

# PRO BONO NEWSLETTER

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## SCHNADER LITIGATORS AND BUSINESS LAWYERS TEAM UP TO SAVE PRO BONO CLIENT'S HOME



A team of Schnader lawyers from the Firm's Litigation and Business Services Departments, including **Han Nguyen**, **Melissa S. Blanton**, and **Elizabeth Nicolas**, successfully saved a pro bono client's home after years of hard work.



Schnader was asked by the public interest group, Philadelphia VIP, to represent the pro bono client in a lawsuit against the prior owners of her house in the Kensington/Fishtown neighborhood of Philadelphia. The client and her late husband rented the house for many years and decided to purchase the house in the late 1990s. Unfortunately, the parties' agreement of sale was not properly documented, although the parties to the purported sale acted as if ownership had passed to the client. Several years later, the former owners had a falling out and one owner filed a quiet title action against the other to take back the property. Schnader's client was named as a defendant in the lawsuit. In addition, both former owners disavowed the agreement of sale and showed up at the house threatening immediate eviction of the client.



At that point, VIP asked Schnader to take up the case and save the client from losing her house. Melissa Blanton handled the matter so ably that, at the pretrial conference for the quiet title action, the prior owners agreed, upon payment of a modest amount, to abandon their claims, convey title to Schnader's client, and execute a quitclaim deed. The prior owners also agreed to remove an existing mortgage and all judgments recorded against them that were attached to the property, none of which had anything to do with the property itself. Although this was a significant victory for Schnader's client, the legal saga was just beginning.

Schnader's client now had title to the property, but she could not record the deed while the mortgage and the judgments remained on her title report. A year went by while the prior owners did nothing to remove the mortgage or the judgments and refused to sign the settlement agreement that set out the agreement that had been reached in court.

The Schnader legal team then petitioned the court to impose sanctions on the prior owners for their intransigence in failing to remove the mortgage and judgments. After successfully obtaining one prior owner's signature on the settlement agreement and documenting that certain judgments against him were satisfied, the Schnader lawyers proceeded to a hearing in March 2010 against the remaining prior owner. At the close of the hearing, the judge ordered the prior owner to produce a full accounting of his financial affairs to dispel his claim that he could not afford to pay off the judgments against him. By September 2010, after the Schnader lawyers continued to apply pressure to the recalcitrant prior owner, all judgments were removed from the home.

The final hurdle for the team to overcome in order to record the deed was a 17-year-old mortgage on the house that the prior owners claimed was satisfied, but which they could not document. Complicating matters was the parties' inability to locate the mortgagee. The Schnader lawyers eventually filed a quiet title action and obtained leave of court to serve the mortgagee by publication, and set out to effect service of process in two different central Pennsylvania counties. Finally, after numerous efforts to reach the mortgagee, he responded to the complaint mailed to his last known address and confirmed that the mortgage had been satisfied years ago. Schnader obtained the mortgagee's signature on a mortgage satisfaction piece that was filed with the court, thus removing the final obstacle to free and clear ownership of the home by the pro bono client.

Thanks to Schnader's efforts over many years and in many forums, the client was able to record the new deed naming her as the fee simple owner of her house. ◆

## SCHNADER STAYS BUSY IN THIRD CIRCUIT REPRESENTING PRO BONO CLIENTS



Schnader lawyers have handled a number of pro bono cases in the Third Circuit in the past year. Recently, **Stephen A. Fogdall** briefed and argued an important case involving the federal Clean Water Act (CWA) and the scope of the statute's jurisdictional provision on behalf of a small property owner in Delaware. The pro bono client placed fill material on a portion of his property in order to build a fruit stand to sell fruit grown on his farm. Although the only source of water on the client's property was rainwater run-off from the adjacent highway, the federal government claimed that the fill material had destroyed wetlands on the property that were "waters of the United States" and thus subject to federal jurisdiction under the CWA.



In 2008, Stephen Fogdall was appointed by the Third Circuit as *amicus curiae* to argue certain complex legal issues related to the CWA, but at the government's request, the case was remanded back to the trial court. Steve then began representing the client directly. Following minimal discovery, the trial court granted the government's motion for summary judgment, finding that the wetlands were subject to CWA jurisdiction and upholding a fine against the client. Steve continued to represent the client in the new appeal to the Third Circuit, in which he argued that the Supreme Court's fractured 2006 opinion in *Rapanos v. United States* left the courts without a clear test for determining whether jurisdiction over particular wetlands existed under the CWA and required the appeals court to reverse the trial court's ruling. Steve was assisted in the Third Circuit briefing by **Marieke Tuthill Beck-Coon**. Steve argued the appeal before the Third Circuit in July 2011 and is awaiting a decision from the Court. ♦



A few months earlier, **Carl A. Solano** argued a pro bono appeal in the Third Circuit on behalf of an *amicus curiae*. Carl represented an *amicus* in support of individuals seeking to intervene in a class action brought by residents of state intermediate care facilities against the Commonwealth of Pennsylvania. Although the party Carl's client supported lost the appeal, Carl continues to represent the *amicus* in the trial court, where a settlement of the class action has been reached by the plaintiffs and state defendants. Carl recently participated in a fairness hearing on the settlement and presented argument before the trial court on behalf of his pro bono client and other individuals objecting to the settlement. ♦

Other Schnader lawyers are handling pro bono appeals in the Third Circuit on behalf of prisoners who have brought civil rights or habeas actions, after a panel of the court's judges reviewed the appeals and determined that counsel should be appointed for the *pro se* prisoners.



In one case, **Thomas W. Hazlett**, with assistance from **Carl A. Solano** and **Chris W. Haaf**, is representing a prisoner whose claim against a correctional officer was dismissed by the trial court after the officer died. The prisoner had originally brought suit against various prison administrators, medical personnel, and correctional officers related to an altercation he had with several officers that resulted in severe injuries to the prisoner, including a collapsed lung that required emergency surgery. After initial proceedings in the trial court and an appeal to the Third Circuit, the prisoner's claims against all the remaining defendants were finally adjudicated but his claim against the deceased officer was dismissed by the trial court, despite the prisoner's attempt to substitute the officer's estate as a defendant. He then appealed to the Third Circuit a second time and Schnader was appointed by the court to represent him. On appeal, the Schnader team is arguing that the trial court erred in holding that the estate could not be substituted because no case allegedly was pending in the trial court at the time of the officer's death; in fact, the case was pending in the Third Circuit at the time. The appeal is almost fully briefed and likely will be argued in the fall.





In another case, **Keith E. Whitson** is representing a habeas petitioner whose claim was dismissed after he failed to file a prison account statement in support of his application to proceed *in forma pauperis*. The trial court had entered an order requiring the client to file the statement by June 2, 2010, but the client never received the order. In his Third Circuit brief, Keith argued that the trial court erred in dismissing the habeas petition when the client never received a copy of the order setting the June 2 deadline. He also argued that it was error to require a prison account statement in the first place, as this requirement does not apply to habeas petitions. His argument was apparently quite persuasive because, after filing his brief, opposing counsel indicated that they agreed entirely with Keith's argument. In a three-page brief, counsel from the Allegheny County district attorney's office conceded that the trial court had erred and invited the Third Circuit to appoint *amicus curiae* counsel to defend the trial court's ruling. Instead, the court vacated the district court's ruling and remanded the case to the district court with instructions to give the client 30 days to file the prison statement.



Finally, a team of Schnader lawyers, including **Samuel W. Silver**, **Bruce P. Merenstein**, and **Katrin C. Rowan**, is back in the Third Circuit, representing longtime Firm client Florencio Rolan. Schnader has represented Mr. Rolan since 1994, when he was on death row and only days from execution for a 1983 shooting that he has always contended was done in self-defense. That representation has included a series of state and federal proceedings, including a resentencing trial at which the jury returned a unanimous life sentence (rather than death) and a prior habeas petition that was granted by a federal trial court and affirmed by the Third Circuit. Following a retrial in 2007 and an unsuccessful state appeal, Schnader is back in federal court, once again seeking habeas relief and a new trial for Mr. Rolan. The case is now before the Third Circuit, where the briefing is underway and an oral argument will likely be held in the fall of 2011. ♦

## SCHNADER LAWYERS SUCCESSFULLY HANDLE NUMEROUS PRO BONO IMMIGRATION MATTERS

Schnader attorneys in Pittsburgh and Philadelphia have scored significant victories for several pro bono asylum clients in recent months.



This spring, asylum was granted to Salah Alzubaidy, a citizen of Iraq. Salah and his son worked for a medical supply company which provided supplies to the coalition forces in Iraq, and as a result, he and his family were targeted by insurgents. He and his son received threats, both written and by text message to their phones, and his wife and son escaped an ambush in which shots were fired. Unfortunately, Salah's wife suffered a fatal stroke as a result of these events, and after her death, Salah travelled first to Jordan and then to the United States seeking asylum. **Marieke Tuthill Beck-Coon** and **Keith E. Whitson** represented Mr. Alzubaidy in his successful asylum application.



In a second case, Delphine Murekatete fled Rwanda with her two daughters, primarily as a result of domestic violence. Her husband was a member of the ruling regime in Rwanda and among other things, threatened to kill Delphine and kidnap her daughters. Delphine travelled to Uganda, and was able to obtain a visa for herself but not her daughters. She left her daughters in the care of a volunteer, came to the United States, and applied for asylum in October 2009, with the pro bono assistance of Schnader lawyers. Once asylum was granted, Schnader lawyers continued to assist Delphine and sought derivative asylum on behalf of her daughters. After numerous petitions and pleas to the Department of Homeland Security, the embassy in Kampala, and the National Visa Center over the past 15 months, the children finally received approval and obtained their visas. They are scheduled to arrive in Pittsburgh on September 10, and will be reunited with their mother after almost two years. The Firm represented Ms. Murekatete in her asylum application and **Keith E. Whitson** pursued the petitions on behalf of her daughters. ♦

# SCHNADER HONORS TWO OF ITS LAWYERS FOR OUTSTANDING PRO BONO EFFORTS AND COMMUNITY SERVICE

In July 2011, Schnader honored two of its lawyers for distinguished records of pro bono and community service. Every year, the Firm presents two awards named for one of its founding members, Earl G. Harrison. One award is given to a Firm lawyer for outstanding pro bono service, while the other is given to a Firm employee who has demonstrated an abiding commitment to community service.



**H. Lee Schwartzberg, Jr.** was honored with this year's Pro Bono Award for a wide variety of pro bono matters, including a number on behalf of children referred to Schnader by the Support Center for Child Advocates. An experienced business lawyer, Lee handled a number of matters in which he was forced to play the role of a litigator — and did so with aplomb. In addition to honing his litigation skills in the matters for the Support Center, Lee was required to coordinate the efforts of multiple agencies and interested parties to ensure that his clients ended up in safe and loving environments with adoptive parents. Lee has also contributed to the pro bono culture at Schnader through his active membership on Schnader's Pro Bono Committee.



**Paul H. Titus** received the 2011 Harrison Community Service Award. Paul has been a leader in the Pittsburgh legal community for many years and is one of the most respected lawyers in the state, for both his litigation skills and his unwavering commitment to justice. Less well-known is Paul's work on behalf of numerous community organizations. Most notably, Paul has been very active with the Thea Bowman Academy in Wilkinsburg, a working-class suburb of Pittsburgh. Paul teaches constitutional law to the school's 7th and 8th grade students, and also runs a mock trial program for 8th grade students, through which Paul meets with the students monthly and recruits other attorneys in town to serve as coaches. Paul set up the program and essentially runs it himself. As part of this program, Paul also takes the students on trips to Harrisburg and Washington D.C., where they visit the Supreme Court and local legislators. ◆

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