BETH SHUTTERLY AND JON SHUTTERLY, HER HUSBAND V. WAL-MART STORES, INC. NO. 5645 OF 1999

Cause of Action: Negligence — Slip and Fall — Loss of Consortium — Arbitration Appeal

On December 30, 1997, at approximately 5:45 p.m., wife-plaintiff was a business invitee at defendant's Wal-Mart Supercenter in Rostraver Township. According to the complaint, plaintiff was on her way to work at the Blow Out Video Store located inside the Wal-Mart when she slipped and fell on an isolated patch of ice located on the sidewalk near the "grocery entrance." Plaintiff alleged that the icy, slippery condition of the sidewalk constituted a dangerous condition of the premises in that the area was dimly lit and the patch of ice was not readily visible. Plaintiff claimed injuries to her back, while her husband asserted loss of consortium.

The defendant, in its pre-trial statement, asserted that there were generally slippery conditions in the community at the time of the plaintiff's fall. The plaintiff denied that the "hills and ridges" doctrine was applicable to the facts of this case.

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

Defendant's Counsel: Cary W. Valyo, Gorr, Moser, Dell & Loughney, Pgh.

Trial Judge: The Hon. Charles H. Loughran

Result: Molded verdict for Plaintiff in the amount of $2500.00. Causal negligence apportioned 50/50 between the parties.

STATMAIL,INC. V. HEALTHCARE SYSTEMS, INC. NO. 976 OF 1998

Cause of Action: Breach of Contract

The plaintiff alleged that it entered into a written agreement with the defendant on July 24, 1997, wherein the two companies would work together in developing an Oracle office based home health care database system. The plaintiff was to be exclusively responsible for maintaining appropriate office space, clerical support and program and development staff. The complaint alleges that defendant informed plaintiff on July 31, 1997, one day prior to commencement of the project, that it did not intend to honor the written agreement. The plaintiff's suit was for loss of profits.

In its pre-trial statement, defendant asserted that Roland Cleneany, an employee of defendant, did not have the authority to execute the document on behalf of defendant. In the alternative, defendant claimed that the agreement was terminated before the commencement date of the agreement and that plaintiff consented to the termination. Defendant also argued that plaintiff's damages were speculative and unforeseeable.

Plaintiff's Counsel: Thomas J. Godlewski, Scott Avolio, Godlewski & Associates, Gbg.

Defendant's Counsel: Bernard T. McArdle, Stewart, McCormick, McArdle & Sorice, Gbg.; Damogar Sarup Airan, Coral Gables, Fla., admitted pro hac vice.

Trial Judge: The Hon. Charles H. Loughran

Result: Verdict for Plaintiff in the amount of $82,500.00.

JULIA P. BAVARO, A MINOR, BY HER PARENT AND NATURAL GUARDIAN, FRANK BAVARO V. WILLIAM DEGRANGE, DEFENDANT V. PAULINE BAVARO, ADDITIONAL DEFENDANT NO. 1001 OF 1999

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

On June 26, 1998, the minor-plaintiff, Julia P. Bavaro, a six-year-old child, was a passenger in her mother's automobile, and was assisting her mother and thirteen-year-old sister in delivering newspapers. Mrs. Bavaro was traveling south on Ninth Street, just past its intersection with Marguerite Avenue, in Monessen. In an attempt to deliver a newspaper on the opposite side of the street, the minor-plaintiff exited the vehicle on the right-hand side, went around the front of the vehicle and proceeded to cross the street. The minor-plaintiff was struck on her right side by the defendant's vehicle, which was traveling behind her mother's vehicle. Among the injuries claimed were lacerations to the forehead and knees, head injury, and fractures of the right lower leg and foot.

The defendant, in new matter, contended that he was confronted with a sudden and unexpected peril affording him little or no time to apprehend or avoid the situation. Defendant also joined plaintiff's mother, Pauline Bavaro, as an additional defendant, wherein defendant alleged that the minor-plaintiff ran around the front of her mother's van and directly into the side of defendant's vehicle. Defendant asserted that the minor-plaintiff's injuries were solely caused by the negligence of Mrs. Bavaro in failing to properly supervise her six-year-old child.

In her amended new matter, the additional defendant asserted the defense of a joint tortfeasor release executed in her favor.

Plaintiffs' Counsel: Jack L. Bergstein, Bergstein & Galper, Monessen

Defendant's Counsel: Laura R. Pasquinelli, Law Office of Marianne C. Mnich, Pgh.

Additional Defendant's Counsel: Thomas W. Smith, Mears and Smith, P.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Defendant. Although jury attributed 100% causal negligence to additional defendant, a joint tortfeasor release operated as a bar.

ROBERT G. ROWLAND V. DR. DAVID M. TONEY; DR. THOMAS D. MCCLURE; DR. DANIEL L. HAFFNER; AND WESTMORELAND ORTHOPAEDICS & SPORTS MEDICINE, LTD., A/K/A WESTMORELAND ORTHOPAIEDICS AND SPORTS MEDICINE NO. 916 OF 1999

Cause of Action: Negligence — Medical Malpractice

Plaintiff suffered a fracture and dislocation of his mid-right foot. On March 27 and April 19, 1998, plaintiff presented himself to two hospitals, complaining of pain to his right foot and ankle and an inability to bear weight. X-rays of his foot were taken at both hospitals, and were interpreted by radiologists Dr. Toney and Dr. McClure, respectively. On April 21, plaintiff saw Dr. Haffner, an orthopedic surgeon, who performed surgery on plaintiff's foot on May 21, 1998. Plaintiff brought this medical malpractice action against these defendants, alleging that they were negligent in failing to promptly and accurately diagnose and/or treat the defendant's injuries.

Defendants Dr. Toney and Dr. McClure asserted that they were not negligent and their conduct did not cause, contribute to or increase the likelihood of plaintiff's claimed injuries. Defendant Dr. Haffner, in new matter, asserted defenses of assumption of the risk, comparative and contributory negligence, and that he did not proximately cause plaintiff's injuries.

Plaintiff's Counsel: Jay H. Feldstein, James C. Heneghan, Feldstein Grinberg Stein & McKee, Pgh.

Counsel for Defendants David M. Toney, M.D. and Thomas McClure, M.D.: M. Brian O'Connor, Gaca Matis Baum & Rizza, Pgh.

Counsel for Defendants Daniel L. Haffner, M.D. and Westmoreland Orthopaiedics and Sports Medicine: Paul K. Vey, David P. Franklin, Pietragallo, Bosick & Gordon, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict for Plaintiff in the amount of $92,625.00. Jury found 35% contributory negligence attributable to plaintiff. Causal negligence attributed to defendants, Dr. Toney (34%); Dr. McClure (10%); and Dr. Haffner (21%).

MARIANNA L. WALKER, A/K/A MARYIANNA WALKER, INDIVIDUALLY AND IN HER CAPACITY AS EXECUTRIX OF THE ESTATE OF IRVIN WALKER, DECEASED, PLAINTIFF
V.
RANDY E. COCHRAN, AN ADULT INDIVIDUAL, DEFENDANT
V.
MARIANNA L. WALKER, A/K/A MARYIANNA WALKER IN HER CAPACITY AS EXECUTRIX OF THE ESTATE OF IRVIN WALKER, DECEASED, DEFENDANT ON THE COUNTERCLAIM
NO. 2927 OF 1996

Cause of Action: Negligence — Motor Vehicle Accident — Wrongful Death — Survival — Loss of Consortium

This fatal motor vehicle accident occurred on September 26, 1995, on State Route 119, near its intersection with Greenville Road in Center Township, Indiana County. The defendant, Randy E. Cochran, operated his tractor trailer rig, which contained a load of coal, south on Route 119. The complaint alleged that Cochran lost control of his coal truck and impacted the pickup truck operated by plaintiff's decedent, Irvin Walker, ultimately resulting in Walker's death. Walker's estate sought survival and wrongful death damages from Cochran, alleging Cochran's negligence, inter alia, in operating his coal truck at an excessive speed and failing to stop in sufficient time to avoid colliding with Walker's vehicle.

In his counterclaim, Cochran contended that Walker pulled in front of him from the side of the road and stopped in the left southbound lane, in an apparent attempt to make a left turn onto the northbound lanes of Route 119. Cochran maintained that Walker's negligence caused the fatal collision, and claimed severe psychological and physical injuries which rendered him disabled and unable to work. Cochran's wife asserted loss of consortium.

Plaintiff's Counsel: Daniel Joseph, George & Joseph, New Kensington

Counsel for Defendant Randy Cochran: Arthur J. Murphy, Jr., Murphy Taylor, P.C., Pgh.

Counsel for Cochran, Counterclaim Plaintiff: Howard Schulberg, Weisman Goldman Bowen & Gross, Pgh.

Counsel for Walker's Estate, Counterclaim Defendant: Timothy J. Burdette, Anstandig, McDyer, Burdette & Yurcon, P.C., Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: As a result of the jury's special findings, a molded verdict was entered in favor of Defendant Randy E. Cochran on the plaintiff's survival and wrongful death action. On the counterclaim, a verdict was entered in favor of Counterclaim Plaintiff, Randy E. Cochran, only, in the amount of $1,300,000.00.

CANZIAN/JOHNSTON & ASSOCIATES
V.
QUEST HEALTHCARE DEVELOPMENT, INC.
NO. 3738 OF 1998

Cause of Action: Breach of Contract — Contractor and Subcontractor Payment Act

Plaintiff brought this action to collect architect fees allegedly owed by defendant in connection with the proposed construction of an assisted living center in Penn Township. Plaintiff asserted that its November 24, 1996, agreement with defendant to perform professional services was based upon a Standard Form of Agreement Between Owner and Architect. By letter of November 6, 1997, defendant indicated to plaintiff that the project had been permanently abandoned. Plaintiff contended that plaintiff was entitled to compensation for services rendered prior to termination. Plaintiff asserted claims for breach of contract and under the Contractor and Subcontractor Payment Act for payments wrongfully withheld by defendant.

In new matter, defendant maintained that the parties never reached an agreement with respect to architect fees. Defendant also asserted that plaintiff agreed to provide architectural services for the project on a contingent fee basis.

Plaintiff's Counsel: Robert J. Ray, Kelly B. Bakayza, Burns, White & Hickton, Pgh.

Defendant's Counsel: Robert J. Cromer, Trafford

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict for Plaintiff in the amount of $644,045.54.

PAUL KORN, JR., AN INDIVIDUAL, AND SANDRA L. KORN, HIS WIFE V. ELEANOR SILVIS, EXECUTRIX OF THE ESTATE OF ELEANOR F. O'BRYAN, DECEASED NO. 1864 OF 1999

Cause of Action: Negligence — Motor Vehicle Accident— Loss of Consortium

On the afternoon of November 22, 1997, plaintiff was operating his vehicle in a northerly direction on North Greengate Road in Hempfield Township. The complaint alleges that plaintiff was at a complete stop with his left turn signal activated as he attempted to make a left-hand turn onto a private road. Defendant's vehicle struck plaintiff's vehicle from behind, causing plaintiff's injuries, which included herniated discs, hyper-extension injuries of the cervical spine and right elbow, and chronic cephalgia. Wife-plaintiff claimed loss of consortium.

The defendant denied plaintiffs' allegations of negligence. In new matter, defendant asserted that plaintiffs' claims were limited, barred and/or restricted by the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL), including the limited tort provisions. Defendant also raised the Deadman's Act.

Plaintiffs' Counsel: David J. Millstein, Jacquelyn A. Knupp, Millstein & Knupp, Youngwood

Defendant's Counsel: Kim Ross Houser, Mears and Smith, P.C., Gbg.

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

Result: Verdict for Plaintiff in the amount of $5,000. No award for wife-plaintiff.

PATRICIA M. HEATER V. WILLIAM A. CARLSON NO. 327 OF 1999

Cause of Action: Negligence— Motor Vehicle Accident

This motor vehicle accident occurred on July 25, 1997, when plaintiff was stopped at a traffic signal on East Pittsburgh Street in the City of Greensburg. Defendant's vehicle struck plaintiff's vehicle in the rear, causing plaintiff's vehicle to impact the vehicle stopped in front of her. Injuries included severe aggravation of an asymptomatic arthritic condition, causing it to become symptomatic and requiring total hip replacement; injuries to the spine resulting in cervicalgia, intercostal neuralgia, lumbalgia and sciatic neuralgia; and low back, right hip and leg, and neck pain.

In new matter, the defendant asserted that plaintiff exhausted first-party benefits; plaintiff has not sustained a "serious injury" as defined in the MVFRL; and plaintiff's election of a limited tort option precludes an action for non-economic loss.

Plaintiff's Counsel: Bryan J. Smith, Brown & Levicoff, P.C., Pgh.

Defendant's Counsel: Thomas W. Smith, Mears and Smith, P.C., Gbg.

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

Result: Verdict for Plaintiff in the amount of $10,000.

RONALD LEE MURPHY AND LYNN KRISTA MURPHY, HIS WIFE V. EUGENE CAVALIERE NO. 439 OF 1998

Cause of Action: Negligence—Motor Vehicle Accident—Loss of Consortium—Arbitration Appeal

On November 6, 1996, the plaintiff was traveling in the right westbound land of U.S. Route 30, near Westmoreland Mall, when defendant's vehicle struck the rear of plaintiff's vehicle. Plaintiff averred, inter alia, that defendant failed to properly signal the changing of lanes and failed to keep a proper look out for vehicles ahead of him and in adjacent lanes of traffic. Plaintiff's injuries included cervical and lumbar spine strains, headaches, and injuries to the elbow and neck. Wife-plaintiff claimed loss of consortium.

The defendant, in new matter, maintained that plaintiff did not sustain a "serious injury" as defined in the MVFRL. In his reply to new matter, plaintiff averred that the full tort option was selected; thus, plaintiff need not prove "serious injury."

Plaintiffs' Counsel: Louis J. Kober, II, Gbg.

Defendant's Counsel: Scott O. Mears, Jr., Mears and Smith, P.C., Gbg.

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

Result: Verdict for Defendant. Jury attributed 49% negligence to defendant and 51% to plaintiff.

JAN ROBISON V. LLOYD KEITH RICHLESS, M.D. NO. 6254 OF 1999

Cause of Action: Negligence — Medical Malpractice

On January 6, 1998, plaintiff underwent his second medical examination by the defendant, who practices occupational medicine, at the request of his employer's worker's compensation insurance carrier in connection with a 1994 work injury to his left shoulder. On January 2, 1998, plaintiff's chiropractor sent defendant a letter wherein he requested that plaintiff's neck examination be limited to active range of motion, and that distraction and compression of the neck be gentle or eliminated altogether. Prior to the exam, plaintiff gave defendant a note from plaintiff's orthopedic surgeon, dated December 31, 1997, which stated that plaintiff was allowed no overhead movement of the shoulder. Plaintiff alleged that, during the examination, defendant grabbed plaintiff's arm and jerked it overhead, causing popping, snapping, and immediate and severe pain and swelling in the area of his previous surgery. Plaintiff claimed that defendant caused further injury to his shoulder, which necessitated further surgery.

In his answer, defendant maintained that the range of motion testing in his exam was fully appropriate, involved no grabbing or jerking of plaintiff's arm and caused no injury to plaintiff. In new matter, defendant asserted that defendant cannot be liable to plaintiff because there was no physician-patient relationship associated with the independent medical examination. Defendant also raised the statute of limitations.

Plaintiff's Counsel: Joseph P. Moschetta, Joseph P. Moschetta Associates; C. Jerome Moschetta, Washington, Pa.

Defendant's Counsel: Charles P. Falk, Solomon & Associates, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Defendant.

STEELE CONSTRUCTION, INC.
V.
JOSEPH L. DUNN AND KAREN P. DUNN, HIS WIFE, DEFENDANTS V. DRAVIS LUMBER COMPANY, ADDITIONAL DEFENDANT
NO. 2003 OF 1998

Cause of Action: Accord and Satisfaction — Breach of Contract

On March 27, 1997, plaintiff entered into a written contract with the defendants for the construction of a house on defendants' property. After performing the work, plaintiff sought payment of the unpaid balance due under the contract, together with reasonable charges for certain modifications/extras that were requested by defendants.

In their answer, defendants contended that many of the extras were for work contracted for under the original agreement. As an affirmative defense, defendants asserted that they tendered the balance due under the contract and for those extras agreed to less the amount they had expended for materials and items.

Defendants brought a counterclaim, which sought payment of expenses incurred by defendants in purchasing materials for their home when those materials were to be provided by plaintiff pursuant to the contract. Defendants also maintained that plaintiff failed to complete certain enumerated items in a proper workmanlike manner and sought payment for the repair of those items. In its answer to the counterclaim, plaintiff denied that any items purchased by defendants were for items specified under the contract, and denied that the work was not done in a proper workmanlike manner.

Plaintiff brought a claim against the additional defendant lumber company, which supplied materials to plaintiff, for contribution and indemnity.

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

Defendant's Counsel: Dwayne E. Ross, Latrobe

Additional Defendant's Counsel: John J. Kuzmiak, Johnstown

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict (1) for Plaintiff Steele Construction, Inc., in the amount of $14,264.37; (2) for Counterclaim Plaintiffs/Defendants Joseph L. Dunn and Karen P. Dunn for $6,272.50; and (3) for Additional Defendant Dravis Lumber Company.

JOHN C. LAUFFER AND WANDA J. LAUFFER, HIS WIFE
V.
SHEETZ, INC., A PENNSYLVANIA CORPORATION
NO. 2200 OF 1999

Cause of Action: Negligence — Loss of Consortium

On June 9, 1998, the plaintiff went to the defendant's New Kensington retail gas outlet and convenience store to purchase cigarettes. As he was exiting the premises, plaintiff ran into and collided with a pipe batten located directly outside of the door to defendant's store. Plaintiff averred that defendant had knowledge of this dangerous and defective condition and allowed it to remain on the premises. As a result of the incident, plaintiff sustained injuries to his scrotum and testicles. His wife asserted a claim for loss of consortium.

The defendant denied that plaintiff's alleged injuries were caused by any conduct of the defendant. In new matter, defendant asserted that plaintiff's presence on defendant's premises on many prior occasions should have made him aware of the existence and location of the pipe batten. In the alternative, defendant maintained that any condition complained of by plaintiff was both open and obvious.

Plaintiffs' Counsel: Mark E. Milsop, John E. Quinn, Evans, Portnoy & Quinn, Pgh.

Defendant's Counsel: Alexander P. Bicket, Zimmer Kunz Professional Corporation, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict for Defendant.

VELMA GRIGGS
V.
SIMONE JACKSON, LEONARD J. MCCONNELL AND HARDHAT TRUCKING COMPANY
NO. 2780 OF 1997

Cause of Action: Negligence—Motor Vehicle Accident

On May 24, 1995, plaintiff was a passenger in a vehicle operated by co-defendant Simone Jackson that was traveling east on Route 30 in Ligonier Township. Co-defendant Leonard McConnell was also operating a vehicle in an easterly direction on Route 30. The complaint alleges that the two vehicles collided when Jackson attempted to change lanes and/or make a left turn while McConnell attempted to pass her on the left. Plaintiff's injuries included a head injury, hematoma to her left leg and injury to her leg and back.

Co-defendant McConnell, an independent contractor for Hardhat Trucking, submitted that he was operating his vehicle in the left/passing lane when Jackson turned left into his vehicle. McConnell asserted comparative/contributory negligence, the sudden emergency doctrine and the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL). Co-defendant Jackson asserted contributory/comparative negligence, plaintiff's pre-existing injuries/damages and plaintiff's election of the limited tort. Both McConnell and Jackson brought claims for contribution and/or indemnity against each other.

Plaintiff's Counsel: Susan E. Mahood, Pgh.

Counsel for Defendant Simone Jackson: J. Eric Barchiesi, Baginski and Bashline, Pgh.

Counsel for Defendants Leonard J. McConnell and Hardhat Trucking Co.: John G. Wall, Burns, White & Hickton, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict for plaintiff against defendant Simone Jackson in the amount of $15,000.

EXPLORER SCOUTING POST 155 A/K/A THE GOLDEN LANCERS DRUM AND BUGLE CORP., KENNETH B. BEHREND AND PAMELA BEHREND, HIS WIFE
V.
DAVID LONG, DEFENDANT
V.
JANE M. KENNELLY, ADDITIONAL DEFENDANT
NO. 514 OF 1998

Cause of Action: Negligence—Motor Vehicle Accident—Loss of Consortium

The plaintiff is a musical Exploring Post with the Boy Scouts of America and performs at shows, parades and events. The plaintiffs, Kenneth R. Behrend and Pamela Behrend, and the additional defendant, Jane M. Kennelly, are adult leaders of the Post. On July 29, 1995, Kenneth Behrend, Pamela Behrend and Jane Kennelly were operating three vehicles on the Pennsylvania Turnpike during heavy traffic in a construction zone. The defendant, David Long, was traveling behind their vehicles. A chain reaction collision ensued when traffic came to a sudden stop as a result of a disabled vehicle ahead. Kenneth Behrend claimed soft tissue injuries and a closed head injury. Pamela Behrend claimed soft tissue injuries and loss of consortium. The Post claimed injuries to its reputation and property damage.

The defendant contended that the plaintiffs and the additional defendant were responsible for the collision. In new matter, defendant raised the relevant provisions of the MVFRL, including plaintiffs' failure to allege "serious injury," comparative/contributory negligence, the assured clear distance rule and the sudden emergency doctrine. The additional defendant maintained that the plaintiffs and the original defendant caused the accident. In amended new matter, the additional defendant averred that each of the plaintiffs executed a release in her favor.

Plaintiffs' Counsel: G. Clinton Kelley, Pgh.

Defendant's Counsel: Thomas A. McDonnell, Summers, McDonnell, Walsh & Skeel, Pgh.

Additional Defendant's Counsel: John R. Bryan, Zimmer Kunz PLLC, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict (1) in favor of original defendant, David Long, and (2) in favor of plaintiff, Explorer Scouting Post 155, and against additional defendant, Jane M. Kennelly, in the amount of $4,000.

MIGUEL SALOMON
V.
DARRYL CORNMAN AND COLLEEN R. CORNMAN
NO. 1820 OF 1995

Cause of Action: Negligence—Motor Vehicle Accident

This motor vehicle accident occurred on March 15, 1993, as both vehicles were traveling west on Route 22 in New Alexandria. The complaint alleges that defendant Darryl Cornman, operating a vehicle owned by defendant Colleen R. Cornman, struck plaintiff's vehicle in the rear when plaintiff stopped his vehicle for a traffic signal. Plaintiff alleged soft tissue injuries and aggravation of a pre-existing low back condition.

The defendants argued that plaintiff was involved in two prior motor vehicle accidents. The question for the jury was whether the injuries claimed by the plaintiff were caused by the third collision.

Plaintiff's Counsel: Dante G. Bertani, Gbg.

Defendants' Counsel: Kim Ross Houser, Mears and Smith, P.C., Gbg.

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

Result: Verdict for the defendant.

CHARLES ANGELO VALENTI
V.
ROBERT DENNISON T/D/B/A BUMMY'S CAMPGROUND, AND ABATE OF PENNSYLVANIA
NO. 2257 OF 1997

Cause of Action: Negligence—Slip and Fall

On July 15, 1995, plaintiff participated in a poker run sponsored by defendant ABATE of Pennsylvania. The motorcycle event concluded with a picnic and band at defendant Robert Dennison's campground, which was leased by ABATE. After a rain storm, plaintiff stepped into the picnic pavilion where he slipped on smooth concrete. Plaintiff alleged that defendants were negligent, inter alia, in permitting a dangerous amount of water to accumulate on the pavilion floor, in failing to install adequate drainage in the pavilion, and in failing to inspect and remove the dangerous condition following the storm. Injuries included a fractured fibula with swelling, as well as the insertion and removal of pins and plates.

Both defendants denied that the area was under their care, custody and control when plaintiff fell. Defendants asserted comparative negligence, assumption of the risk, the choice of ways doctrine and that the condition was open and obvious.

Plaintiff's Counsel: Timothy E. Cassidy, Pgh.

Counsel for Defendant Robert Dennison: Matthew L. Rovacik, Witheral, Kovacik & Marchewka, Pgh.

Counsel for Defendant ABATE: Stephen J. Poljak, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for defendants.

MARTHA FOSTER, AN INCAPACITATED PERSON, BY JAMES FOSTER, GUARDIAN V. RICHARDO MIGLIORI NO. 2234 OF 1999

Cause of Action: Negligence—
Binding Summary Jury Trial

The defendant was the passenger and owner of the vehicle driven by the plaintiff when it collided with a second vehicle on May 15, 1998. In August of 1997, the plaintiff had been instructed by her doctor not to drive a motor vehicle. Through her guardian, plaintiff brought this action against defendant for permitting or encouraging plaintiff to drive his vehicle when he knew or should have known that plaintiff was restricted from driving a motor vehicle. Plaintiff's injuries included a fractured left cheek bone and jaw, damage to teeth, and fractures to her ribs and leg.

The defendant denied plaintiff's allegations of negligence and asserted the affirmative defenses of contributory/comparative negligence, assumption of the risk, the MVFRL and Act 6.

Plaintiff's Counsel: Jay H. Feldstein, James C. Heneghan, Feldstein Grinberg Stein & McKee, Pgh.

Defendant's Counsel: Kim Ross Houser, Mears and Smith, P.C., Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Following a verdict for plaintiff, the parties settled the action for a predetermined amount.

HELEN STACK V. PROFESSIONAL INVENTORY MERCHANDISING MANAGEMENT SERVICES, A/K/A P.I.M.M.S. NO. 802 OF 1999

Cause of Action: Negligence—Slip and Fall—
Binding Summary Jury Trial

On February 17, 1997, plaintiff was shopping in a Wal-Mart store in Belle Vernon. While walking through the stationery department, plaintiff's foot became caught in a display allegedly owned, constructed and erected by the defendant. Plaintiff fell on her back and was struck by an improperly secured support pole on the display. Injuries included a fractured left hip and injuries to her left knee and back.

In its answer and new matter, defendant denied ownership of the display base and that it owed or breached a duty of care to plaintiff. Defendant asserted contributory/ comparative negligence, assumption of the risk and that, as a contractor hired by Wal-Mart, it followed the directions and instructions of Wal-Mart with regard to the construction, location and erection of the display.

Plaintiff's Counsel: Andrew J. Leger, Jr., Shilobod Leger & Ball, P.C., Pgh.

Defendant's Counsel: Cheryl L. Esposito, Gigler & Joyal, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: The jury having determined that defendant was negligent and that plaintiff was free of contributory negligence, the parties settled the action for a predetermined amount.

VIVIAN L. RUFFNER
V.
M.J.T. ENTERPRISES, INC., T/D/B/A BEER ARENA
NO. 7060 OF 1997

Cause of Action: Negligence—Premises Liability

On April 26, 1996, plaintiff was at the Beer Arena store located at the WOW Plaza in Hempfield Township, Westmoreland County. After purchasing a bag of ice, plaintiff was exiting the Beer Arena when she stepped in a large crevice of broken cement near the base of the exterior steps leading to the store. Plaintiff's injuries included an avulsion type fracture of her left ankle.

Defendant asserted plaintiff's comparative negligence and assumption of the risk, alleging that the broken cement was a known or obvious danger.

Counsel for Plaintiff: Denis P. Zuzik, Gbg.

Counsel for Defendant: John K. Bryan, Zimmer Kunz PLLC, Pgh.

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

Result: Molded verdict for plaintiff in the amount of $27,500. Plaintiff's contributory negligence was 45%.

MARJORIE KAYE LUCAS
V.
SCOTT HUBER AND
NANCY HUBER, HIS WIFE
NO. 5257 OF 1998

Cause of Action: Negligence—Premises Liability

On September 14, 1996, plaintiff was a guest of defendants in their home. As she was leaving, plaintiff slipped on the edge of the defendants' newly asphalted driveway. Plaintiff asserted negligence with respect to the steep slope of the edge of the driveway, the slippery nature of the surface material on the driveway and the defendants' failure to warn of these conditions. Plaintiff fractured the tibia and fibula of her left leg, which required two surgeries.

The defendants maintained that plaintiff's own contributory negligence and voluntary assumption of the risk barred recovery, and denied that the alleged improper acts or failures of the defendants were the proximate cause of plaintiff's alleged injuries and damages.

Counsel for Plaintiff: Steven W. Alm, Gbg.

Counsel for Defendants: David Chmiel, Solomon & Associates, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict for defendants.

SUSAN K. OLSON (CHICKA)
V.
AMY MULL
NO. 843 OF 2000

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

The plaintiff brought this negligence action as a result of a motor vehicle accident that occurred on March 15, 1999, in Greensburg. Plaintiff alleged she was stopped for a red light on East Pittsburgh Street, near its intersection with Tremont Avenue, when the defendant failed to stop her vehicle, striking plaintiff's vehicle in the rear. Injuries included ligament damage and neck and upper back injury, causing severe muscle spasms, headaches and joint dysfunction.

The defendant denied that she operated her vehicle in a negligent manner and asserted the affirmative defenses of plaintiff's comparative negligence and the limited tort provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL).

Counsel for Plaintiff: Michael C. Maselli, Law Office of Marianne C. Mnich, Pgh.

Counsel for Defendant: Denis P. Zuzik, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

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

PAULA M. LOUGHNER AND
JEFFREY LOUGHNER
V.
THOMAS LAERO
NO. 2513 OF 1999

Cause of Action: Negligence—Motor Vehicle Accident—
Loss of Consortium—Arbitration Appeal

This motor vehicle accident occurred on April 1, 1998, in the left lane of Interstate 376, near the Edgewood Extension ramp.

The plaintiff, Paula Loughner, slowed her vehicle in rush hour traffic and was struck from behind by the defendant's vehicle, causing a five car chain reaction collision. Plaintiff suffered soft tissue injuries. Her husband claimed loss of consortium.

The defendant raised the affirmative defenses of contributory/comparative negligence and assumption of the risk, including the sudden emergency doctrine, and the MVFRL and its limited tort provisions. In reply to defendant's new matter, plaintiff asserted that full tort insurance coverage was selected.

Counsel for Plaintiffs: David A. Colecchia, Law Care, Gbg.

Counsel for Defendant: Christopher Fleming, Jacobs & Saba, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for plaintiff in the amount of $2,000. No award for husband-plaintiff.

HENRY SOBEK
V.
DUSTIN TOMAN
NO. 668 OF 1998

Cause of Action: Assault and Battery—Intentional Infliction of Emotional Distress—Arbitration Appeal

Plaintiff alleged that the defendant assaulted and battered him in the alley behind plaintiff's home. Injuries included contusions and lacerations on his face, right arm and abdominal region, as well as severe facial and body scarring. Plaintiff also claimed that defendant's conduct caused him severe emotional distress which resulted in increased hypertension, inability to sleep and general nervous conditions.

In new matter, defendant maintained that plaintiff provoked the altercation, and that any force defendant used was justifiable because it was immediately necessary to protect himself against plaintiff's use of unlawful force.

Defendant brought a counterclaim regarding alleged events which resulted in plaintiff's termination of defendant's employment. Defendant contended that he was assaulted and battered by plaintiff, who punched him in the nose while intervening in an argument between defendant and plaintiff's nephew while on the job site. Defendant suffered a bloody nose, as well as various bruises, contusions and lacerations.

Plaintiff's Counsel: Jack L. Bergstein, Bergstein & Galper, P.C., Monessen.

Defendant's Counsel: Jason M. Walsh, Bigi Duronio & Walsh, Charleroi.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for defendant on original claim; verdict for plaintiff/counterclaim defendant on counterclaim.

CARL MAGNETTA T/D/B/A TARENTUM HARDWARE AND HYDRAULIC REPAIRS
V.
KEY BELLEVILLES, INC.
NO. 1619 OF 1998

Cause of Action: Breach of Contract

This action was for breach of the parties' oral contract regarding the sale of a hydraulic press. Plaintiff requested the balance due in the amount of $7,058.06, plus interest and finance charges.

The defendant contended that the agreed upon price was $1,900. Defendant maintained that the prices charged by plaintiff were not reasonable and did not reflect market prices. Defendant asserted improper workmanship and installation. Furthermore, defendant contended that it never agreed to pay interest or finance charges.

Plaintiff's Counsel: Nicholas D. Krawec, Bernstein Law Firm, P.C., Pgh.

Defendant's Counsel: John M. O'Connell, Jr., O'Connell & Silvis, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for plaintiff in the amount of $7,058.06.

RAY E. BUNGARD AND ARLENE BUNGARD, HIS WIFE V. MARK S. WILLIAMS NO. 5111 OF 1996

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

On July 20, 1994, plaintiff presented himself to the emergency department of Frick Hospital and Community Health Center with complaints of weakness, pain, numbness and limited range of motion in his right upper extremity, right shoulder and neck. Plaintiff alleged that defendant treating physician failed to promptly and properly diagnose and treat the plaintiff for a posterior dislocation of his right shoulder and a Hill-Sachs lesion of the humeral head of his right upper extremity. Plaintiff claimed that the alleged negligence of the defendant caused him to suffer further injury to his right shoulder and right upper extremity. His wife claimed loss of consortium.

The defendant denied that plaintiff's complaints were consistent with the presence of a posterior dislocation of his right shoulder and a Hill-Sachs lesion of the humeral head of the right upper extremity. Defendant denied negligence and maintained that his conduct did not cause, contribute to or increase the likelihood of plaintiff's alleged injuries.

Plaintiff's Counsel: Jason E. Matzus, Evans, Portnoy & Quinn, Pgh.

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

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for defendant.

MICHELE L. LEIGHTY V. VIRGINIA ROWE AND PITT OHIO EXPRESS, INC. NO. 1314 OF 1998

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

On July 3, 1996, plaintiff was involved in a motor vehicle accident with defendant, Virginia Rowe, in New Stanton. Plaintiff approached the Mellon Bank parking lot while traveling east on State Route 3093. A tractor trailer owner and operated by an employee of defendant, Pitt Ohio Express, was parked on the right side of the road, and allegedly obstructed the view for anyone attempting to make a left turn from the Mellon Bank parking lot. Defendant Rowe attempted to enter the roadway from the bank parking lot and collided with plaintiff's vehicle. Plaintiff claimed severe migraines, depression, and injuries to her head, neck, shoulder and back.

Defendants denied negligence and asserted plaintiff's comparative/ contributory negligence, the Pennsylvania Motor Vehicle Financial Responsibility Act, as amended, and plaintiff's preexisting injuries. Defendants submitted cross-claims for contribution and/or indemnification. In amended new matter, defendant Rowe averred that a joint tortfeasor's release was given to her by the plaintiff.

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

Counsel for Defendant Virginia Rowe: Kim Ross Houser, Mears Smith Houser & Boyle, P.C., Gbg.

Counsel for Defendant Pitt-Ohio Express: John T. Pion, Dickie, McCamey & Chilcote, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for defendants. Jury found that plaintiff was 60% contributorily negligent.

NELDA DAVID AND WILLIAM DAVID
V.
MARIA A. BRUNO
NO. 9712 OF 1995

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

On December 16, 1993, the defendant performed a vaginal hysterectomy on the wife-plaintiff. In this medical malpractice action, plaintiff alleged that defendant performed an unnecessary surgery, caused urethral and bladder injuries during surgery and failed to properly diagnose and treat post-operative complications of leakage of urine and infection, which required additional hospital treatment and resulted in a cystoscopy. Plaintiff's husband claimed loss of consortium.

Defendant asserted that there was a complete medical necessity for the hysterectomy and that she provided proper and reasonable surgical care. Defendant denied that the ureter was cut during the surgery, and maintained that she provided proper and adequate post-operative instructions and care. As affirmative defenses, defendant pled comparative/contributory negligence and assumption of the risk.

Plaintiffs' Counsel: Kenneth W. Behrend, Behrend & Ernsberger, Pgh.

Defendant's Counsel: William D. Phillips, Phillips, Faldowski & McCloskey, P.C.

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

Result: Verdict for plaintiff in the amount of $35,000; verdict for husband-plaintiff in the amount of $3,200.

REBECCA RENSHAW AND BENNY JOHNSON
V.
EUGENE P. BEHAGE AND
LINDA LEE BEHAGE, HIS WIFE
NO. 5739 OF 1998

Cause of Action: Fraudulent/Negligent Misrepresentation

Plaintiff-buyers brought this action to recover damages incurred as a result of their reliance on misrepresentations of defendant-sellers during their purchase of real estate in 1997. The complaint alleged that buyers encountered problems of an insufficient water supply in that water had to be hauled to the property once a month, an inoperational swimming pool and the infestation of carpenter ants.

Sellers asserted compliance with their duties and obligations involved in the transaction. They maintained that any damages were caused by the buyers' personal home inspectors. To the extent insufficient coverage existed under homeowners warranty, sellers asserted accord and satisfaction and the failure to mitigate damages.

Plaintiffs' Counsel: Kenneth P. McKay, Pgh.

Defendants' Counsel: Gary F. Sharlock, Marks O'Neill O'Brien & Courtney, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict for plaintiff in the amount of $15,500. Jury found negligent failure to disclose material facts concerning the property.

JAMES N. MARTIN
V.
JOSEPH H. QUINN
NO. 7551 OF 1997

Cause of Action: Civil Rights, 42 U.S.C. § 1983

This civil rights action arose out of the improper incarceration of plaintiff for three days at the Westmoreland County Prison. Plaintiff alleged that the defendant, a deputy sheriff for the county, altered a court order to make it appear that a bench warrant had been issued for the plaintiff. As a result of this violation of his constitutional rights, plaintiff also claimed mental anguish, injury to his reputation and the inability to attend to his business while incarcerated.

Plaintiff's Counsel: Kenneth B. Burkley, Gbg.

Defendant's Counsel: Irving M. Green, New Kensington

Trial Judge: The Hon. Daniel J. Ackerman

Result: Liability was not disputed. Jury awarded plaintiff $5,000 compensatory damages and $1,200 punitive damages.

MARLENE A. HASLETT AND
DANIEL A. HASLETT, HER HUSBAND
V.
ESTHER C. HILL AND JAMES A. STONE
NO. 8386 OF 1996

Cause of Action: Negligence—Motor Vehicle Accident—Negligent Entrustment—Loss of Consortium

Plaintiffs brought this action against defendants as a result of a motor vehicle collision that occurred on January 6, 1995, at the intersection of State Route 56 Bypass and Powers Drive. Wife-plaintiff was a guest passenger in a vehicle operated by her husband. While plaintiffs were traveling north on the bypass, the vehicle operated by defendant Stone entered the intersection against a red light and collided with the passenger side of plaintiffs' vehicle. Plaintiffs alleged the negligence of defendant Stone in failing to have the vehicle under proper control due to weather and road conditions and in driving under the influence of alcohol and without a license, and the negligence of defendant Hill in entrusting her vehicle to Stone. Wife-plaintiff's injuries included, inter alia, blood in the urine from internal injuries and cervical and left wrist sprain. Husband-plaintiff claimed loss of consortium.

In new matter, defendants asserted the limitations provided for in the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL). Defendants also asserted the affirmative defense of a general release executed by husband-plaintiff.

Plaintiffs' Counsel: John F. Hooper, Pgh.

Counsel for Defendant Hill: Jeffrey C. Catanzarite, Summers, McDonnell, Walsh & Skeel, L.L.P., Pgh.

Counsel for Defendant Stone: Thomas W. Smith, Mears and Smith, P.C., Gbg.

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

Result: Verdict in favor of wife-plaintiff and against defendant Stone in the amount of $42,000.

BERNARD BAHLEDA
V.
LARRY MCCURDY
NO. 1117 OF 2000

Cause of Action: Negligence—Premises Liability

On June 20, 1999, plaintiff delivered a swimming pool sliding board to the defendant's residence. Plaintiff was helping the defendant carry it to the swimming pool when he tripped over a green plastic sandbox in the yard. Plaintiff asserted that defendant was negligent in failing to warn him of the presence of the sandbox. Plaintiff twisted his right knee and tore the anterior cruciate ligament of the right knee, which required surgical repair.

The defendant denied negligence in failing to warn plaintiff of a condition that was open and obvious.

Plaintiff's Counsel: James J. Lestitian, Kim A. Bodnar, Pgh.

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

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

Result: Verdict for defendant.

NANCY J. DODD AND
ROBERT DODD, HER HUSBAND
V.
THERESA GROSSER
NO. 2241 OF 1999

Cause of Action: Negligence—Motor Vehicle Accident—Loss of Consortium—Arbitration Appeal

On July 4, 1997, the wife-plaintiff was traveling east on Frick Avenue in Mt. Pleasant when defendant's vehicle entered the road from an alleyway and collided with the front end of plaintiff's vehicle. Plaintiff claimed soft tissue injuries that caused paralysis of her left upper extremity and the inability to work for five months following the accident. Husband-plaintiff asserted a claim for loss of consortium.

Defendant denied negligence and asserted the affirmative defenses of contributory/comparative negligence, assumption of the risk and the provisions of the MVFRL.

Plaintiffs' Counsel: Rachel E. Morocco, Morocco Morocco & Specht, P.C., Trafford.

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

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for defendant.

DEBRA J. TALLERICO AND SAMMIE JO TALLERICO, A MINOR V. DOUGLAS E. WELSH NO. 9961 OF 1995

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

Plaintiffs' action arose from a motor vehicle accident that occurred on December 23, 1993, on State Route 366 in Lower Burrell. Plaintiff was operating her vehicle, in which the minor-plaintiff was a passenger, when the defendant's vehicle collided into the rear of plaintiffs' vehicle. The complaint alleged, inter alia, that defendant was negligent in operating his vehicle while in an impaired condition and in failing to observe plaintiffs' vehicle and stop his vehicle within the assured clear distance. Both plaintiffs alleged soft tissue injuries.

The defendant denied operating his vehicle in a negligent manner and asserted the affirmative defenses of contributory/comparative negligence and assumption of the risk, as well as those found in the MVFRL.

Plaintiffs' Counsel: John E. Quinn, Evans, Portnoy & Quinn, Pgh.

Defendant's Counsel: Kim Ross Houser, Mears and Smith, P.C., Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict for plaintiff in the amount of $1,000. No award for minor-plaintiff.