Quarterly reported numerous success stories, SMS lawyers have continued to be triumphant with their aggressive representation of clients. Some of the results are reported below.

#### "Raze" the Roof

Firm member Karen McElhinny obtained a defense verdict after a trial in the case styled

Herman Fletcher v. City of Charleston, filed in the Circuit Court of Kanawha County, West Virginia.

Mr. Fletcher sued the City for trespass and wrongful demolition without proper notice because the City of Charleston razed a structure on his property. The City was able to prove that it provided Mr. Fletcher with proper notice prior to demolishing the structure, a concrete slab and partial walls that sat vacant for many years. After a three day trial, the jury returned a verdict in favor of the City.

### The Fine Print

Firm member Dwayne Cyrus obtained a summary judgment for his client, Farm Family Insurance Company, in a declaratory judgment action filed in Mercer County, West Virginia.

Plaintiff's decedent was killed while working as a timber cutter under the employment of the insured. Based upon the OSHA findings, there was substantial liability exposure for the underlying case. The insured and the Estate argued that coverage should be extended under the doctrine of reasonable expectations. They also argued that the decedent was a seasonal worker and, therefore, not subject to the employer's liability exclusion.

The Court rejected those arguments and found that the decedent was an employee, that the employee's liability exclusion in the CGL policy was clear and unambiguous, and that the exclusion had been effectively communicated to the insured by the agent who provided a copy of the policy. The Estate recently filed a Petition for Appeal.

### Fallen and Down for the Count

Firm member William Slicer and associate Heather Lord recently obtained an Order dismissing their clients from a lawsuit where the Plaintiff failed to prosecute. The Defendants were landlords, and the Plaintiff, one of their former tenants, sued them after falling through a weak spot in the floor of his rented mobile home, a condition allegedly known to the Defendants.

The case was initially filed in December 2005 in the Circuit Court of Kanawha County, West Virginia, and the Plaintiff's counsel failed to respond to written discovery requests or conduct any meaningful investigation. In June 2007, the Defendants filed a Motion to Dismiss pursuant to W.Va.R.Civ.P. 41(b) and Dimon v. Mansy, 198 W.Va. 40, 479 S.E.2d 339 (1996).

Judge Irene Berger granted the Motion to Dismiss and found that the Plaintiff, indeed, failed to prosecute the case.

### The Perfect Medicine

Firm member Timothy R. Linkous secured the voluntary dismissal, without indemnity payment, of a physician in a complicated medical professional negligence case. The Plaintiff is continuing to seek damages from the remaining Defendants in the multi-million dollar case.

### It's Not by Accident...

Firm member William Slicer and associate Christopher Sears obtained summary judgment for one of their clients in a complicated deliberate intent industrial accident case.

## SMS Welcomes 2008 Summer Associate in Morgantown Office

**W**e are pleased to announce that Jennifer L. Tampoya has accepted a Summer Associate position with our Morgantown office for the 2008 summer.

Jennifer, a second year student at the WVU College of Law, is originally from Los Angeles, California, and she relocated to the Morgantown area with her husband to raise their family. Prior to entering law school, she was responsible for the administration of closely-held business corporations providing health care and fitness services. SMS is looking forward to working with Jennifer.

The firm plans on announcing the Charleston office 2008 Summer Associates in the near future.

# Legal Developments

## Recent Decisions from the Supreme Court of Appeals of WV

There were, relatively speaking, few decisions from the Supreme Court of Appeals of West Virginia that directly impact claims, claim adjusting, and ongoing litigation this past quarter. However, there are a few that worthy of mentioning, and they are set forth below.

### Walker v. Option One Mortgage Corp., No. 33225

Reversing an order of the Circuit Court of Kanawha County that denied Defendants leave to file a counterclaim and third party complaint, the Walker Court held that, in absence of evidence that the Defendants were dilatory, leave to file such claims should be freely granted where it would not cause prejudice and it would promote judicial economy.

### Kominar v. Health Management Associates of West Virginia, No. 33215

The Kominar Court reversed a defense verdict in this medical malpractice civil action because each of the three Defendants were afforded three peremptory strikes when there was no serious, genuine hostility among their positions. It also examined whether a Defendant could cross-examine the experts called by Co-Defendants to elicit favorable testimony to the Defendant. While the Court did not reverse the lower court's decision to allow cross-examination of multiple, cumulative experts, it cautioned trial courts to be cognizant of cumulative testimony and delay that is occasioned by cross-examination of multiple expert witnesses. It also stated that cross-examination is not an absolute right unless a witness is truly hostile to a party's position, thereby affording trial court's with the discretion as to whether or not a Defendant can cross-examine his Co-Defendant's expert witness.

### Gary Jenkins v. CSX Transportation, Inc., No. 33179

The Jenkins Court affirmed a lower court's decision to limit the testimony of the Plaintiff's neuropsychology expert such that he could not render an opinion as to the cause of the Plaintiff's alleged brain damage.

### SER Erie Insurance Property & Casualty Co. v. Mazzone, No. 33209

The WV Supreme Court denied a writ of prohibition against a trial court that ordered the production of an insurance company's reserve information. The Court held that the reserve information is discoverable under certain circumstances outlined in the decision. The full text of this decision should be reviewed and analyzed, in detail, by all persons in the insurance industry as well as the lawyers defending insurance bad faith claims.

# SMS Lawyer Highlights

## Associate Krista Sheets Smith

Sms is pleased to announce the most recent addition to the firm, associate Krista Sheets Smith. Krista joined the firm in August 2007 as an associate in the Morgantown office, and on October 11, 2007, she was admitted to practice before the Supreme Court of Appeals of West Virginia and the United States District Court for the Southern District of West Virginia.

Originally from Kingwood, West Virginia, Krista graduated *magna cum laude* with two Bachelor of Arts degrees from Bethany College. At Bethany, she was a member of the Political Science and Theatre Honor Societies, Pi Sigma Alpha and Alpha Psi Omega. After graduating from Bethany College, Krista moved to Washington, D.C. and attended George Washington University where she graduated *cum laude* with a Masters of Arts. During her four years in D.C., she worked on Capitol Hill as a legislative aide for Congresswoman Capito. From 2002-2004, Krista was also the staff director for the Congressional Caucus for Women's Issues and worked with all sixty-four Congresswomen on various issues.

In 2004, she moved back to West Virginia to continue her education at the West Virginia University College of Law. While in law school, she was selected to serve on the Executive Moot Court Board and as an extern for the Honorable John T. Copenhaver, Jr., United States District Court Southern District of West Virginia.

Krista was recently married to Christopher Smith. They reside in Morgantown with their cat, Mistellina..

## Quarterly Quote:

“I don't want to know what the law is, I want to know who the judge is.”

– Roy Cohn

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(Timothy R. Linkous is the member responsible for this publication. This publication is an advertisement for Shuman, McCuskey & Slicer, PLLC).