JANUARY 2010 CIVIL TRIAL TERM

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY V. STEPHEN M. SIMKO, JR., THOMAS DOTTEN AND BEVERLY DOTTEN NO. 4372 OF 2008

Cause of Action: Declaratory Judgment

Defendant-Son was involved in an automobile collision with a vehicle driven by Defendant Thomas Dotten. The vehicle that Defendant-Son was driving was owned by an acquaintance and was insured under a policy that provided up to $15,000 liability coverage, which was paid to the Defendant-Dottens.

The Defendant-Dottens made an excess liability claim under a State Farm insurance policy that was issued by Plaintiff to Defendant-Son's father. The Defendant-Dottens asserted that Defendant-Son was a resident relative of his parents and, therefore, an insured for purposes of coverage under the State Farm policy.

Plaintiff denied that Defendant-Son "lived with" his parents as that phrase is defined in the policy, and denied coverage.

Both parties introduced evidence of Defendant-Son's mailing address, his sleeping arrangements, the location of his personal belongings and effects, where he took his meals, where he did his laundry, and so on.

Plaintiff's Counsel: Daniel L. Rivetti, Robb Leonard Mulvihill LLP, Pgh.

Defendant's Counsel: Mark A. Smith, Pribanic & Pribanic, LLC, White Oak

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: The jury found that Defendant-Son lived with his parents at the time of the automobile collision. Declaratory judgment entered that Defendant-Son is an insured under his parents' policy.

MARCH 2010 CIVIL TRIAL TERM

KENNETH AND FELICIA WHIPKEY V. KESLAR LUMBER COMPANY, SENNETH KESLAR, HENRY WILTROUT AND JOHN DOE NO. 323 OF 2006

Cause of Action: Negligence—Trespass—Conversion

On or about January 16, 2004, employees and/or agents of Defendant lumber company cut down a number of trees on the Plaintiffs' property located in Mt. Pleasant Township, Westmoreland County, without Plaintiffs' consent. In their New Matter, Defendants admitted cutting the trees by mistake, but denied conversion, as the trees were left upon Plaintiffs' property.

Plaintiffs filed an action against all three Defendants, asserting claims of negligence, trespass and conversion against each Defendant. Following an arbitration award in favor of Defendants, Plaintiffs appealed and requested a jury trial. Experts for each party testified at trial. At trial, the jury was asked to determine whether Defendants' actions were deliberate or negligent, or alternatively, whether Defendants had a reasonable basis for their actions. Further, the jury determined whether the damages should be awarded under the Timber Statute, 42 Pa. C.S.A. § 8311.

Plaintiffs' Counsel: John A. Klamo, Cherry Hill, N.J.

Defendants' Counsel: William W. Guthrie, Wm. W. Guthrie & Associates, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Plaintiffs in the amount of $4,513.08. The jury determined that Defendants' actions were negligent. The jury found Defendants' expert to be credible and accepted his valuation of the damages. Based upon the finding of negligence, and pursuant to 42 P.S. § 8311(a)(2)(ii), the jury assessed damages at two times the market value of the timber.

MARCH 2010 CIVIL TRIAL TERM

LYNDA C. BERENBROK
V.
JEFFREY DAVIS
NO. 4804 OF 2009

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

Plaintiff and Defendant were involved in an automobile accident on September 12, 2008. Defendant's vehicle collided with the rear of Plaintiff's vehicle while Plaintiff's vehicle was stopped at a traffic light. Plaintiff sustained injuries to her neck and back as a result of the accident. Following an arbitration award in favor of Plaintiff in the amount of $9,500, Defendant appealed and requested a jury trial.

The parties agreed to resolve this dispute by conducting a summary jury trial, with a binding high/low agreement. The parties litigated the issue of the factual cause of Plaintiff's alleged damages.

Plaintiff's Counsel: Robert W. King, Gbg.

Defendant's Counsel: Laura R. Signorelli, Law Offices of Twanda Turner-Hawkins, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant; however, per the high/low agreement, the verdict was molded to award the Plaintiff the sum of $3,000.

MAY 2010 CIVIL TRIAL TERM

DAVID F. WYDO AND JOYCE WYDO, HIS WIFE
V.
DANIEL HAFFNER, M.D.; WESTMORELAND ORTHOPEDICS & SPORTS MEDICINE; AND EXCELA HEALTH-WESTMORELAND HOSPITAL
NO. 6493 OF 2006

Cause of Action: Medical Professional Liability—Negligence—Loss of Consortium

On or about August 9, 2004, Plaintiff-Husband underwent arthroscopic right knee surgery by the Defendant physician. During surgery, a scalpel slipped from Defendant's hand and landed in Plaintiff's right calf. Plaintiff alleged residual nerve injuries of paresthesias, pain, and numbness in his right leg. Plaintiffs claimed that the dropping of the scalpel was negligence. Defendants responded that said action was an accident and did not breach the standard of care. Plaintiffs filed an action against all three Defendants, asserting claims of negligence and loss of consortium. Both parties retained medical experts.

The parties entered into a stipulation that dismissed Defendant Excela Health from the case, with prejudice. The case proceeded to trial against Defendants Haffner and Westmoreland Orthopedics & Sports Medicine. The jury found, in a 10-2 decision, that Defendant Haffner was not negligent.

Plaintiffs' Counsel: Elizabeth L. Jenkins, Pgh.

Defendants' Counsel: Daniel P. Stefko, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Defense Verdict in favor of Daniel Haffner, M.D. and Westmoreland Orthopedics & Sports Medicine

MAY 2010 CIVIL TRIAL TERM

GARRY NICHOLSON AND DIANA NICHOLSON, HIS WIFE V. MATTHEW BANKS, M.D. 12680 OF 2008

Cause of Action: Professional Negligence—Medical Malpractice

On December 20, 2005, Plaintiff Garry Nicholson presented to Latrobe Area Hospital with significant abdominal and right side flank pain. An abdominal and pelvic CT scan, which was ordered and interpreted by Defendant physician, a radiologist, showed a kidney stone in the ureter. Plaintiff was given a prescription for pain medication and discharged from the hospital.

Eighteen months later, on July 6, 2007, Plaintiff reported to Latrobe Area Hospital with a persistent cough, fever, and congestion. A chest CT scan revealed a mass-like density in the chest to be a thymoma, a tumor of the thymus gland. The tumor was surgically removed and Plaintiff underwent radiation therapy.

Plaintiffs contend that Defendant deviated from the radiological standard of care in failing to identify and report the thymoma that was visible on the December, 20, 2005, CT scan scout image. (A scout image is a rudimentary X-ray taken at the beginning of a more sophisticated CT scan imaging procedure in order to ensure proper orientation and placement of the patient's body.) Defendant maintains that the thymoma could not be seen on any portion of the diagnostic images of the CT scan of the abdomen and pelvis. Defendant presented expert medical testimony that the care and treatment he provided Plaintiff was within the applicable standard of medical care.

Plaintiffs' Counsel: David J. Lozier, Harry S. Cohen & Associates, Pgh.

Defendant's Counsel: M. Brian O'Connor, Matis Baum Rizza O'Connor, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant.

JULY 2010 CIVIL TRIAL TERM

DARLA J. TOTH V. DONEGAL COMPANIES, ET AL. NO. 145 OF 2003

Cause of Action: Breach of Contract—Underinsured Motorist Coverage

On January 10, 2001, Plaintiff Darla J. Toth received physical injuries when she was involved in a motor vehicle accident with Charles Arthurs. Plaintiff recovered $15,000.00 from Mr. Arthurs's insurance carrier for those injuries. Because the liability insurance coverage under Mr. Arthurs's policy was inadequate to compensate Plaintiff for her injuries and damages, Plaintiff then applied for compensation under the underinsured motorist provisions of her automobile insurance policy with Defendant Donegal. Defendant denied her request for benefits, stating that she had waived underinsured motorist coverage in 1997, when she made several changes to her automobile policy.

Plaintiff maintained that she never signed any papers to waive or decline underinsurance coverage, and claimed that at no time did she give her consent or authorize her former husband to sign her name. Plaintiff argued that the underinsured coverage was cancelled when her former husband forged her signature on the waiver forms. Defendant asserted that it owed no obligation to Plaintiff because a valid form rejecting underinsured motorist coverage was executed.

Plaintiff's Counsel: Darrell J. Arbore, North Huntingdon

Defendant's Counsel: Scott A. Millhouse, Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Plaintiff and against Defendant. The Court further directed that the determination of the amount, if any, of underinsured motorist benefits due be submitted to arbitration in accord with the provision of Plaintiff's insurance policy with Defendant.

JULY 2010 CIVIL TRIAL TERM

DEBORA B. URCHEK
V.
RONALD R. HOWELL
NO. 5592 OF 2006

Cause of Action: Negligence—Motorcycle Collision

On August 8, 2004, Thomas Urchek was operating his motorcycle on State Route 6 in Warren County, Pennsylvania. Mr. Urchek's wife, Plaintiff Debora Urchek, was a passenger on the motorcycle. Defendant Ronald R. Howell was operating a motorcycle immediately behind the Urchek motorcycle. The Urcheks exited State Route 6 onto the ramp leading to State Route 62 and came to a complete stop at the stop sign located at the end of the ramp. As Mr. Urchek was stopped to observe traffic on State Route 62, the front portion of Defendant's motorcycle collided with the back portion of the Urchek motorcycle. As a result of the collision, Plaintiff was thrown from the motorcycle and allegedly sustained injuries.

Plaintiff maintained that she sustained post-traumatic migraine headaches as a result of the collision caused by Defendant's negligent operation of his motorcycle. As a result of the injuries sustained, Plaintiff claimed damages of pain and suffering, diminishing or lessening of life's pleasures, and mental anguish. Defendant argued that Plaintiff had a long history of prior head injuries, headaches, and neck, shoulder, and back problems that pre-dated the subject collision.

Plaintiff's Counsel: Jeffrey D. Monzo, Galloway Monzo, P.C., Gbg., and Grey D. Pratt, Hanchak & Pratt, L.L.C., Pgh.

Defendant's Counsel: Scott O. Mears, Jr., Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Plaintiff and against Defendant in the amount of $2,003.76, representing only the amount of Plaintiff's unreimbursed medical expenses. The verdict did not compensate Plaintiff for any pain and suffering or other non-economic injuries.

SEPTEMBER 2010 CIVIL TRIAL TERM

LORI L. MILLER AND WILLIAM B. MILLER, HER HUSBAND
V.
BRIAN NEMUNAITIS, D.O.
NO. 9264 OF 2006

Cause of Action: Medical Professional Liability—Negligence—Loss of Consortium

On October 26, 2004, Plaintiff-Wife had a Caesarean section (C-section) performed by the Defendant-Physician at Westmoreland Hospital. Plaintiff alleged that, during the repair of a left vaginal laceration (a known complication that occurs in C-sections), Defendant injured the left ureter. Defendant argued that said action was an accident and did not breach the standard of care.

Plaintiff and her husband filed an action against Defendant, asserting claims of negligence and loss of consortium. Both parties retained medical experts. The jury found, by a 10-2 decision, that Defendant was not negligent.

Plaintiffs' Counsel: Andrew J. Leger, Jr., Pgh.

Defendant's Counsel: M. Brian O'Connor, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of the Defendant.

SEPTEMBER 2010 CIVIL TRIAL TERM

RALPH COLORITO, JR.
V.
GIANT EAGLE, INC.
NO. 7136 OF 2007

Cause of Action: Personal Injury—Slip and Fall

On June 26, 2007, Plaintiff fell while walking down an aisle in a GetGo convenience store in North Huntington. Plaintiff filed a complaint alleging that the fall was the result of an accumulation of a slippery and soapy liquid substance on the floor, which caused his injury, a non-displaced patella fracture of Plaintiff's left knee. Plaintiff's medical expert testified as to Plaintiff's injuries, which were limited in duration to a period of a few months. Defendant denied negligence and asserted the contributory negligence of the Plaintiff. Defendant further disputed the extent of Plaintiff's injuries.

The jury found, in an 11-1 decision, that Defendant was not negligent.

Plaintiff's Counsel: Jeffrey A. Pribanic, Pgh.

Defendant's Counsel: James F. Rosenberg, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of the Defendant.

SEPTEMBER 2010 CIVIL TRIAL TERM

MICHELE CALDWELL
V.
NATHAN QUERRY AND NOBLE L. WARD, JR.
NO. 7593 OF 2003

Cause of Action: Negligence—Motor Vehicle Accident

On December 8, 2001, Defendant Nathan Querry was operating a vehicle on Route 30 at or near its intersection with Lowry Avenue in Jeannette, Hempfield Township. The vehicle was owned by Noble Ward, Jr. Defendant attempted to make a left turn from Route 30 East onto Lowry Avenue when his vehicle was struck by Plain-tiff's vehicle. As a result of the accident, Plaintiff claimed injuries to her upper and lower back, as well as hip and pelvic area, including a labral tear.

Defendant maintained that the Plaintiff's injuries and damages were the result of independent causes over which Defendant had no control and did not participate.

Plaintiff'sCounsel: William J. Wiker, Gbg.

Defendants' Counsel: Kenneth Ficerai, Mears, Smith, Houser, & Boyle, P.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant and against Plaintiff. The jury found that the injuries complained of by Plaintiff were not caused by the collision that occurred on December 8, 2001.

SEPTEMBER 2010 CIVIL TRIAL TERM

KIMBERLY K. ULERY AND THOMAS ULERY V. NATIONWIDE MUTUAL INSURANCE COMPANY NO. 1246 OF 2006

Cause of Action: Breach of Contract—Underinsured Motorist Coverage

Plaintiffs Kimberly and Thomas Ulery were insured under a Nationwide Mutual Insurance Company automobile insurance policy. On February 19, 2004, Mrs. Ulery was involved in a rear-end collision. As a result of the accident, she sustained serious injuries including a spinal cord contusion and shearing injury, resulting in paralysis on the left side. Following the motor vehicle accident, Plaintiffs made a claim for underinsured motorist benefits.

Nationwide Insurance asserted that it was not liable to Mrs. Ulery for underinsured motorist coverage due to the fact that a valid form rejecting underinsured motorist coverage was executed. Plaintiffs acknowledged the rejection of underinsured benefits form but argued that Mr. Ulery's signature on the rejection form was a forgery.

Plaintiffs' Counsel: Melissa A. Guiddy, King & Guiddy, Gbg.

Defendant's Counsel: Daniel M. Taylor, Jr., Swartz Campbell LLC, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant and against Plaintiffs. The jury found that the signature on the Rejection of Underinsured Motorist protection form was not a forgery.

NOVEMBER 2010 CIVIL TRIAL TERM

SUSAN RENEE MUDRY, INDIVIDUALLY AND AS PARENT AND NATURAL GUARDIAN OF BLAKE STEPHEN McDONALD, A MINOR V. NAOMA W. BOYD, A/K/A NAOMA W. WADE NO. 5792 OF 2007

Cause of Action: Negligence—Pedestrian Motor Vehicle Accident

On April 12, 2006, at 3:36 p.m., Defendant was operating a motor vehicle in the 900 block of Broad Avenue in North Belle Vernon. Plaintiff Blake McDonald, who was thirteen years old at the time, was a pedestrian attempting to cross Broad Avenue when he was struck by Defendant's vehicle. As a result of the accident, Plaintiff suffered multiple traumas with open comminuted mid-shaft fractures of the tibia and fibula of the lower left leg. In due time, the Plaintiff fully recovered from his injuries.

Defendant raised the affirmative defenses of contributory/comparative negligence and assumption of the risk. Defendant's accident reconstruction expert witness characterized the accident as a "dart out" incident, in which Plaintiff darted out into approaching traffic with little or no advance warning to Defendant, the approaching driver. Furthermore, the expert opined that there was no reason to believe that the actions of Defendant contributed to the accident.

Plaintiffs' Counsel: Charles L. Bell, Jr., Arnold

Defendant's Counsel: Scott Mears and Richard F. Boyle, Jr., Mears, Smith, Houser, & Boyle, P.C., Gbg.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of Defendant. The jury found that Defendant was not negligent.

NOVEMBER 2010 CIVIL TRIAL TERM

BONNIE KOSH
V.
GREENSBURG POOL & SUPPLY CO.
NO. 6324 OF 2009

Cause of Action: Breach of Contract—Negligence

In 2002, Defendant installed a pool liner and associated equipment for Plaintiff. Every summer thereafter, Plaintiff alleged that the pool leaked. In 2007, Defendant returned to Plaintiff's home to attempt to stop the pool from leaking. Defendant informed Plaintiff that the leak was caused by a light fixture in the pool and said that he temporarily fixed it.

Plaintiff claimed that Defendant breached its contract with Plaintiff by failing to correct the situation, resulting in continuing leaks and a detachment of the pool liner from the interior floor and walls of the pool. Defendant denied all liability, stating that the cause of the problem was groundwater runoff from the hillside that flowed under the pool, a fact that Defendant had previously recommended Plaintiff correct.

Both parties presented experts.

Plaintiff's Counsel: John M. O'Connell, Jr., Gbg.

Defendant's Counsel: Joseph Massaro, Gbg.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant. The jury found, by a 10-2 decision, that Defendant did not breach its contract.

NOVEMBER 2010 CIVIL TRIAL TERM

DAWN A. SCHRECKENGOST AND SHAWN SHRECKENGOST, HER HUSBAND
V.
KING'S COUNTRY SHOPPES, INC., T/D/B/A KING'S FAMILY RESTAURANT
NO. 10342 OF 2008

Cause of Action: Negligence—Personal Injury—Loss of Consortium

On October 7, 2006, Plaintiff Dawn Schreckengost went to King's Family Restaurant in New Kensington and ordered a chicken salad from the menu. Plaintiff claimed that when she took a bite of the salad, there were pieces of porcelain in the food. She alleged that the porcelain caused injuries to her teeth, mouth, and gastric system. Plaintiff and her husband filed an action against Defendant asserting claims of negligence and loss of consortium.

Defendant denied that the incident was the factual cause of any injuries to Plaintiff-Wife. Defendant argued that at the time of the incident, Plaintiff downplayed any injury to the manager of Defendant's restaurant. Further, Defendant argued that Plaintiff had pre-existing stomach and gastric issues.

Counsel for the parties agreed to a binding summary jury trial.

Plaintiffs' Counsel: Jon C. Botula, Pgh.

Defendant's Counsel: Kenneth T. Newman, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Plaintiff. The jury found, by an 8-0 decision, that Defendant's negligence was the factual cause of harm to Plaintiff-Wife and awarded medical damages in the amount of $783.67. The jury denied any award for pain and suffering to Plaintiff-Wife and denied any award for loss of consortium to Plaintiff-Husband.

NOVEMBER 2010 CIVIL TRIAL TERM

DAVID DEFELICES
V.
ROBERTA JONES
NO. 9092 OF 2007

Cause of Action: Negligence—Personal Injury—Motor Vehicle Collision

On January 8, 2007, Plaintiff, while operating his motor vehicle, was stopped at a red light at the intersection of Freeport Road and Drey Street in New Kensington when his Ford Econoline van was struck in the rear by Defendant's vehicle. Plaintiff claimed that the collision caused him to suffer from myofascial pain syndrome involving the posterior trunk muscles. As a result, Plaintiff claimed that he could no longer be employed as a painter. Furthermore, he claimed damages for pain and suffering.

Plaintiff's expert witnesses rendered opinions concerning Plaintiff's projected loss of earning capacity as a result of the injuries he sustained.

Defendant maintained that the vehicles sustained only minimal damages and that neither Plaintiff nor Defendant suffered any apparent injury. The accident was considered "non-reportable" by the Arnold Police Department. A medical report indicated, among other things, findings of "no evidence of lingering injury" and "ongoing evidence of nonorganicity consistent with magnification or fabrication of symptoms."

Counsel for the parties agreed to a binding summary jury trial with a high/low agreement.

Plaintiff's Counsel: Susan N. Williams, Gbg.

Defendant's Counsel: Dwayne E. Ross, Latrobe

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of Defendant. The jury found, by an 8-0 decision, in favor of the Defendant and awarded zero damages to the Plaintiff.

NOVEMBER 2010 CIVIL TRIAL TERM

CYNTHIA WEIGAND AND KARL WEIGAND
V.
THOMAS M. MCCLARRAN, JR., AND SHIRLEY MCCLARRAN
NO. 421 OF 2009

Cause of Action: Negligence—Slip and Fall

On January 29, 2008, Plaintiff Cynthia Weigand exited her vehicle at 520 Donohoe Road, Latrobe—where Defendants conducted a dog breeding business—and fell on a patch of ice and/or snow in Defendants' driveway.

Plaintiff alleged that as a direct and proximate result of the carelessness and negligence of Defendants in maintaining the driveway to ensure that it was safe for use by business invitees, she sustained a fracture of her left distal fibula. As a further result, she suffered wage loss, impairment of earning capacity, medical bills, and pain and suffering. Her husband asserted a claim for loss of consortium.

Defendants denied the driveway had accumulated ridges of ice and snow so as to place Defendants on notice of a dangerous condition. On the contrary, Defendants asserted that the area had been salted earlier on the day of the accident.

Plaintiffs' Counsel: John J. Romza, Covelli Law Offices, Pgh.

Defendants' Counsel: Dennis J. Slyman, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants and against Plaintiffs.