

JANUARY 2014 CIVIL TRIAL TERM

No jury trials were held.

MARCH 2014 CIVIL TRIAL TERM

**IN RE: CONDEMNATION OF THE PROPERTY OF  
RONALD L. REPASKY, JR., LOCATED IN THE CITY  
OF GREENSBURG, WESTMORELAND COUNTY,  
PENNSYLVANIA BY GREATER GREENSBURG  
SEWAGE AUTHORITY**

**RONALD L. REPASKY, JR., FEE OWNER  
AND BLAST-TEK, INC., TENANT, TOGETHER  
CONDEMNNEES/PLAINTIFFS**

**V.**

**GREATER GREENSBURG SEWAGE AUTHORITY,  
CONDEMNOR/DEFENDANT**

**NO. 7947 OF 2005**

*Cause of Action: Eminent Domain—Condemnation—  
Appeal from Board of Viewers*

This condemnation case arises out of a declaration of taking authorized by the Municipality Authorities Act of 2001, P.L. 287, No. 22, Sec. 1, *et seq.*

On October 18, 2005, the governing board of the Greater Greensburg Sewage Authority (GGSA) filed a Declaration of Taking. GGSA had authorized taking a permanent easement on property of Ronald L. Repasky (leased to Mr. Repasky's tenant, Blast-Tek, Inc.), for purposes of placing an equalization tank and related equipment necessary for a sewer system. In addition, a twenty-foot easement was taken for and during construction. The property subject to the taking is located at or in the vicinity of 757 South Main Street, Greensburg, Westmoreland County, Pa. By stipulation, at trial, the claim on behalf of Blast-Tek, Inc., was withdrawn.

The property subject to the taking consisted of three contiguous parcels. During the construction phase, Plaintiff and his tenant, which used the subject property for loading, unloading, and as a storage facility, suffered interference with parking, use of loading docks, and general operation of business. In addition, Plaintiff contended that grading on his property altered the flow of water to the detriment of the property. Plaintiff's expert proposed three alternative measures with correlating costs to remediate the problems of drainage that existed after condemnation: Plan A cost \$72,605, Plan B cost \$51,905, and Plan C (which was not recommended) cost \$23,245. Plaintiff testified that he estimated the diminution in value to his property to exceed \$150,000.00. Defendant's expert was precluded from testifying based on his method of appraisal which was not in conformity with the unity of use doctrine.

The jury found in favor of the Plaintiff/Condemnee in the amount of \$115,000.00.

*Trial Dates:* March 5-7, 2014

*Plaintiff/Condemnee's Counsel:* Robert P. Lightcap and Amber Leechalk, Latrobe

*Defendant/Condemnor's Counsel:* John M. O'Connell, Gbg.

*Trial Judge:* The Hon. Christopher A. Feliciani

*Result:* Plaintiff/Condemnee

MAY 2014 CIVIL TRIAL TERM

**TD LASH ENTERPRISES, LLC  
AND TODD LASH, PLAINTIFFS**

**V.**

**PAUL FISHER, I/T/D/B/A PAUL FISHER  
INSURANCE SERVICES, LLC, DEFENDANT  
NO. 6766 OF 2009**

*Cause of Action: Negligence—  
Negligent Misrepresentation*

This negligence case arises out of an alleged failure to advise as to the coverage issued under an insurance policy covering Plaintiffs' rental property after a fire loss.

In 2006, Plaintiffs, Todd Lash and T.D. Lash Enterprises, LLC, sought insurance coverage from Defendant, Paul Fisher Insurance Services, LLC, for property located at 740 Thompson Avenue in Donora, Pa. The property consisted of ten separate apartments, to be used by Plaintiffs as rental property.

On July 20, 2006, Penn-America Insurance Company issued an insurance policy, through Defendant, Paul Fisher Insurance Services, LLC, for the rental property for approximately \$332,000.00, with an 80% co-insurance penalty. On July 21, 2007, there was a fire on the property which destroyed several of the rental units. Plaintiffs made a claim under the Penn-America insurance policy for damages to real and personal property in the amount of \$554,556.47. Penn-America paid \$195,661.61 for damaged and lost property.

Plaintiffs alleged that Defendant failed to adhere to the standard of an ordinary prudent professional by providing \$195,661.61 in coverage and not \$332,000.00, as allegedly represented by Defendant. Plaintiffs also alleged that Defendant breached his fiduciary duties to Plaintiffs by not advising Plaintiffs prior to the date of loss that the premises were not fully covered for fire loss, and for loss of rents. Further, Plaintiffs alleged that Defendant failed to adequately explain the co-insurance provision of the policy and make recommendations for reducing or eliminating risk and exposure after a fire loss.

In its New Matter, Defendant alleged that Plaintiff Todd Lash, as a student and teacher of the "Real Estate Riches and Wealth Builders Program," was a knowledgeable purchaser of insurance and that Defendant provided Mr. Lash with the amount and type of insurance he requested. Defendant moved for judgment in his favor based on the economic loss doctrine, and also raised contributory negligence as a defense.

The jury found the Defendant negligent but determined that his negligence was not a factual cause of the Plaintiff's harm.

*Trial Dates:* May 14-16, 2014

*Plaintiff's Counsel:* Anthony C. Mengine and Brittani R. Agona Hassen, Pgh.

*Defendant's Counsel:* Sheila M. Burke, Pgh.

*Trial Judge:* The Hon. Christopher A. Feliciani

*Result:* Defendant

JULY 2014 CIVIL TRIAL TERM

**GERARD ASSOCIATES ARCHITECTS**

**V.**

**DONALD J. AND GLORIA M. IVILL,  
HUSBAND AND WIFE**

**NO. 5693 OF 2011**

*Cause of Action: Breach of Contract*

Plaintiff, Gerard Associates Architects, alleges that the Plaintiff and the Defendants, homeowners Donald and Gloria Ivill, entered into an oral contract in 2006, with the Plaintiff agreeing to perform architectural and design services for the design of Defendants' residence located in Belle Vernon, Westmoreland County. The amount in dispute is \$56,137.50.

Plaintiff alleges that the Defendants have not paid that invoice. Defendants allege that they have no obligation to pay that invoice and that no oral contract existed between the Plaintiff and the Defendants.

*Trial Date:* July 7-8, 2014

*Plaintiff's Counsel:* William D. Clifford, Pgh.

*Defendant's Counsel:* D. Matthew Jameson III, Pgh.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Plaintiff in the amount of \$56,137.50, against Defendant Husband.

JULY 2014 CIVIL TRIAL TERM

**DAVID CHILKO**  
**V.**  
**CHRISTOPHER S. PATTERSON AND**  
**MICHAEL M. CORSETTI**  
**V.**  
**KEVIN J. CHILKO AND**  
**JOSEPH R. CHILKO,**  
**INDIVIDUALLY**  
**NO. 669 OF 2009**

*Cause of Action: Negligence—All-Terrain Vehicle Accident*

This negligence case arises out of an alleged All-Terrain Vehicle (ATV) accident that occurred on February 13, 2008, in Washington Township, Westmoreland County.

Plaintiff David Chilko, his brother, Kevin Chilko, and their father, Joseph Chilko, were lawfully on property owned by Kevin Chilko, when they encountered Defendants Christopher S. Patterson and Michael Corsetti, who were riding all-terrain vehicles on the property. After an initial encounter amongst the parties, at which time the Chilkos warned Defendants that they were riding on private property, Defendants drove away. Defendants maintained they did so in an alleged attempt to flee from the Chilkos, who threatened them. The Chilkos disputed this version of events.

Defendants, upon recognizing that they would not be able to exit the property via their intended route, agreed to drive back the way they had come without stopping. While in the process of so doing, Defendants again encountered the Chilkos, passing them on the ATVs. Plaintiff David Chilko fell or was knocked down and was injured, breaking his left wrist and injuring his head and legs. David Chilko maintained that his injuries resulted from being struck by the ATV operated by Defendant Patterson. Defendant Patterson maintained that Plaintiff David Chilko swung a large stick or bat at the approaching ATVs and tumbled down a ravine, thereby causing himself injury.

The characterization of both encounters was disputed at trial. Plaintiff maintained that Defendants knowingly trespassed and that a gun held by David Chilko was discharged into the air during the second encounter. Defendants maintained that they were accosted and threatened by Plaintiff and that Kevin Chilko aimed and fired a gun directly at Defendant Patterson.

Plaintiff's negligence action asserted a claim of negligent operation of the ATV against Christopher Patterson, and a claim that Defendant Corsetti instigated, encouraged, or promoted Patterson's alleged reckless driving towards the Plaintiff, thereby causing

the accident. Defendants each filed New Matter alleging the affirmative defenses of duress and justification. Defendant Christopher Patterson joined Kevin Chilko and Joseph Chilko as additional defendants on the theory that their negligent and/or intentional actions in blocking egress from the property, attempting to batter Christopher Patterson, and aiming and firing a gun at Defendant Patterson were the cause of the Plaintiff's injuries.

Following presentation of the Plaintiff's case-in-chief, Joseph Chilko was voluntarily dismissed from the lawsuit. At the close of all evidence, upon motion of counsel for Defendant Corsetti, the Court entered a directed verdict in favor of Michael Corsetti, dismissing him from the case.

*Trial Date:* July 14, 16-18, 2014

*Plaintiff's Counsel:* Allan C. Lundberg, Lower Burrell

*Defendant Patterson's Counsel:* Scott Mears, Jr., Gbg.

*Defendant Corsetti's Counsel:* David K. Trautman, Pgh.

*Additional Defendants' Counsel:* Dennis E. Shean, Lower Burrell

*Trial Judge:* The Hon. Christopher A. Feliciani

*Result:* The jury found Defendant Patterson 35% causally negligent, Additional Defendant Kevin Chilko 10% causally negligent, and Plaintiff Chilko 55% causally negligent.

JULY 2014 CIVIL TRIAL TERM

**RICHARD A. STOKER**

V.

**ANN M. YUTZ****ANN YUTZ AND ROBERT YUTZ**

V.

**RICHARD STOKER AND SUPERIOR  
WELL SERVICES, INC. / SUPERIOR WELL  
SERVICES, LTD.****LIBERTY INSURANCE CORPORATION T/D/B/A  
LIBERTY MUTUAL INSURANCE COMPANY, AS  
SUBROGEE OF SUPERIOR WELL SERVICES, INC.**

V.

**ANN YUTZ, AN ADULT INDIVIDUAL**

V.

**RICHARD STOKER  
CONSOLIDATED AT NO. 5141 OF 2010***Cause of Action: Negligence—Automobile Collision*

These consolidated cases arise out of an automobile collision that occurred on August 7, 2008, on Route 66, near its intersection with Route 119 in New Stanton. Richard Stoker was operating a Peterbilt 379 industrial truck owned by Superior Well Services, driving north on Route 66. Ann Yutz had stopped her Jeep Laredo in a white striped area adjacent to the slow lane of travel, near the exit ramp of Route 119 onto Route 70 West. After she entered the slow lane of Route 66, the driver's side rear of her vehicle was struck by the passenger side front of the vehicle operated by Mr. Stoker. Mr. Stoker testified that a passenger in a phantom black Nissan truck, driving erratically, had thrown a drink out of the window, causing liquid to splatter on the Stoker vehicle prior to the occurrence of the accident. Following the accident, the Stoker vehicle crashed into a hillside and caught fire. The Yutz vehicle rolled over several times.

Both Mr. Stoker and Ms. Yutz filed lawsuits seeking damages for personal injuries arising out of the accident. Liberty Insurance Company, a subrogee of Superior Well Services, Inc., sought reimbursement for damage to the Superior Well Services vehicle and pumping equipment. The parties agreed to bifurcate the issues of liability and damages and try the case as to liability only.

At trial, Mr. Stoker maintained that he was confronted with a sudden emergency in that the liquid thrown from the phantom vehicle had splattered on his windshield. He further claimed that Ms. Yutz was negligent for failing to merge her vehicle properly onto the roadway. Ms. Yutz questioned the existence of the phantom vehicle, and argued that Mr. Stoker had negligently failed to observe her vehicle and violated the

assured clear distance ahead rule. Accident reconstructionist David Bizzak, Ph.D., P.E., testified on behalf of Mr. Stoker. Accident reconstructionist Daniel R. Aernie, P.E., testified on behalf of Ms. Yutz.

*Trial Date:* July 7-9, 2014*Plaintiff Stoker's Counsel:* Donald J. Feinberg, Philadelphia, and Eric L.B. Strahn, Reading*Defendant Stoker and Superior Well Services' Counsel:* Joseph V. Lesinski, Pgh.*Plaintiff Ann Yutz and Robert Yutz's Counsel:* Maria Spina Altobelli, Gbg.*Defendant Ann M. Yutz's Counsel:* Joseph A. Hudock, Jr., Pgh.*Liberty Insurance Corporation's Counsel:* Rhonda F. Harris, Paoli*Trial Judge:* The Hon. Christopher A. Feliciani*Result:* Verdict in favor of Plaintiff Richard A. Stoker and against Defendant Ann Yutz, attributing 15% liability to Mr. Stoker, and 85% liability to Ms. Yutz.

## SEPTEMBER 2014 CIVIL TRIAL TERM

**DONALD SMODIC, AND DORY SMODIC, HIS WIFE**  
**V.**  
**ALLIED SYSTEMS, LTD.**  
**NO. 11107 OF 2007**

*Cause of Action: Negligence—Motor Vehicle Collision—  
 Loss of Consortium*

At approximately 9:00 a.m., on January 9, 2006, Plaintiff Donald Smodic was operating a Chevy Silverado on Route 376, in the vicinity of the exit for Wilkinsburg. At that time, Plaintiff alleges that Defendant's employee was operating a truck typically used for transporting new vehicles. Plaintiff's vehicle was stopped in traffic when he was struck from behind by Defendant's vehicle.

Plaintiff alleged that he suffered various injuries, including a concussion, mild traumatic brain injury, and post traumatic concussion syndrome, as well as loss of income. As a result, he and his wife, Dory Smodic, sought monetary damages from Defendant. Defendant denied that all of the injuries complained of by Plaintiff were related to the 2006 collision and maintained Plaintiffs should not be awarded monetary damages.

*Trial Date:* September 2-9, 2014

*Plaintiff's Counsel:* Richard C. Levine, Pgh.

*Defendant's Counsel:* Patrick M. Carey, Erie, and Paul A. Custer, Pgh.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Plaintiff-Husband in the amount of \$97,495.00. No damages were awarded the Plaintiff-Wife.

## NOVEMBER 2014 CIVIL TRIAL TERM

**MARK ZIATYK**  
**V.**  
**WADE GREENWALD AND CHERYL GREENWALD**  
**NO. 5161 OF 2011**

*Cause of Action: Premises Liability*

On November 3, 2010, Plaintiff, Mark Ziatyk, was descending the basement steps of his apartment, said apartment being owned by the Defendants. At that time, Plaintiff alleges that his power had been shut off and that his landlord, Defendant Wade Greenwald, had previously been in the basement and unplugged an extension cord, leaving it on the basement stairs. Plaintiff tripped over the extension cord and fell to the bottom of the steps on the basement floor.

Plaintiff claimed that he suffered various injuries, including tearing his right quadriceps muscle, which required surgery. Defendants raised contributory/comparative negligence as an affirmative defense.

A jury trial was conducted in this matter on the issue of liability only.

*Trial Date:* November 4-5, 2014

*Plaintiff's Counsel:* Daniel Joseph, New Kensington

*Defendants' Counsel:* Thomas W. Smith, Gbg.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Defendants.

NOVEMBER 2014 CIVIL TRIAL TERM

**FRED HOFFMAN**  
**V.**  
**RAY MURRAY, ALSO KNOWN AS**  
**RAYMOND MURRAY**  
**NO. 1164 OF 2011**

*Cause of Action: Negligence—  
Automobile Collision—Damages*

On May 4, 2009, Plaintiff was operating a motor vehicle on Clay Pike, when he came to a complete stop in the roadway because a school bus, traveling toward him in the opposite direction, stopped and activated its flashing red lights. Defendant was traveling behind the Plaintiff's vehicle, and failed to bring his vehicle to a stop, colliding into the rear of Plaintiff's car. As a result of the collision, Plaintiff claimed to have suffered multiple injuries, for which he received medical treatment, including but not limited to cervical strain and sprain, left shoulder contusion, blunt abdominal contusion, herniated disc, pain, and pain and suffering.

Defendant did not deny liability, but contended that Plaintiff's injuries were minimal and of limited duration.

Both Plaintiff and Defendant presented medical experts who rendered conflicting opinions on the extent of the injuries suffered by the Plaintiff as a result of the collision.

A jury trial was conducted in this matter on the issue of damages only.

*Trial Date:* November 13-14, 2014

*Plaintiff's Counsel:* Joyce Novotny-Prettiman and Jessica Rafferty, Gbg.

*Defendant's Counsel:* Kenneth Ficerai, Gbg.

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

*Result:* Verdict in favor of Plaintiff in the amount of \$4,678.00. The jury awarded zero for pain and suffering.