## JAY SHEPLER
## V.
## LATROBE AREA HOSPITAL, INC.
## NO. 5419 OF 1996

*Cause of Action: Professional Negligence—Medical Malpractice*

The plaintiff brought this medical malpractice action as a result of the alleged misdiagnosis of plaintiff's condition of testicular torsion by the defendant hospital, acting through its emergency department physician. On August 24, 1995, plaintiff presented himself to the emergency department complaining of right testicular pain and swelling. The defendant diagnosed the condition as epididymo-orchitis. Plaintiff contended that the failure to immediately render treatment and resolve the testicular torsion resulted in the subsequent surgical removal of plaintiff's right testicle. Plaintiff also claimed emotional damages associated with the loss.

Defendant averred that appropriate testing and diagnostic procedures were performed and that an appropriate diagnosis was made. Defendant also contended that plaintiff was referred to his family physician and a urologist for further care and treatment, which was rendered to plaintiff prior to the surgery.

*Plaintiff's Counsel:* Arthur L. Schwarzwaelder, John A. Caputo & Associates, Pgh.; Lawrence D. Kerr, Berk, Whitehead, Kerr, Feliciani & Turin, P.C., Gbg.

*Defendant's Counsel:* Donald H. Smith, Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C., Pgh.

*Plaintiff's Experts:* Terrence R. Malloy, M.D., Michael Jastremski, M.D., and Donna Coufal, Ph.D.

*Defendant's Experts:* Alan K. Hodgdon, M.D., and Lawson F. Bernstein, M.D.

*Trial Judge:* The Hon. Daniel J. Ackerman

*Result:* Verdict for plaintiff in the amount of $250,000.

## GILBERT STEVENSON AND GLADYS STEVENSON, HIS WIFE
## V.
## FREDERICK MCWILLIAMS, M.D.
## NO. 3827 OF 1996

*Cause of Action: Professional Negligence—Medical Malpractice—Loss of Consortium*

Husband-plaintiff brought this medical malpractice action against defendant-physician for prescribing the drug Demadex, a diuretic, at an allegedly high and dangerous level. After six days of taking the medication as prescribed, plaintiff alleged that he was hospitalized due to severe dehydration from the drug. Plaintiff contended that defendant's failure to diagnose the dehydration from excessive use of the drug led to the defendant's erroneous removal of plaintiff's gall bladder, severe disorientation and cerebral damage from a condition known as encephalopathy, as well as blood clotting and damage to the heart, bladder and kidneys. His wife claimed loss of consortium.

Defendant denied that the drug was prescribed in a dangerous manner. The defendant averred that any dosage taken by the plaintiff had no affect on his overall condition. Defendant asserted that any injuries or damages claimed by plaintiff were caused by the plaintiff's underlying medical condition.

*Plaintiffs' Counsel:* Michael Hahalyak, Murrysville

*Defendant's Counsel:* Robert W. Murdoch, Zimmer Kunz P.C., Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for defendant. The jury found that defendant's negligence was not a substantial factor in bringing about the plaintiff's harm.

## BARBARA A. STURM, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF BRUCE E. STURM, DECEASED V. SURINDER S. BAJWA, M.D. NO. 2352 OF 1998

*Cause of Action: Professional Negligence—Medical Malpractice—Survival and Wrongful Death—Loss of Consortium*

In this professional negligence action, plaintiff alleged that the defendant-physician failed to properly diagnose and treat the alleged true condition of plaintiff's decedent of pulmonary embolus during two hospitalizations in March and October of 1996 and at office visits in between. Plaintiff alleged that defendant failed to include pulmonary embolus in the differential diagnosis and rule it out as the cause of decedent's symptoms.

Immediately following his discharge from the second hospitalization in October of 1996, the decedent developed a massive pulmonary emboli, which blocked blood flow in both lungs and resulted in his death.

Defendant denied the existence of clinical signs or symptoms suggesting testing and diagnosis of pulmonary emboli. Defendant maintained that his conduct did not cause, contribute to or increase the likelihood of the claimed injuries or damages.

*Plaintiffs' Counsel:* Robert L. Potter, Harry F. Kunselman, Strassburger McKenna Gutnick & Potter, Pgh.

*Defendant's Counsel:* Bernard R. Rizza, Gaca Matis Baum & Rizza, Pgh.

*Trial Judge:* The Hon. Charles H. Loughran, President Judge

*Result:* Verdict for defendant.

## GREEN VALLEY DRY CLEANERS, INC., DAVID ROSENBLATT AND GAIL ROSENBLATT V. WESTMORELAND COUNTY INDUSTRIAL DEVELOPMENT CORPORATION NO. 5746 OF 1998

*Cause of Action: Breach of Contract*

In October of 1997, plaintiff purchased from the defendant a parcel of real estate located in the Westmoreland County Industrial Park IV Plan of Lots in North Huntingdon upon which he could erect a building for his wholesale dry cleaning business. Shortly after closing on the property, plaintiffs contended that there were latent conditions on the property, which the defendant should have known, caused by subsurface mining. Plaintiffs contended that the defendant did not disclose the defect, thereby causing plaintiffs to incur extraordinary costs when erecting the building.

As no purchase agreement was executed, the defendant contended that disclosure of subsurface conditions of the property was not a term of the contract. Rather, the parties proceeded upon an executed option agreement, which permitted the plaintiffs to make test borings and soil analyses on the property and cancel the agreement without incurring any financial loss if the tests revealed that they could not proceed with their construction plans. The defendant contended that plaintiffs conducted multiple tests regarding the subsurface conditions of the lot which revealed the presence of coal and carbonaceous material and also relied upon the expertise of the architect hired by the plaintiffs prior to closing on the property.

The special interrogatories submitted to the jury included whether the parties agreed that the defendant-seller would have the duty of revealing subsurface conditions to the plaintiff-buyer and, if so, whether the defendant-seller breached this duty.

*Plaintiffs' Counsel:* S. Link Christin, Meyer, Unkovic & Scott, LLP, Pgh.

*Defendant's Counsel:* Thomas P. Pellis, Aimee R. Jim, Meyer, Darragh, Buckler, Bebenek & Eck, PLLC, Gbg.

*Trial Judge:* The Hon. Daniel J. Ackerman

*Result:* Molded verdict for plaintiff in the amount of $603,500.

## SALLY DAVIS
## V.
## DAVID JOHN MOSES
## NO. 935 OF 1999

*Cause of Action: Negligence—*
*Motor Vehicle Accident—Arbitration Appeal*

This action arose out of a motor vehicle accident that occurred on July 7, 1998 when plaintiff was traveling west on Seventh Street at its intersection with Constitution Boulevard in New Kensington. The defendant was operating his vehicle in a northerly direction on Constitution Boulevard. Plaintiff contended that she attempted to travel through the intersection when the defendant failed to stop/yield to plaintiff's vehicle, causing the front of defendant's vehicle to hit the plaintiff's vehicle broadside. Plaintiff averred the selection of the full tort option and claimed soft tissue injuries.

In new matter, defendant invoked the sudden emergency doctrine as a bar to plaintiff's recovery. Defendant also asserted the affirmative defense of plaintiff's contributory/comparative negligence and the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL).

*Plaintiff's Counsel:* Robert Paul Vincler, Pgh.

*Defendant's Counsel:* Susan D. O'Connell, Law Office of Marianne C. Mnich, Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for defendant. Jury found no negligence on behalf of defendant.

## MICHAEL KORYWCHAK
## V.
## LINDA LEVRIO
## NO. 1575 OF 2000

*Cause of Action: Negligence—Motor Vehicle Accident*

Plaintiff's claim arose out of a motor vehicle accident that occurred on August 11, 1998 in Derry Township at the intersection of Route 217 and the entrance to Choice Gas. Plaintiff, heading south on Route 217, accessed his turn signal and brought his vehicle to a stop to allow traffic to clear before turning east into the entrance to Choice Gas. The complaint alleged that the defendant, traveling behind the plaintiff, failed to stop and struck the rear of plaintiff's vehicle. Plaintiff selected full tort and claimed soft tissue injuries.

The defendant asserted that she acted reasonably and prudently and with due care. In new matter, defendant invoked the defenses of comparative/contributory negligence and the provisions of the MVFRL.

*Plaintiff's Counsel:* Ned J. Nakles, Jr., Nakles and Nakles, Latrobe

*Defendant's Counsel:* Michael C. Maselli, Law Office of Marianne C. Mnich, Pgh.

*Trial Judge:* The Hon. Charles H. Loughran, President Judge

*Result:* Verdict for plaintiff in the amount of $12,500.

## LLOYD MARKER
## V.
## DAIMLERCHRYSLER CORPORATION
## NO. 5161 OF 1999

*Cause of Action: Pennsylvania Automobile Lemon Law—Arbitration Appeal*

On March 15, 1996, plaintiff purchased a new 1996 Dodge Stratus, which was manufactured by the defendant. In this Lemon Law action, plaintiff averred that he delivered the nonconforming vehicle to the authorized service and repair facility of the defendant on numerous occasions. After a reasonable number of attempts, defendant was unable to repair the nonconformities, which ranged from the vehicle's alleged defective transmission, brakes and rotors to its power steering. Plaintiff alleged that the vehicle could not be utilized for the purposes intended by plaintiff at the time of acquisition.

Defendant denied that the vehicle exhibited defects and nonconformities. Defendant averred, inter alia, that plaintiff's claims were barred and/or limited by the Automobile Lemon Law, by his neglect, misuse, abuse and/or alteration of the vehicle and that the nonconformity did not substantially impair the use, value or safety of the vehicle.

*Plaintiff's Counsel:* Michael Power, Power & Associates, P.C., Glen Mills

*Defendant's Counsel:* Patricia A. Monahan, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

*Trial Judge:* The Hon. Daniel J. Ackerman

*Result:* Molded verdict for plaintiff for a total of $27,259.20—$19,957.70 compensatory damages and $7,301.50 counsel fees.

## MARY MAGGIORE
## V.
## RICK KATREEB
## NO. 4741 OF 1999

*Cause of Action: Negligence—Motor Vehicle Accident—Summary Jury Trial*

This motor vehicle accident occurred at the intersection of Route 981 and Route 30 in Unity Township on August 27, 1997. Plaintiff was a passenger in a vehicle operated by her husband, who was traveling on the exit ramp of Route 30 leading to Route 981. The complaint alleged that plaintiff's vehicle was stopped with its turn signal activated while waiting for traffic to clear before proceeding onto Route 981. The defendant, whose vehicle was behind the plaintiff's, failed to stop and caused a collision with the rear of plaintiff's vehicle. Plaintiff's claim consisted primarily of soft tissue injuries.

Defendants raised the affirmative defenses of contributory/comparative negligence and assumption of the risk, the statute of limitations and/or plaintiff's failure to prosecute the action, as well as the provisions of the MVFRL and its amendments known as Act 6.

*Plaintiff's Counsel:* Ned J. Nakles, Jr., Nakles and Nakles, Latrobe

*Defendants' Counsel:* Maria Spina Altobelli, Jacobs & Saba, Gbg.

*Trial Judge:* The Hon. Daniel J. Ackerman

*Result:* Verdict for plaintiff in the amount of $4,000.

## JOHN W. FAGAN AND BROOKE FAGAN, HIS WIFE V. MURAT BANKACI, M.D. NO. 6052 OF 2000

*Cause of Action: Professional Negligence—Medical Malpractice—Loss of Consortium*

The husband-plaintiff brought this medical malpractice action against the defendant, an ear, nose and throat specialist, for damage sustained by plaintiff during surgery on his left ear. Plaintiff treated the defendant for problems associated with his left ear for approximately a year and a half before the defendant recommended surgery to remove cholesteatoma of plaintiff's left middle ear. During the surgery of April 12, 2000, defendant cut the vertical portion of the plaintiff's left facial nerve and injured the horizontal semicircular canal. Plaintiff suffered from facial paralysis and disequilibrium, as well as injuries to his left ear and eye, face and neck. His wife claimed loss of consortium.

In new matter, defendant averred that any injuries sustained by plaintiff were the result of superseding, intervening and/or independent causes over which defendant had no control. At trial, the defendant admitted that he cut the left facial nerve, but maintained that it was an accepted risk of surgery.

*Plaintiffs' Counsel:* Timothy J. Schweers, Harrington Schweers Dattilo & McClelland, P.C., Pgh.

*Defendant's Counsel:* Tyler J. Smith, Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Pgh.

*Trial Judge:* The Hon. Daniel J. Ackerman

*Result:* Verdict for plaintiff in the amount of $265,000, which included medical expenses of $49,500. No amount awarded for wife-plaintiff.

## HOLLY A. MOWREY, PARENT AND NATURAL GUARDIAN OF NASH E. PAULIN, A MINOR V. DONALD J. HOOPER NO. 4826 OF 1999

*Cause of Action: Negligence—Motor Vehicle Accident—Arbitration Appeal*

The plaintiff brought this negligence action for injuries sustained by her minor son as a result of a motor vehicle collision. On August 26, 1998, the minor was operating plaintiff's vehicle and traveling south on State Route 2045 in Ligonier Township. The defendant was proceeding north on State Route 2045 when his vehicle struck the vehicle operated by the minor. Plaintiff alleged that the defendant was negligent in operating his vehicle at an excessive rate of speed and in entering the lane of traffic occupied by the minor. Injuries claimed involved those to the minor's left arm, back, leg and body. Plaintiff alleged eligibility for full tort recovery under the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL).

At the time of trial, the defendant conceded that he was negligent in the operation of his vehicle. The jury was asked to determine whether the negligence of the defendant was a substantial factor in bringing about the minor's injuries and the amount of damages, if any, to be awarded to the plaintiff.

*Plaintiff's Counsel:* Mark L. Sorice, Stewart, McCormick, McArdle & Sorice, Gbg.

*Defendant's Counsel:* Pamela V. Collis, Summers, McDonnell, Walsh & Skeel, Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Jury found that defendant's negligence was a substantial factor and awarded $25,000 to the plaintiff.

## JASON E. HASSELL
## V.
## KENNETH LEE WHITE
## NO. 7317 OF 2000

*Cause of Action: Negligence—Motor Vehicle Accident*

Plaintiff sought damages for personal injuries sustained as a result of a two-vehicle collision at the intersection of Routes 22 and 981 in New Alexandria on November 19, 1999. The plaintiff was traveling west on Route 22, while the defendant was operating his pickup truck in an easterly direction. Defendant attempted to turn left at the intersection in front of plaintiff's vehicle, causing a head-on collision. The plaintiff suffered injuries to his left knee and left shoulder, both of which required surgery and fully resolved. Plaintiff claimed continued low back pain and numbness in his legs. Plaintiff had selected the full tort option of insurance coverage.

At the time of trial, the defendant admitted liability. The only issue before the jury was the amount of damages to be awarded the plaintiff.

*Plaintiff's Counsel:* Stephen J. Harris, Pgh.

*Defendant's Counsel:* Christopher M. Fleming, Jacobs & Saba, Gbg.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Jury awarded $20,000 in damages to plaintiff.

## KEVIN THORSEN AND
## CHRISTINE THORSEN, HIS WIFE
## V.
## KAUFMANN'S DEPARTMENT STORE
## NO. 1170 OF 2000

*Cause of Action: Defamation—Invasion of Privacy—False Imprisonment—Loss of Consortium*

On January 13, 2000, wife-plaintiff was shopping for a pair of jeans at defendant's store at Westmoreland Mall. After trying on several pairs, plaintiff left the dressing room to select a different size. According to the plaintiff, she returned to find that her fitting room was occupied and that the pants she had worn into the store were missing. The defendant's employee told her that she was "in big trouble," then informed her that her pants had been removed, searched and placed at the register. The employee told her that customers were not permitted to wear store clothing onto the sales floor. After a few minutes, plaintiff proceeded to the register while wearing the store's jeans in order to retrieve her pants.

Plaintiff sued the defendant for defamation. Plaintiff argued that the employee implied she committed retail theft by stating that she was "in big trouble." Plaintiff also brought claims for false imprisonment for her brief confinement to the dressing room and invasion of privacy for the employee's search of her pockets. Plaintiff sought damages for anxiety, embarrassment and humiliation. Her husband claimed loss of consortium.

The defendant maintained that its employee removed plaintiff's pants from the fitting room during the employee's regular collection of store clothing from the dressing room. The employee believed that plaintiff's fitting room was unoccupied because her jeans were lying on the floor and there were no other identifying items, such as a purse, keys or shoes, to suggest that the fitting room was being used. The employee testified that she picked up the pair of jeans when she was cleaning out the dressing room and looked in plaintiff's pockets in order to locate the department store's tag. Finding none, she folded the jeans and placed them at the register. When the employee observed the plaintiff's return to the same fitting room, the employee stated that she realized her mistake and apologized to plaintiff for the same.

*Plaintiffs' Counsel:* Amy S. Cunningham, Gbg.

*Defendant's Counsel:* Jonathan S. McAnney, Tucker Arensberg, P.C., Pgh.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Verdict for defendant.

## MELANIE M. BRYAN, A MINOR, BY HER PARENTS AND GUARDIANS, ROBERT BRYAN AND CYNTHIA L. BRYAN, AND ROBERT BRYAN AND CYNTHIA L. BRYAN, PARENTS OF SAID MINOR, IN THEIR OWN RIGHT
## V.
## CAROL TACKETT AND GLEN TACKETT AND TYLER TACKETT
## NO. 629 OF 1999

*Cause of Action: Negligence—Premises Liability*

The events that gave rise to this action occurred on September 21, 1997, at approximately 12:45 a.m. The plaintiff, sixteen years of age, was at the defendants' residence when she slipped and fell from a trampoline located in the yard. Plaintiff alleged that defendants were negligent in inviting and/or permitting her to use the trampoline, which was covered with dew, in an unlighted yard and while it was being used simultaneously by several other guests. Plaintiff's injuries included a fractured left elbow, which required several surgical procedures and caused scarring.

The defendants averred that plaintiff did not have their consent or permission to enter onto the premises or use the trampoline that night, nor did their son have the authority to grant her permission. The defendants claimed that plaintiff was a trespasser or, at most, a licensee. Defendant asserted contributory/comparative negligence and that the minor-plaintiff voluntarily assumed a known risk.

*Plaintiffs' Counsel:* Merle Kramer, Mermelstein, Silberblatt Mermelstein, P.C., Pgh.

*Defendants' Counsel:* Thomas W. Smith, Mears, Smith, Houser & Boyle, P.C., Gbg.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for plaintiffs in the amount of $16,000. 50% causal negligence attributed to plaintiff.

## RUTH ANN POORBAUGH AND JAMES POORBAUGH, HER HUSBAND
## V.
## GREGORY C. SPAIN, D.P.M.
## NO. 2949 OF 2000

*Cause of Action: Professional Negligence—Medical Malpractice—Battery and Informed Consent—Loss of Consortium*

The wife-plaintiff was referred to the defendant podiatrist on May 29, 1998, for treatment of chronic right heel pain. The defendant diagnosed her condition as tarsal tunnel syndrome. On August 19, 1998, the defendant performed surgery on plaintiff, which consisted of a right foot release of tarsal tunnel. Plaintiff contended that defendant incorrectly diagnosed her condition as tarsal tunnel syndrome when her true condition was plantar fasciitis. Plaintiff also averred that defendant was negligent in his performance of the unnecessary surgery, which required her to undergo further surgery by an orthopedic surgeon. Plaintiff claimed continued pain in her right foot, numbness and disability. Her husband brought a claim for loss of consortium.

Defendant maintained that he fully advised plaintiff of the risks and complications involved in the surgical treatment, which required the severing of a portion of the medial calcaneal nerve. Defendant claimed that plaintiff consented to the procedure only after such information was provided. Defendant denied negligence in the care and treatment of plaintiff and contended that plaintiff assumed any and all risks of the surgery.

*Plaintiffs' Counsel:* Alan H. Perer, Swenson Perer & Kontos, Pgh.

*Defendant's Counsel:* Charles A. Buechel, Grogan Graffam, P.C., Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for defendant. Jury found informed consent and no negligence.

## ANGELINE DIFILIPPO
## V.
## S. MARK RAYBURG, D.M.D.
## NO. 4425 OF 2000

*Cause of Action: Professional Negligence—Medical Malpractice—Arbitration Appeal*

On or about June 9, 1999, plaintiff presented herself to the defendant, who practiced general dentistry, for evaluation and treatment of her lower denture. Plaintiff contended that the defendant was negligent in performing an in-office reline of the lower denture. Plaintiff claimed damage to her dental implants and the supporting bony and soft tissues of the mandible. In the alternative, if her medical condition was pre-existing, then plaintiff claimed aggravation of such condition.

The defendant contended that the in-office treatment was provided in accordance with the accepted standards of dentistry. Defendant denied that he was negligent in any manner and maintained that the procedure was accomplished without any injury or harm to plaintiff, her denture or the mandibular implants.

*Plaintiff's Counsel:* Edward A. Scherder, D.M.D., Pgh.

*Defendant's Counsel:* Francis Garger, Davies, McFarland & Carroll, P.C., Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Verdict for defendant.

## LINDA GAUDIELLO, AN INDIVIDUAL
## V.
## ALAN E. OLIVENSTEIN, M.D.
## NO. 7317 OF 2000

*Cause of Action: Professional Negligence—Medical Malpractice*

Plaintiff brought this medical malpractice action against the defendant for health care rendered from July 9, 1993, through August 20, 1993. Initially, defendant was assigned as plaintiff's treating physician in the hospital when plaintiff presented with high blood pressure and left arm pain. Upon defendant's recommendation, plaintiff underwent a cardiac catheterization test. Tests following the procedure revealed that defendant had dissected the right coronary artery with the catheter device. Plaintiff was immediately transported to Mercy Hospital, where she successfully underwent open heart surgery. Plaintiff contended that defendant was negligent in dissecting the artery, as well as ordering the cardiac catheterization test when she was not suffering from coronary artery disease or blockage.

The defendant maintained that the cardiac catheterization was recommended as a result of plaintiff's symptoms and findings. Defendant denied that he acted improperly in performing the surgical procedure during which plaintiff developed the complication.

*Plaintiff's Counsel:* Edward G. Shoemaker, Shoemaker & Associates, Pgh.

*Defendant's Counsel:* Alan S. Baum, Gaca Matis Baum & Rizza, Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Verdict for defendant.

## MARJORIE L. MARLING AND RAYMOND E. MARLING, HER HUSBAND V. EAT 'N PARK RESTAURANT TRUST AND CINTAS CORPORATION AND CINTAS SALES CORPORATION D/B/A CINTAS CORPORATION NO. 780 OF 2000

*Cause of Action: Negligence—Premises Liability*

On October 23, 1998, plaintiff was a business invitee of Eat 'n Park Restaurant in New Stanton. As plaintiff entered through the front entrance, she tripped and fell on a turned up edge of the floor mat/runner, which was allegedly improperly installed by defendant Cintas Sales Corporation, d/b/a Cintas Corporation. Plaintiff was transported to the emergency room, treated and released for orthopedic care. Plaintiff's injuries included a severe fracture of the left humerus and injuries to the nervous system. Her husband claimed loss of consortium.

Defendant Cintas denied negligent installation of the floor mat. Defendant asserted that plaintiffs' damages were caused by an intervening and/or superseding cause over which it had no control. Defendants brought cross-claims against each other for contribution and/or indemnity by way of new matter pursuant to Pa.R.C.P. 2252(d). Plaintiffs executed a Settlement Agreement and Joint Tortfeasor Release in favor of Defendant Eat 'n Park.

*Plaintiffs' Counsel:* Anthony DeBernardo, Jr., DeBernardo Antoniono McCabe & Davis, P.C., Gbg.

*Counsel for Defendant Eat 'n Park:* Anne Friday Beck, Law Office of Joseph S. Weimer, Pgh.

*Counsel for Defendant Cintas:* Paul T. Grater, Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for defendants. The jury found no negligence on behalf of Cintas, while 85% negligence was attributed to Eat 'n Park. The verdict was molded to reflect the jury's findings and plaintiffs' release in favor of Eat 'n Park.

## THOMAS GRETOK V. LITTLE CAESAR EAST, INC., A CORPORATION NO. 1005 OF 2000

*Cause of Action: Breach of Contract—Lease Agreement*

On February 14, 1989, the defendant entered into a lease agreement with plaintiff for space in a small strip shopping center to be built on East Pittsburgh Street, Greensburg. The lease provided that defendant would pay minimum monthly rent plus its proportionate share of common area maintenance fees, taxes and insurance. In the event defendant would abandon the leased premises, the agreement permitted plaintiff to charge additional rent during each month of abandonment in an amount equal to the minimum monthly rent. The ten-year lease was to expire on December 30, 2000. However, defendant abandoned the premises without notice to plaintiff on July 20, 1999. Plaintiff sought the difference in the monthly minimum rents of defendant and the new lessees, additional rent, defendant's share of common area maintenance fees, taxes and insurance, as well as expenses incurred to clean and repair the property.

Defendant did not dispute that it owed certain amounts of rent, common area maintenance fees, taxes and insurance, to be appropriately set-off by rent collected by plaintiff in re-letting the space. Defendant conceded that it owed a reasonable amount of repair costs to plaintiff, but disputed the amount of those costs. Further, defendant contested the additional "double" rent provision for defendant's abandonment of the premises as an unenforceable penalty.

*Plaintiff's Counsel:* Douglas G. Hipp, Oakmont

*Defendant's Counsel:* James M. Evans, Michael C. Hamilton, Buchanan Ingersoll, P.C., Pgh.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Molded verdict for plaintiff in the amount of $73,278.92. The jury found the liquidated damages clause enforceable.

## MOTORISTS MUTUAL INSURANCE COMPANY V. KATHRYN GRECO, GREGORY GRECO, AND FAYE GRECO, BY KATHRYN GRECO AND GREGORY GRECO, HER PARENTS, KENNY RAY YECKEL AND TEST BORING SERVICES, INC. NO. 3714 OF 2001

*Cause of Action: Declaratory Judgment—Insurance Coverage—Advisory Verdict*

Plaintiff insurance company sought a declaration that it had no duty to provide coverage or a defense to defendant Kenny Ray Yeckel based upon a policy of automobile insurance issued to Mr. Yeckel's employer, defendant Test Boring Services, Inc. The policy provided coverage to Test Boring and its sole shareholder, Jeff Selvoski, as well as to anyone using a covered auto with the permission of Mr. Selvoski or Test Boring. The underlying action arose from a motor vehicle accident involving the vehicles operated by Mr. Yeckel and Mrs. Greco, in which her minor daughter was a passenger. The truck driven by Mr. Yeckel was owned by Test Boring. The Greco family brought suit against Mr. Yeckel and Test Boring for negligence and negligent entrustment.

Plaintiff contended that Mr. Yeckel was not an "insured" under his employer's policy of insurance because he was operating a covered auto without the knowledge or permission of Mr. Selvoski or Test Boring. On the day of the accident, Mr. Yeckel had borrowed the company vehicle from another employee, Scott Patrick, who had driven the vehicle home from work the previous day. Eleven days before the accident and in the presence of Mr. Patrick, Mr. Selvoski expressly forbade Mr. Yeckel from driving any company vehicle while he did not possess a valid Pennsylvania driver's license.

Defendants Greco asserted that Mr. Yeckel operated the vehicle with the permission of Mr. Selvoski and/or Test Boring. In new matter, plaintiff averred that Mr. Patrick was given possession of the truck and had authority to permit its use by Mr. Yeckel. In addition, plaintiff contended that Mr. Selvoski asked Mr. Yeckel to drive the truck to secure repairs and inspection even after he was informed that Mr. Yeckel did not have a valid driver's license.

A jury was empaneled to render an advisory verdict to the court. The jury was asked to determine if, at the time of the accident, Mr. Yeckel was operating Test Boring's truck with the permission of Test Boring or Mr. Selvoski.

*Plaintiff's Counsel:* Richard E. Rush and Templeton Smith, Jr., Thomson, Rhodes & Cowie, P.C., Pgh.

*Counsel for Defendants Greco:* Jan C. Swensen, Swensen Perer & Kontos, Pgh.

*Counsel for Test Boring Services, Inc.:* Rabe F. Marsh, III, Ward & Christner, P.C., Gbg.

*Defendant Yeckel:* pro se

*Trial Judge:* The Hon. Gary P. Caruso

*Advisory Verdict:* The jury found that Mr. Yeckel was operating the vehicle with permission from Test Boring or Mr. Selvoski. The court declared that Mr. Yeckel was an insured under the commercial automobile policy issued to Test Boring.

## ELIZABETH BOGLE
## V.
## SANDRA SOLOMON
## NO. 4241 OF 2000

*Cause of Action: Negligence—*
*Motor Vehicle Accident—Arbitration Appeal*

This motor vehicle accident occurred on July 28, 1999, in Derry Township, Westmoreland County. Both vehicles were traveling southbound on State Route 217 when plaintiff stopped her vehicle to make a left hand turn onto an intersecting street. As plaintiff waited for traffic to pass, the defendant failed to stop her vehicle and collided into the rear of plaintiff's vehicle. Plaintiff claimed soft tissue injuries. The defendant denied negligence and averred that she was acting reasonably, prudently and with due care. In new matter, defendant asserted the affirmative defenses of the Pennsylvania Comparative Negligence Act, statute of limitations, and the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL), as amended by Act 6, including the limited tort provisions of the same. In reply to new matter, plaintiff averred that she retained full tort insurance coverage at the time of the accident.

*Plaintiff's Counsel:* Michael D. Ferguson, Ferguson Law Associates, Latrobe

*Defendant's Counsel:* Michael C. Maselli, Law Office of Marianne C. Mnich, Pgh.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Verdict for defendant.

## LORNA G. SMITH AND
## JACK SMITH, HER HUSBAND
## V.
## RODNEY C. HUMMEL AND
## SCHUYLKILL STONE, INC.
## NO. 5956 OF 2000

*Cause of Action: Negligence—Motor Vehicle Accident*

On October 5, 1998, at approximately 8:50 a.m., plaintiff was involved in a motor vehicle accident at the intersection of State Routes 130 and 4006 (North Greengate Road) in Greensburg, Westmoreland County. Plaintiff Lorna G. Smith was operating her vehicle in a southerly direction on North Greengate Road and was proceeding through the intersection on a green traffic signal. Defendant Rodney C. Hummel, operating a vehicle owned by defendant Schuylkill Stone, Inc., and traveling west on State Route 130, failed to stop for a red traffic signal and caused the collision with plaintiff's vehicle. The complaint alleged that Mr. Hummel was employed by Schuylkill Stone, Inc., and was acting within the course and scope of his employment and upon the business of his employer at the time of the accident. Plaintiff claimed injuries that included a concussion, fractured ribs, fracture of a tooth at the gum line, a separated shoulder, lacerations, diplopia, and other specified injuries. Her husband brought a claim for loss of consortium.

In new matter, defendants asserted that some or all of plaintiff's injuries may have been the result of pre-existing conditions. They also sought application of all sections of the Pennsylvania MVFRL, including the preclusion of recovery of medical bills and wage payments that were covered by plaintiff's own insurance. The parties stipulated that liability rested with Mr. Hummel and Schuylkill Stone, Inc., and that Mrs. Smith was not contributorily negligent. However, defendants made no admission that injuries suffered by Mrs. Smith were caused by the negligence of defendants.

*Plaintiffs' Counsel:* Robert L. Blum, Blum Reiss & Plaitano, Mt. Pleasant

*Defendants' Counsel:* Patrick W. Murphy, Solomon & Associates, Pgh.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Molded verdict for plaintiff Lorna G. Smith in the amount of $270,000, which reflects the parties' consent to reduce the jury's award by the sum of $5,000.

### COLLEEN MARIE SCHMIDT AND PAUL M. SCHMIDT, HER HUSBAND V. DAVID JOSEPH HYLAND NO. 499 OF 1997

*Cause of Action: Negligence—Motor Vehicle Accident—Arbitration Appeal—Binding Summary Jury Trial*

Plaintiffs brought this negligence action against defendant as a result of a motor vehicle accident that occurred on March 7, 1995, at approximately 4:00 p.m. Wife-plaintiff was operating a vehicle owned by her husband on State Route 3039, otherwise known as Clay Pike, in North Huntingdon, Westmoreland County. Wife-plaintiff brought her vehicle to a complete stop attempting to make a left hand turn. The defendant, traveling directly behind plaintiff, collided into the rear of plaintiff's vehicle. Wife-plaintiff claimed soft tissue injuries, while her husband asserted loss of consortium. Defendant averred that he exercised reasonable and prudent care under the circumstances. The affirmative defenses of contributory/ comparative negligence, assumption of the risk and the Pennsylvania MVFRL, along with its amendments known as Act 6, were asserted in new matter.

*Plaintiffs' Counsel:* Robert L. Blum, Blum Reiss & Plaitano, Mt. Pleasant

*Defendant's Counsel:* Kim Ross Houser, Mears, Smith, Houser & Boyle, P.C., Gbg.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Verdict for defendant.

### MARCO LUCCI V. JAMES BAKER CONSTRUCTION CO. AND KENNETH A. BAKER NO. 3016 OF 2001

*Cause of Action: Negligence—Motor Vehicle Accident—Arbitration Appeal*

This accident occurred on October 17, 2000, at approximately 2:50 p.m. in Delmont, Westmoreland County. Plaintiff alleged that defendant Kenneth A. Baker, an agent and/or employee of defendant James Baker Construction Co., was operating his vehicle directly behind plaintiff's vehicle. The complaint averred that both vehicles were traveling in an easterly direction on Manor Road and were approaching the intersection of Route 66. Plaintiff's vehicle was struck in the rear by defendant's vehicle. Soft tissue injuries were claimed.

Defendant alleged that he was operating his vehicle in a westbound direction on Manor Road and was traveling away from the intersection of Route 66 at the time of the accident. Defendant averred that plaintiff pulled out of a driveway directly into defendant's path of travel immediately prior to the collision. The affirmative defenses of contributory negligence, assumption of the risk and the right, privileges and/or immunities of the Pennsylvania MVFRL were raised in new matter.

*Plaintiff's Counsel:* E. Timothy McCullough, Murrysville

*Defendants' Counsel:* Joseph A. Hudock, Jr., Summers, McDonnell, Walsh & Skeel, L.L.P., Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for defendant based upon special interrogatories submitted to the jury.

## DAVID J. O'BARTO AND ROCHELLE L. O'BARTO, HIS WIFE V. ADA G. KEPPLE NO. 7101 OF 1999

*Cause of Action: Negligence—Motor Vehicle Accident—Binding Summary Jury Trial*

This motor vehicle accident occurred on January 8, 1998, at the intersection of State Routes 22 and 1055 in Salem Township, Westmoreland County. The husband-plaintiff was traveling in the right eastbound lane on Route 22. According to the complaint, defendant proceeded through the intersection traveling south on Route 1055 and into the path of plaintiff. Plaintiff selected the full tort provision of insurance coverage. In addition to soft tissue injuries, plaintiff suffered an open fracture of the right knee and rupture of the attached tendon, subsequent arthrotomy of his right knee to retrieve a loose screw from initial surgery and permanent limitation and mobility to the right knee. Wife-plaintiff asserted a claim for loss of consortium.

In new matter, defendant raised the affirmative defenses of contributory/ comparative negligence, assumption of the risk and the Pennsylvania Motor Vehicle Financial Responsibility Act.

*Plaintiff's Counsel:* Bernard M. Tully, Bernard M. Tully, P.C., Pgh.

*Defendant's Counsel:* Christopher M. Fleming, Jacobs & Saba, Gbg.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Verdict for plaintiff David J. O'Barto in the amount of $50,000. No award for wife-plaintiff.

## LISA A. FRANK V. DR. ROBERT R. FRANZINO AND WESTMORELAND REGIONAL HOSPITAL NO. 3759 OF 2000

*Cause of Action: Professional Negligence—Medical Malpractice*

This medical malpractice action arose from the defendant-physician's alleged failure to diagnose and treat the plaintiff's condition of pseudomembranous colitis, which necessitated surgical procedures due to extensive abdominal injuries. On September 20, 1998, plaintiff presented to the emergency room of defendant-hospital with complaints of significant lower abdominal pain. Dr. Franzino diagnosed plaintiff as having a suprapubic hematoma. The following day, plaintiff returned to the emergency room and was admitted. Plaintiff was diagnosed with an acute abdomen and taken to the operating room for a subtotal colectomy with end ileostomy. Plaintiff underwent a reversal of the ileostomy in January 1999. Plaintiff alleged negligence against defendants in failing to administer and properly interpret diagnostic tests so as to discover the colitis, in failing to admit her to the hospital and administer antibiotic therapy so as to prevent the need for her subsequent abdominal colectomy, and in failing to consider the significance of plaintiff's prior medical treatment.

The defendants denied that plaintiff's subsequent symptoms and procedures occurred as a result of any actions of Dr. Franzino. Defendants also denied that Dr. Franzino was an ostensible agent of Westmoreland Regional Hospital, and averred that he was an employee and/or independent contractor of Westmoreland Emergency Medical Specialists.

*Plaintiff's Counsel:* Sandra S. Neuman, Gismondi & Associates, P.C., Pgh.

*Defendants' Counsel:* James R. Hartline, Thomson, Rhodes & Cowie, P.C., Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for defendants. Jury found that Dr. Franzino was not negligent.

**PAULA BRANDT**
**V.**
**JEFFREY ABBOTT, T/D/B/A FOUR SEASONS LAWN SERVICE AND CHRIS MILLER**
**NO. 1167 OF 2001**
**********
**PAULA BRANDT**
**V.**
**BRETT TOMAN**
**NO. 2479 OF 2001**
**(CASES CONSOLIDATED FOR TRIAL AT NO. 1167 OF 2002)**

*Cause of Action: Negligence—Motor Vehicle Accident—Arbitration Appeal*

Plaintiff filed this negligence action as a result of a motor vehicle accident that occurred on April 16, 1999, in Rostraver Township, Westmoreland County. Plaintiff was traveling east on Finley Road and approached its intersection with State Route 201 ("Allen's Crossroads"). While plaintiff was stopped in traffic on Finley Road due to a red traffic signal. her vehicle was struck from behind by defendant Brett Toman, an employee of defendant Jeffrey Abbot, t/d/b/a Four Seasons Lawn Service. Mr. Toman had been operating a vehicle owned by his employer in an easterly direction on Finley Road behind plaintiff's vehicle. Plaintiff sustained soft tissue injuries in the accident, and had previously selected the limited tort option of automobile insurance coverage. Plaintiff limited her claim to damages for loss of income less the amount of wage loss benefits payable by her first-party insurance carrier.

Defendants admitted the agency of Brett Toman, and that the occurrence of the accident was due to the actions of Mr. Toman. However, defendants contended that plaintiff was not entitled to any amount above and beyond her first-party wage loss benefits.

*Plaintiff's Counsel:* Mark S. Galper, Bergstein & Galper, P.C., Monessen

*Defendants' Counsel:* Patrick J. Loughney, Gorr, Moser, Dell & Loughney, Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict for defendants. Jury found that the negligence of Brett Toman was not a substantial factor in causing any injury to plaintiff.

**LAUREN L. SOSTARICH**
**V.**
**GREG A. MCFADDEN**
**NO. 7985 OF 2000**

*Cause of Action: Negligence—Motor Vehicle Accident—Binding Summary Jury Trial*

This motor vehicle collision occurred on March 4, 2000, at approximately 1:05 p.m. in Madison Borough, Westmoreland County. Plaintiff was operating her vehicle in a northerly direction on State Route 3012 ("Yukon Road"). Defendant was traveling east on State Route 3037 ("Main Street"). Plaintiff alleged that she was proceeding to make a left hand turn from Yukon Road onto Main Street when the vehicle driven by the defendant impacted with the driver's side of her vehicle. Plaintiff asserted that defendant was using a cell phone, was traveling at an excessive rate of speed and was inattentive to the roadway. In addition to soft tissue injuries, plaintiff sustained fractures to the lumbar spine, sacrum and pubic rami. Plaintiff elected the limited tort option of insurance coverage, but asserted that non-economic damages were recoverable since she sustained serious bodily injury.

Defendant raised the affirmative defenses of contributory/comparative negligence and assumption of the risk. Defendant asserted, inter alia, that plaintiff was negligent in failing to obey a stop sign, failing to yield the right-of-way to defendant, and in failing to keep a proper and adequate lookout of the road prior to entering the roadway on which defendant was traveling. Defendant also raised the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL), and its amendments known as Act 6, which precluded the introduction and recovery of medical bills by plaintiff at the time of trial and which governed the limited tort option selected by the plaintiff.

*Plaintiff's Counsel:* Mark Neff, Edgar Snyder & Associates, LLC, Pgh.

*Defendant's Counsel:* Maria Spina Altobelli, Jacobs & Saba, Gbg.

*Trial Judge:* The Hon. Daniel J. Ackerman, President Judge

*Result:* Jury attributed 80% negligence to the defendant, and 20% to plaintiff's contributory negligence. Jury awarded plaintiff damages in the amount of $20,000.

## TIMOTHY E. SMAIL AND TAMRA A. SMAIL, HUSBAND AND WIFE V. A. RICHARD KACIN, INC., A CORPORATION; AND RONALD D. ANDERSON, T/D/B/A ANDERSON PLUMBING, A SOLE PROPRIETORSHIP; ANDERSON PLUMBING, A CORPORATION, PARTNERSHIP, PROPRIETORSHIP OR OTHER LEGAL ENTITY NO. 1040 OF 2001

*Cause of Action: Breach of Contract—Breach of Warranty—Negligence—Unfair Trade Practices and Consumer Protection Law*

On January 31, 1994, plaintiffs entered into a written agreement with A. Richard Kacin, Inc., for the construction of a two-story residential dwelling. The contract provided that "all materials shall be new and both workmanship and materials shall be of as good quality as the market affords in the respective grade specified." Kacin retained subcontractor Ronald D. Anderson (Anderson Plumbing), who performed all of the plumbing-related construction and installation. Plaintiffs moved into the residence on September 15, 1994. In October, 1999, the plumbing system began to experience sudden and unexpected leaks. The plaintiffs employed a plumbing contractor, who concluded that the "pitting" of the plumbing lines resulted from the excessive use of soldering flux or an action known as "dipping" during the installation of the system by defendants, which deviated from the acceptable standard of care for installation of the system. Plaintiffs averred that the defendants failed and/or refused to inspect the system, make repairs and provide reimbursement to plaintiffs. Theories asserted included those for breach of contract, breach of warranty, negligence and violations of the Unfair Trade Practices and Consumer Protection Law (UTPCPL), 73 P.S. §§ 201-1 to 201-9.3.

Defendants averred that they provided materials and workmanship with respect to the plumbing system that fully complied with all applicable standards of care. Furthermore, defendants denied that they had a legal and/or contractual obligation to make repairs or replacements with respect to the plumbing system. In new matter, defendants asserted that plaintiffs' claims were barred by the limitation of actions set forth in the contract and the applicable statute of limitations.

*Plaintiffs' Counsel:* Bernard P. Matthews, Jr., Meyer, Darragh, Buckler, Bebenek & Eck, PLLC, Gbg.

*Defendants' Counsel:* Thomas P. McGinnis, Alan G. Stahl, Zimmer Kunz, PLLC, Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Verdict for plaintiffs in the amount of $36,473.