

BALINT'S BULLETIN

CLIENT LAW UPDATE

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TRICK OR TREAT, OR HORROR STORY?

On October 31, 2012, my client was making a right turn in her F-150 truck off of the Auburn Black Diamond Road into a private driveway. A young lady driving another F-150 truck was looking in the mirror to fix her makeup on her way to a Halloween party. Distracted, this young driver did not see the slowing truck in front of her, smashing into it at 50 miles an hour. The force of the impact twisted and turned my client's truck, smashing it into a fence post. Dazed and confused, my client went to the ER that evening and was diagnosed with soft tissue injury. Not improving, six days later she reported her injuries, including ongoing impaired mental functioning, to her primary care doctor. He diagnosed her with post-concussive syndrome, a form of brain damage, and referred her to a neurologist who made the same diagnosis. Concerned, the neurologist referred her to a neuropsychologist to conduct a full-scale neuropsychological evaluation 11 months after the crash. This kind of specialized testing is effective in determining brain dysfunction and the particular parts of the brain affected, narrowing the scope of treatment for the best improvement. The findings of my client's test was post-concussive syndrome with deficits in executive functioning, i.e., the ability to organize, prioritize and plan. My client was insured by American National Property and Casualty Co. (ANPAC), which provided \$100,000 UIM (underinsured

motorist) coverage. ANPAC gathered medical records and bills and paid its \$10,000 PIP (medical pay) limit. Making no progress with settlement against the negligent driver's insurance, my client retained me. By this time, her medical bills totaled over \$18,000. She had no relevant pre-existing conditions. Faced with this mild brain-damage case, a demand package was sent to the at-fault driver's insurance company that provided \$100,000 liability coverage. ANPAC was also asked to pay its policy limit. Upon receipt of the settlement letter, which contained all of the client's medical records, the at-fault driver's insurance company immediately paid its full \$100,000 liability limits. At this point ANPAC decided to play hardball; it offered only \$10,000, and launched a long intense campaign of intimidation, including extensive and expensive discovery. ANPAC took a 3 ½ hour deposition during which my client described in detail how the brain damage drastically affected her ability to function. The ANPAC adjuster never bothered to review the testimony, nor the three sets of medical records they were provided. Under threat of lawsuit, ANPAC increased its settlement offer to \$25,000. ANPAC violated Washington law in numerous particulars, including the failure to fully explain the reasoning behind its two offers.

I was forced to file suit in the King County Superior Court, but the case was quickly removed to Federal Court and assigned to Judge Richard Jones. During an extensive discovery process, ANPAC forced my client, their own insured, to undergo hours of further testing and examinations. ANPAC's numerous

attorneys took the depositions of all her treating doctors. ANPAC also hired several experts, both in regards to the injuries in question and about the accusation of bad faith in their claims handling. Shortly before trial, Judge Jones dismissed all of the claims pertaining to the bad faith handling of the lawsuit. Trial took place on the contractual claims only. The jury evaluated the harms and losses to my client to be \$386,000. During the adjusting process and continuing from the witness stand, ANPAC attempted to demean my client and solicited various experts to concoct several other possibilities to explain the brain dysfunction. After all the evidence was in, the Judge gave an unusual jury instruction informing the jury to ignore any 'evidence' of pre-existing conditions.

Following the trial, ANPAC finally paid its \$100,000 UIM limits. I appealed Judge Jones' exclusion of bad faith claims handling to the Ninth Circuit Court of Appeals. I had no trouble reversing Judge Jones' dismissal, thus bringing the case back to court. Judge Jones set a November 2019 trial date. The week before the second trial,

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This newsletter reports on news and developments in the law. It is offered as a service to our clients and readers and is not a substitute for legal advice.

Judge Jones granted several of ANPAC's motions, significantly harming the case. Faced with a severely constrained damages case, we opted for a large settlement. The case settled on Halloween 2019 exactly 7 years after the crash. To protect its \$100,000 UIM limit, it is estimated that ANPAC paid well over \$1,000,000 including legal costs and fees.

The insurance industry is increasingly refusing to pay benefits that customers pay premiums for. Anyone who thinks their insurance company considers them as anything other than a profit source is sadly mistaken. Anyone who expects loyalty from ANPAC, Allstate, Geico and USAA (among others) is similarly mistaken. When it comes time to pay for medical bills or for personal injuries under UIM coverages, slick TV ads do not reflect reality.

Benjamin Balint Award

I am so proud of my son. The following is a news article by Michael Schaub at the on line "Kirkus."
 "Benjamin Balint has won the 2020 Sami Rohr Prize for Jewish Literature for his book *Kafka's Last Trial: The Case of a Literary Legacy*. Balint's book tells the story of the decades-long fight over Franz Kafka's manuscripts and papers, which were the subject of competing ownership claims. A court eventually ruled that the papers belonged to the National Library of Israel. A reviewer for Kirkus called Balint's book "a fascinating tale of literary friendship, loyalty, political power, and feckless law." The organizers of the prize praised the book as "a brilliant portrayal of a modern master and the complex story of the fight for the right to claim his literary legacy." In a news release, Balint said he was "stunned" to receive the award, which comes with a \$100,000 cash prize. "No writer familiar with the accomplished writers who have received the Sami Rohr Prize—and those named finalists this

year and in years past—can accept it other than with humility," Balint said. "I'm filled today with gratitude to the Rohr family and to the judges for so graciously conferring this unexpected honor." The Sami Rohr Prize, named after the businessman and philanthropist, was first awarded in 2007. Nonfiction and fiction prizes are awarded in alternate years; previous nonfiction winners include *When They Come For Us We'll Be Gone: The Epic Struggle to Save Soviet Jewry* by Gal Beckerman and *The Man in the White Sharkskin Suit: My Family's Exodus from Cairo to the New World* by Lucette Lagnado."

George Washington Mini-Series

I can highly recommend the History Channel mini-series "George Washington" for both its entertainment and educational value. Though I've been an American history buff since junior high school, I learned a great deal about the man commonly called the father of our nation. The series intermixes dramatic presentations with running commentary by several articulate experts. Without hiding George Washington's flaws, it demonstrates his enormous accomplishments as a general and as our first president. He overcame many difficult hurdles in his personal life, his personal finances, his military experiences, divisive politics and numerous brushes with death. Because the program is directed by professional historians, the series does not glamorize the man or the Revolutionary War itself. It is stunning how precarious the birth of our nation was and how dependent that birth was on the character and integrity of George Washington. A single bullet could have stopped our independence movement in its tracks. The night the series concluded, I was kept awake by thoughts of how far leadership in American politics has sunk. George Washington held the interests of his country above his person-

al well-being and above any political considerations.

Check Fraud

Check scammers have become more sophisticated. Telling an authentic bank check from a check concocted by sophisticated software and printers is near impossible. In one scheme, a criminal used software to create excellent copies of an authentic check and then hired street people to go into branches of the same bank to cash the checks. Fortunately, some criminals are not as bright as others. In this case the manufactured checks were in the name of the assistant manager of the first bank to be victimized!

An even more sophisticated scheme involves sending a fake check to a victim who deposits the check. The excuse for providing the check can be varied, such as winning a prize or a down payment on a job offer. "Shrink-wrap" schemes send the person a large check as partial payment for allowing their car to be shrink-wrapped with some advertising. The victim is directed to send a part of the check by wire transfer to a company supposedly hired to shrink-wrap the car. The scammer's check shows up in the victim's bank account, whereupon the victim sends a money order or wire transfer to the installer. Days later, when the fake check bounces, the victim discovers that there never was a company doing the installation.

Here is an absolute rule to avoid becoming a victim: if the check looks authentic but there is a request to send some of the money elsewhere, or to return some of the money as an ostensible "overpayment," the scheme is a fraud. Once the original check bounces, the victim is left holding the bag and banks often require reimbursement. The average loss from such schemes during the last two years is \$2000, a large sum for someone in college or just starting out. Such schemes target young people more often than elderly people or even people over 30 years old. The reason is

obvious: many younger people have never written a check and certainly do not know how checks work or even how they look.

What can you do? First, don't deposit the check. Second, report it to your bank and report the fraud to the Federal Trade Commission on its complaint website. Third, if you have fallen for the fraud and deposited the check, report it immediately to your bank. Some banks will not require you to repay their loss; others will at least offer a payment plan. All this follows the old adage: if it looks too good to be true, it is.

Remember Tiananmen Square Massacre

The United States is now being convulsed with racial tensions, prompting us to hope and work for a reform not only of our police forces but also of our own attitudes and biases. The enthralling History Channel three-part series about Ulysses S Grant shows that without his military leadership in the Civil War there might not be a United States today. As president, Grant fought to dismantle many legal disabilities aimed at the freed slaves. Unfortunately, he was preceded by the second worst president in American history, Andrew Johnson and was succeeded by another weak president, Rutherford Hayes. Although racial, ethnic and religious prejudice continues to plague us, at least as Americans we are free to fight prejudice and to demonstrate for equality. I am proud to see our streets full of peaceful protesters while at the same time I am sickened by scenes of opportunistic violence and looting.

The contrast between our country and China is starkly demonstrated by the ways the Chinese government repressed truth and history concerning the Tiananmen Square massacre on June 4, 1989. Tens of thousands of peaceful demonstrators—men, women, children, teenagers, college students, young and old—had assembled in Beijing to advocate for democracy.

They erected a replica of the Statue of Liberty. The Chinese government called in troops, who opened fire with assault weapons and tanks, killing hundreds, if not thousands, and wounding thousands of others. Since that time the Chinese dictatorship has suppressed all references to the incident from all publications and on line postings. When the foreign press mentions the incident, Chinese citizens are blocked from accessing it.

When Great Britain gave up Hong Kong, the Chinese government signed a treaty that guaranteed citizens of Hong Kong freedom of speech and press. The Communist government has been chipping away at those guarantees ever since. Most recently, the Politburo enacted legislation imposing Chinese censorship onto the people of Hong Kong, basically ending the autonomy of that enclave. Almost every year since 1989, the people of Hong Kong have held the vigils on June 4 to commemorate the massacre and honor its victims. Following the passage of the recent law, the government has warned anybody trying to participate in Tiananmen Square memorials is subject to arrest and long incarceration.

We must resist any government efforts in our country to repress our constitutional rights to speech and to assembly, i.e. the right to demonstrate.

Wealth Inequality

Economic inequality—in the United States and globally—has been an emotional issue since long before the First World War. The difference between then and now is that we have actual facts and statistics that we can quantify inequality. In his 2014 book, "Capital in the 21st Century," Thomas Piketty, one of the foremost economists alive today makes the following observation: "In all known societies, at all times, the least wealthy half of the population owns virtually nothing." Wealth inequality is a

growing threat to democracy. In the United States today, the top 1% own almost 35% of total wealth. If we include the top 10%, the percentage of the ownership of total wealth rises to over 70%. Despite notable exceptions, the increasing wealth disparity is based primarily on inheritance rather than on merit. Furthermore, as any reader of the news knows, the big corporations and the very wealthy can avoid most taxes, exacerbating the wealth disparity. The tax structure the United States unfairly taxes capital income at a greatly reduced rate from earned income, ensuring that the rich get richer and the rest of us pay taxes.

Word Play—The Annual Neologism Contest

The Washington Post recently published the winning submissions to its yearly contest, in which readers are asked to supply alternative meanings for common words. The winners are:

1. **Coffee** (N.), the person upon whom one coughs.
2. **Flabbergasted** (adj.), appalled over how much weight you have gained.
3. **Abdicate** (V.), to give up all hope of ever having a flat stomach.
4. **Esplanade** (V.), to attempt an explanation while drunk.
5. **Willy-nilly** (adj.), impotent
6. **Negligent** (adj.), describes a condition in which you absentmindedly answer the door in your nightgown.
7. **Lymph** (V.), to walk with a limp.
8. **Gargoyle** (N.), olive-flavored mouthwash.
9. **Flatulence** (N.), emergency vehicle that picks you up after you are run over by a steamroller.
10. **Balderdash** (N.), a rapidly receding hairline.
11. **Testicle** (N.), a humorous question on an exam.
12. **Rectitude** (N.), the formal, dignified bearing adopted by proctologists.
13. **Pokemon** (N.), a Rastafarian proctologist.
14. **Oyster** (N.), a person who sprinkles his conversation with Yiddishisms.

15. **Frisbeetarianism** (N.), (back by popular demand): The belief that, when you die, your soul flies up onto the roof and gets stuck there.

16. **Circumvent** (N.), an opening in the front of boxer shorts worn by Jewish men.

The Washington Post's Style Invitational also asked readers to take any word from the dictionary, alter it by adding, subtracting, or changing one letter, and supply a new definition. Here are this year's winners:

1. **Bozone** (N.): The substance surrounding stupid people that stops bright ideas from penetrating. The bozone layer, unfortunately, shows little sign of breaking down in the near future.
2. **Foreploy** (V.): Any misrepresentation about yourself for the purpose of getting laid.
3. **Cashtration** (N.): The act of buying a house, which renders the subject financially impotent for an indefinite period.
4. **Giraffiti** (N.): Vandalism spray-painted very, very high.
5. **Sarchasm** (N.): The gulf between the author of sarcastic wit and the person who doesn't get it.
6. **Inoculatte** (V.): To take coffee intravenously when you are running late.
7. **Hipatitis** (N.): Terminal coolness.
8. **Osteopornosis** (N.): A degenerate disease. (This one got extra credit.)

9. **Karmageddon** (N.): It's like, when everybody is sending off all these really bad vibes, right? And then, like, the Earth explodes and it's like, a serious bummer.

10. **Decafalon** (N.): The grueling event of getting through the day consuming only things that are good for you.

11. **Glibido** (V.): All talk and no action.

12. **Dopeler effect** (N.): The tendency of stupid ideas to seem smarter when they come at you rapidly.

13. **Arachnoleptic fit** (N.): The frantic dance performed just after you've accidentally walked through a spider web.

14. **Beelzebug** (N.): Satan in the form of a mosquito that gets into your bedroom at three in the morning and cannot be cast out.

15. **Caterpallor** (N.): The color you turn after finding half a grub in the fruit you're eating.

And the pick of the literature:

16. **Ignoramus** (N.): A person who's both stupid and an a-----

Quarantine

In the 1300s, as the bubonic plague killed millions in Europe, many of the same measures we are taking today were attempted. One of the efforts was to mandate that travelers from other areas affected by the

plague would be locked up for 30 days to see if they had symptoms after which they would be released. Based on the science of the day it was determined that 40 days would be safer. *Quaranta giorni* is Italian for 40 days. Hence, 'quarantine.'

Quote of the Month

"As democracy is perfected, the office of the presidency represents, more and more closely, the inner soul of the people. Thus, on some great and glorious day, the plain folks of the land will reach their heart's desire at last and the White House will be occupied by a downright fool and a complete narcissistic moron." H.L. Mencken/ *Baltimore Evening Sun*/ July 26, 1920

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