JANUARY/FEBRUARY 2003 TRIAL TERM

JOHN PAPAGEORGIOU AND ELENA PAPAGEORGIOU, HIS WIFE
V.
ROCOR INTERNATIONAL, INC., LAND TRANSPORTATION, A ROCOR TRANSPORTATION COMPANY, LAND, A ROCOR TRANSPORTATION COMPANY, LAND CONTAINER, A ROCOR TRANSPORTATION COMPANY, LAND TRANSPORTATION, LLC, AND BERNARD BAUMEISTER
NO. 45 OF 2000

Cause of Action: Negligence—Motor Vehicle Accident

This motor vehicle accident occurred on July 25, 1998, at approximately 11:55 p.m. in Hempfield Township. Plaintiff was traveling north on State Route 66, while defendant Baumeister was operating a 1985 Mack tractor trailer unit. According to the amended complaint, Baumeister operated the tractor trailer so as to completely block the northbound lane of all oncoming traffic, including plaintiff's vehicle. As a result, plaintiff's vehicle collided with and became pinned underneath the tractor trailer. Baumeister was an employee of the defendant over-the-road trucking companies ("Land Transportation"), who owned the tractor trailer. Negligence was asserted against defendants in blocking the northbound lane of Route 66 directly in front of all oncoming traffic, inattentiveness to traffic conditions, failing to operate the unit with proper reflector or light fixtures, and failing to warn plaintiff that his lane of travel was blocked. Plaintiff suffered a severe compound fracture of the right humerus that required multiple surgeries; a fractured left wrist; a fractured clavicle dislocated from the sternum; facial injuries; and a mild to moderate closed head injury. His wife asserted a claim for loss of consortium.

Defendants stipulated as to their liability in negligence. At trial, defendants contested the severity and permanency of plaintiff's injuries. Defendants' case focused on rebutting plaintiff's psychological injuries and that plaintiff was permanently disabled. Defendant's rehabilitation specialist opined that plaintiff was capable of holding multiple positions of employment. Plaintiffs presented medical testimony that plaintiff was permanently disabled from employment based upon his injuries.

Plaintiffs' Counsel: John A. Straka III, Hirshberg, Gustine & Straka, III, Pgh.
Defendants' Counsel: Elizabeth E. Deemer, Brown & Levicoff, P.C., Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Verdict for plaintiff in the amount of $360,000. $50,000 was awarded to wife-plaintiff for loss of consortium.

JANUARY/FEBRUARY 2003 TRIAL TERM

DESIREE NASIBYAN AND IGOR NASIBYAN, HER HUSBAND
V.
THE BOROUGH OF LIGONIER A/K/A LIGONIER BOROUGH, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF PENNSYLVANIA
NO. 5226 OF 1998

Cause of Action: Negligence—Premises Liability

This action resulted from a trip and fall that occurred on October 10, 1997, at approximately 8:00 a.m., during Fort Ligonier Days. Plaintiff was assisting her husband in setting up his craft booth in a municipal parking lot. While carrying items from the booth to their car, plaintiff attempted to pass through an opening in a yew hedge located near the booth. Plaintiff tripped and fell over the stump of a yew shrub that had been removed by the defendant borough. Plaintiff alleged negligence against the borough for allowing a dangerous condition to exist when it knew or should have known that openings created by defendant's cutting were used by the public as a thoroughfare between the parking lot and the street. Plaintiff's injuries included two fractured elbows, which required two arthroscopic procedures, and arthritis had developed in her right elbow. Plaintiff's husband sought damages for loss of consortium.

In new matter, defendant raised the affirmative defenses of governmental immunity, comparative negligence and voluntary assumption of the risk. Defendant admitted that it was in the possession and control of the property where the allegedly dangerous condition existed.

Prior to trial, the parties stipulated that plaintiff incurred recoverable medical bills for treatment of her physical injuries in the amount of $5,098.24.

Plaintiffs' Counsel: Denis P. Zuzik, Gbg.

Defendant's Counsel: Marna K. Blackmer, Summers, McDonnell, Walsh & Skeel, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for plaintiff in the amount of $500.36. Because the defendant was a local agency, the jury's finding of no loss of permanent use of a bodily function precluded an award of non-economic damages. 50% causal negligence was attributed to plaintiff. Pursuant to statute, damages were further reduced by medical bills paid by insurance.

MARCH/APRIL 2003 TRIAL TERM

MELVIN WILLARD WHITE, PLAINTIFF
V.
WENTURINE BROTHERS LUMBER, INC., ICI EXPLOSIVES, U.S.A. AND AMERICAN FORESTRY CONSULTANTS, DEFENDANTS
V.
JOHN BOUCH, INDIVIDUALLY AND JOHN BOUCH T/D/B/A JOHN BOUCH LOGGING, ADDITIONAL DEFENDANTS
NO. 382 OF 2000

Cause of Action: Negligence—Premises Liability

Plaintiff's action stems from a logging incident that occurred on October 12, 1999, at approximately 7:30 a.m. At the time of the occurrence, Plaintiff was an owner and operator of White's Logging. Wenturine Brothers Lumber, Inc. ("Wenturine") purchased timber located on the property of ICI Explosives, U.S.A. American Forestry Consultants was the forester in charge of the site and was responsible for selecting the timber to be cut and marking trees that were dangerous. Wenturine contracted with John Bouch Logging to do the cutting at the site. Bouch retained Plaintiff to perform select cutting of trees. Wenturine employed its own forestry consultant to coordinate, manage and/or supervise the required cutting. Another employee of Wenturine operated a bulldozer to excavate and/ or clear a skidder road that was used to access the logging site.

On October 12, Plaintiff was cutting trees in a sloped area, while his son operated a skidder to remove the freshly cut timber. Immediately prior to the accident, Plaintiff completed the cut on a basswood tree, then retreated to a safety zone as the tree fell. Shortly thereafter, a sugar maple tree on the uphill side of the skidder road fell and struck the Plaintiff, knocking him to the ground and pinning him underneath. The impact from the tree propelled portions of Plaintiff's spine into the spinal canal, resulting in permanent loss of all feeling and motor function below the waist. Other injuries included a fracture of the left clavicle; fractures to the left fifth and sixth ribs with subcutaneous emphysema at the site of the left rib fracture; splenic laceration; and a closed head injury. As a result of these injuries, Plaintiff will not recover his ability to walk. The paraplegia has permanently confined him to a wheelchair, and Plaintiff does not have full use of his left arm due to thrombosis. Assistance is necessary with respect to clothing, transfer and showering. Plaintiff uses a catheter kit and laxatives for toileting purposes and suffers from chronic urinary tract infections. Future orthopedic surgeries will be required.

The sugar maple tree that struck the Plaintiff had been located at the edge of the skidder road above where Plaintiff was working. Plaintiff contended that the excavation of the skidder road removed a substantial amount of earth at the bottom of the sugar maple, causing it to lose its root, or "lateral," support. Plaintiff asserted that Defendants should have inspected the freshly created road, identified the sugar maple as a "danger tree" and marked it for removal. Wenturine maintained that the lateral support of the tree was not compromised because its employee had only cleared the surface of a previously excavated road. Wenturine offered the theory that the sugar maple fell as a result of vines entangled in three trees: the basswood, the sugar maple and a third tree. The parties disputed whether a duty existed on the part of any of the Defendants to make the premises reasonably safe for the Plaintiff. Defendants also asserted the affirmative defense of contributory negligence on the part of the Plaintiff.

All Defendants except Wenturine settled prior to the conclusion of trial. In special interrogatories, the jury was asked to determine and apportion liability with respect to all parties.

Plaintiff's Counsel: Mark Gordon, Paul K. Vey, Pietragallo, Bosick & Gordon, Pgh.

Counsel for Defendant ICI: Scott C. Oostdyk, admitted *pro hac vice*; Christopher J. Hess, McGuire Woods, LLP, Pgh.

Counsel for Defendant Wenturine: John E. Wall, Dickie, McCamey & Chilcote, P.C., Pgh.

Counsel for Defendant AFC: Alan K. Berk, Lawrence D. Kerr, Michael E. DeMatt, Berk, Whitehead, Kerr, Feliciani & Turin, P.C., Gbg.

Counsel for Additional Defendant Bouch: John Deasy, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Plaintiff against Wenturine and AFC in the amount of $6,000,000. Jury answered special interrogatories as follows: Plaintiff was contributorily negligent, but such negligence was not a substantial factor in causing plaintiff's injuries; Causal negligence was apportioned between Wenturine, 80%, and AFC, 20%.

MARCH/APRIL 2003 TRIAL TERM

THE ROMAN CATHOLIC DIOCESE OF GREENSBURG
V.
GALLAGHER BASSETT SERVICES, INC.
NO. 5170 OF 1999

Cause of Action: Breach of Contract

This action resulted from the denial of Plaintiff's claim for property damage to the Queen of Angels School, f/k/a the St. Agnes School, located at St. Agnes Parish, Westmoreland County. On or before December 1, 1997, Plaintiff purchased All Risk Policies from various insurance companies that included coverage for physical loss or damage caused by earth movement. As a third-party administrator, Defendant provided risk control and claims administration services to Plaintiff. Defendant appraised and inspected all of Plaintiff's properties and updated their insurable values for use in purchasing insurance. Following walk-through inspections, Defendant prepared and delivered to Plaintiff Risk Improvement Reports, which noted risks that were observed and offered recommendations regarding these conditions.

In February 1999, an engineering firm hired by Plaintiff determined that the main structural support system for the School had failed, that the failure was directly related to the recent expansion of pyritic soil under the School, and that the School was no longer safe for use. Plaintiff closed the School, which was subsequently demolished, on February 24, 1999. Plaintiff, through Defendant, notified the insurance companies of its property damage claim under the All Risk Policies on March 10, 1999. The insurance companies denied Plaintiff's claim for coverage on or about August 19, 1999, and filed a declaratory judgment action regarding coverage for the claim. In addition to a counterclaim against the insurance companies, Plaintiff brought an action against Defendant for breach of its contract with Plaintiff, which resulted in the subsequent denial of coverage for the claim.

In its Risk Improvement Reports, Defendant reported cracking walls and heaving floors, some of which created tripping hazards that required immediate attention. However, Plaintiff asserted that the reports failed to note that the condition of the school was such that it impacted its insurability or was unsafe for use. Outside engineers retained by Plaintiff over the years to inspect the school did not advise Plaintiff that the structural integrity of the School had failed. Plaintiff maintained that it was not aware of the structural failure until it was advised in February 1999 that previously installed crack monitors had recorded new movement.

Defendant countered that its walk-through inspections were only to detect and advise Plaintiff of obvious dangers and safety violations, such as tripping and falling hazards, and were not structural engineering inspections of Plaintiff's buildings. Defendant contended that Plaintiff's claims were barred, in whole or in part, by its knowledge of the condition of the property prior to the purchase of the policies. Defendant asserted that Plaintiff had been aware of the problem for decades, evidenced by its receipt of a settlement from a 1965 lawsuit against the School's architect and contractor for damages sustained as a result of pyritic movement. Additionally, Plaintiff had received documentation from structural engineers that noted the continuing problems caused by the presence of pyrite, but refused to make the permanent repairs that were necessary to correct the situation. The engineers had reported that such extensive repairs to the School would be nearly cost-prohibitive.

Plaintiff's Counsel: John N. Ellison, Timothy P. Law, Nicholas M. Insua, Anderson Kill & Olick, P.C., Phila.

Defendant's Counsel: P. Brennan Hart, Jennifer R. Russell, William J. Wyrick, Pietragallo, Bosick & Gordon, Pgh.

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

Result: Verdict for Plaintiff in the amount of $4,506,000. The jury's verdict was molded to apply a $2,075,000 credit from Plaintiff's settlement agreement with the insurance carriers, which resulted in a final award against Defendant in the amount of $2,431,000.

MARCH/APRIL 2003 TRIAL TERM

GEORGE FELTES
V.
DAVID PEARSON, INDIVIDUALLY AND T/D/B/A PITTSBURGH RENAISSANCE FESTIVAL, INC.
NO. 7142 OF 2001

Cause of Action: Breach of Employment Contract—Wage Payment and Collection Law

The Pittsburgh Renaissance Festival is an annual event conducted exclusively by Pittsburgh Renaissance Festival, Inc. in Westmoreland County, Pennsylvania. Defendant presents performances, plays and skits to the general public. Defendant hired Plaintiff to prepare and maintain certain equipment, staging and other structures to be used by the festival. Plaintiff contended that the oral agreement provided that Plaintiff would be paid a total sum of $30,000, whereby Plaintiff would receive an hourly pay rate of $15.00 per hour as partial compensation pending receipt of sales money by Defendant. At that time, Plaintiff was to be paid $30,000 less the hourly wages received. At the conclusion of Plaintiff's work on December 29, 1999, Plaintiff had received $18,922.50 from Defendant. Plaintiff brought this action against Defendant for the $11,077.50 balance due Plaintiff, in addition to liquidated damages and attorney's fees pursuant to the Wage Payment and Collection Law, 43 Pa.C.S.A. § 260.10, et seq.

Defendant contended that the agreement provided only for the hourly wage, and that Plaintiff has been fully paid for the same. In new matter, Defendant alleged that each paycheck was issued in response to a written timesheet executed by Plaintiff. Defendant denied that Plaintiff was owed any additional monies. In the alternative, Defendant contended that Plaintiff's acceptance of payment for work performed constituted an accord and satisfaction of any claim. In its counterclaim, Defendant averred that Plaintiff was advanced a sum of $1,200, which was neither credited against wages due Plaintiff nor repaid to Defendant, and that Plaintiff appropriated Defendant's assets, the approximate value of which exceeded $700.00. Plaintiff denied appropriating any assets of Defendant.

Plaintiff's Counsel: Ronald L. Chicka, Gbg.

Defendant's Counsel: Gregory T. Nichols, Gbg.

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

Result: Molded verdict for Plaintiff in the amount of $17,346.87, which represented the jury's verdict of $11,077.50, liquidated damages under 43 P.S. § 260.10, in the amount of $2,769.37, and attorneys fees under 43 P.S. § 260.9(a)(f), of $3,500.00.

MARCH/APRIL 2003 TRIAL TERM

PATRICIA POZELOCK AND LOUIS POZELOCK, HER HUSBAND
V.
COUNTY OF WESTMORELAND
NO. 3296 OF 1997

Cause of Action: Negligence—Premises Liability

On March 7, 1997, at approximately 11:45 a.m., Plaintiff Patricia Pozelock fell while ascending two steps leading to the causeway bridge at Twin Lakes Park, which is owned and operated by Defendant. Plaintiff contended that the pedestrian bridge, which was open to the public, was dangerous because the two steps leading to the bridge were dangerously steep; the ground leading to the steps was uneven and unstable; and Defendant failed to construct a ramp to the bridge. Among other injuries, Plaintiff sustained a trimalleolar ankle fracture, which required surgery. Her husband claimed loss of consortium.

The Defendant denied that it owed a duty to Plaintiff, and denied that the causeway bridge contained any dangerous conditions. In new matter, Defendant asserted the doctrines of assumption of the risk, contributory negligence, governmental immunity, the provisions of the Recreation Use of Land and Water Act, 66 P.S. § 477-1, et

seq., and the provisions contained in 42 Pa.C.S.A. § 8553, whereby any insurance benefits received or to be received by Plaintiff would be deducted from any damages Plaintiff recovered from Defendant.

Plaintiffs' Counsel: David A. Neely, Goldberg, Kamin & Garvin, Pgh.
Defendant's Counsel: Peter B. Skeel, Summers, McDonnell Walsh & Skeel, Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict in favor of Defendant.

MAY/JUNE 2003 TRIAL TERM

RUTH K. HUBER, ADMINISTRATRIX OF THE ESTATE OF DOUGLAS HUBER, DECEASED
V.
SANJEEV JETHMALANI, M.D.
NO. 9362 OF 1995

Cause of Action: Negligence—Medical Malpractice—Wrongful Death Act—Survival Act

This medical malpractice action was brought against the defendant-physician, a specialist in pulmonary diseases, for the failure to test for pulmonary emboli. On November 29 and December 6, 1993, Douglas Huber was treated at the emergency department of the University of Pittsburgh Medical Center, was diagnosed with viral bronchitis and pneumonia, respectively, and was released. The defendant was consulted by Mr. Huber's attending physician when Mr. Huber presented to Latrobe Area Hospital, resulting in his admission on December 26, 1993. Mr. Huber had been treated for pneumonia for one month without any success. He exhibited signs and symptoms of shortness of breath, coughing up blood, pleural effusion on X-ray, pleuritic chest pain, increased white cell count, slight fever and chills. Mr. Huber was started on a course of antibiotics. On the eve of January 4 and into January 5, 1994, Mr. Huber suffered a sudden onset of pain and extreme shortness of breath. An angiogram was ordered by his attending physician, which revealed multiple pulmonary emboli. Mr. Huber was flown to Allegheny General Hospital, but died three days later on January 8, 1994. Plaintiff asserted that defendant was negligent in his early treatment of Mr. Huber because he ruled out pulmonary emboli as a possible diagnosis without testing for the same.

Defendant denied all allegations of negligence. While many signs and symptoms were consistent with pulmonary embolism, there was no evidence that such condition existed prior to January 4. Defendant noted that another pulmonary specialist had examined Mr. Huber the morning of January 4. Based upon the same record and information, that specialist had suggested a biopsy of the lung to rule out cancer and did not suspect pulmonary embolism. Defendant asserted that it is rare for pulmonary embolism to cause death in a 22-year-old male. Mr. Huber contracted a mysterious illness that produced a pulmonary embolism. Finally, these events occurred ten years ago. The jury was asked to decide how other physicians practicing in the specialty of pulmonary medicine with the same information and technology available to them would have acted under the same or similar circumstances.

Plaintiff's Counsel: Ned J. Nakles, Jr., Nakles & Nakles, Latrobe
Defendant's Counsel: Giles J. Gaca, Gaca Matis Baum & Rizza, Pgh.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Molded verdict for Defendant. Jury found that defendant was not negligent.

MAY/JUNE 2003 TRIAL TERM

RAMONA TROUT, PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES LEWIS STRICKLAND
V.
INDIANA COUNTY GUIDANCE CENTER
NO. 829 OF 1997

Cause of Action: Negligence—Medical Malpractice—Wrongful Death Act—Survival Act

On February 2, 1995, James Lewis Strickland was involuntarily admitted to Westmoreland Regional Hospital pursuant to the Mental Health Procedures Act (MHPA). Mr. Strickland exhibited signs of depression, suicidal and homicidal ideation, anxiety, alcohol dependency, polysubstance abuse and flight into health. On February 7, 1995, a discharge hearing was held and an order was signed committing him to mandatory outpatient treatment at the defendant mental health treatment facility until February 27, 1995. The order provided that Mr. Strickland was to appear at the

center on February 14, and, should he fail to appear, he would be taken to Westmoreland Regional Hospital for an additional thirty-day involuntary in-patient treatment. On February 14, Mr. Strickland failed to appear at his appointment. Plaintiff alleged that Mr. Strickland attempted to reschedule his appointment several times via telephone between February 15 and February 21. On February 21, he was able to reschedule the appointment for February 23. On February 22, Mr. Strickland died from a self-inflicted gunshot wound to the head. Plaintiff argued that the grossly negligent acts of defendant in failing to comply with the mandatory discharge order, failing to diagnose Mr. Strickland as suffering from suicidal ideation with intent to commit and/or in failing to institute proper diagnostic measures to discover and treat his condition in a timely manner resulted in Mr. Strickland's commission of suicide on February 22. Plaintiff sought compensatory damages pursuant to the wrongful death and survival acts.

Defendant denied that there was a mandatory involuntary outpatient treatment order. In the alternative, if such order existed, defendant denied that it had any knowledge or notice of the mandatory order. After Mr. Strickland missed his February 14 appointment, defendant contended that its employee received one phone call from him on February 15 to reschedule. The employee advised Mr. Strickland to come to the center to complete paperwork and that no appointment was necessary. Defendant denied that there was any misdiagnosis or failure of defendant to institute appropriate diagnostic measures. Because Mr. Strickland failed to appear at his February 14 appointment and come to the center as requested, defendant had no opportunity to diagnose or treat Mr. Strickland. Defendant asserted the affirmative defense of qualified immunity pursuant to the MHPA, 50 P.S. § 7114.

Plaintiff's Counsel: Victor H. Pribanic, Pribanic & Pribanic, P.C., White Oak

Defendant's Counsel: Kristen L. Pieseski, Davies, McFarland & Carroll, P.C., Pgh.

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

Result: Molded verdict for Defendant. Jury found no gross negligence on the part of defendant.

MAY/JUNE 2003 TRIAL TERM

ANNA MARIE TERPKO, AN INDIVIDUAL
V.
JEANNETTE GARDENS ASSOCIATES, A PENNSYLVANIA LIMITED PARTNERSHIP
NO. 5281 OF 1999

Cause of Action: Negligence—Premises Liability

Defendant was the owner, manager and leasing agent of Jeannette Garden Apartments. Plaintiff, who is confined to a wheelchair, was a tenant at the apartment complex. At approximately 10:00 p.m. on October 13, 1998, plaintiff's son was pushing plaintiff up the curving sloped ramp in front of the main entrance, which served as the only handicapped access available to plaintiff. As he made the bend at the top of the hill, the front wheels of the wheelchair came in contact with landscaping railroad timber that protruded into the ramp route. Plaintiff fell out of the wheelchair, hitting her head and side upon the concrete sidewalk. Plaintiff alleged that a dangerous condition existed because the area was poorly lit and the timber was hidden by overgrown plantings. Plaintiff suffered head contusions, left knee bruise and swelling and multiple fractures of the left distal femur requiring surgery and extended rehabilitation.

Defendant asserted the affirmative defenses of contributory/comparative negligence and voluntary assumption of the risk because she traversed the sidewalk with awareness of the presence of the retaining wall. Should a jury find a dangerous condition to have existed, defendant maintained that the existence and position of the retaining wall and the potential consequences of running into it were open, obvious and known to plaintiff and her son. Defendant also averred that plaintiff's injuries were caused by her son's negligence.

Plaintiff's Counsel: Barry J. Palkovitz, Palkovitz Law Office, White Oak

Defendant's Counsel: Thomas W. Smith, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Plaintiff in the amount of $62,500.00. Jury assigned 50% contributory negligence to plaintiff.

MAY/JUNE 2003 TRIAL TERM

WILLIAM C. SCHLOSSER AND BESSIE M. SCHLOSSER, HIS WIFE
V.
ROBERT B. BOYLE, TRUSTEE UNDER THE EMMETT C. BOYLE, JR., REVOCABLE TRUST DATED 11/9/87
NO. 1695 OF 2000

Cause of Action: Negligence—Premises Liability—Loss of Consortium—Arbitration Appeal

On March 18, 1998, plaintiff-husband was involved in a slip and fall at the Midtown Plaza in Greensburg. The defendant owned the leasehold interest in and to the premises. Plaintiff was a business invitee. Public access to the businesses in the plaza was provided by a stairway and hallway. As plaintiff entered the premises, a piece of wax paper and an accumulation of water on the stairway caused him to slip and fall. Plaintiff's injuries included those to his ribs and hip, numbness in his hands and arms, blood clot in his left leg and other soft tissue injuries. Plaintiff-wife claimed loss of consortium.

In new matter, defendant asserted that plaintiff's injuries, losses and damages were caused and/or contributed to by the negligence or carelessness on the part of other individuals or entities for whom the defendant was neither liable nor responsible. Defendant also averred that plaintiff's injuries were sustained as the result of independent or intervening causes over which defendant had no control or in any way participated.

Plaintiffs' Counsel: Scott A. Fatur, David K. Lucas & Associates, Gbg.
Defendant's Counsel: John V. DeMarco, Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict for Defendant.

MAY/JUNE 2003 TRIAL TERM

HELEN DAWN WOODLEY AND CLAUDE G. WOODLEY, HER HUSBAND
V.
JAYNE E. LIGHTHEART
NO. 7558 OF 2000

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

This motor vehicle accident occurred on a private road off Jacob Miller Road Extension in Ligonier Township on December 18, 1998, at approximately 8:15 a.m., Plaintiff-wife was operating a vehicle owned by her husband in a southerly direction on the private road, while Defendant was traveling north on the same. Plaintiff alleged that defendant's vehicle crossed the center of the road and collided head-on with plaintiff's vehicle. The accident occurred near the crest of a small hill, and one tree flanked the road on each side. Plaintiff's injuries included laceration of the tongue in two places, a herniated disk, carpal tunnel syndrome in her left arm, aggravation of an existing neck and back condition, aggravation of a possible sleep disorder (apnea), as well as various sprains, strains and contusions. Plaintiff-husband sought to recover for damage to his vehicle.

Defendant denied liability for the accident. In new matter, defendant asserted the contributory/comparative negligence of plaintiff in being inattentive, operating her vehicle too fast for conditions and across the center line, and in failing to yield to defendant's vehicle and/or stop within the assured clear distance ahead to avoid the collision. Defendant also claimed that plaintiff's cause of action was subject to and limited by the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law, as amended.

Plaintiffs' Counsel: Jon M. Lewis, Gbg.
Defendant's Counsel: Amy M. DeMatt, Mears, Smith, Houser & Boyle, PC, Gbg.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict for Defendant. Jury found that defendant was not negligent.

JULY 2003 TRIAL TERM

DONALD C. SMILLIE
V.
GENERAL MOTORS CORPORATION, A CORPORATION, A/K/A GENERAL MOTORS CORPORATION CHEVROLET DIVISION AND RIEHLE CHEVROLET, INC., D/B/A STAR CHEVROLET, ORIGINAL DEFENDANTS
V.
LUELLA R. BOSTON AND MARION A. JAREK, ADDITIONAL DEFENDANTS
NO. 8684 OF 1987

Causes of Action: Product Liability (Negligence, Strict Liability and Breach of Warranty)—Bifurcated Trial Limited to Causation and Damages

On December 11, 1985, at approximately 5:05 p.m., Plaintiff was operating his 1984 Chevrolet Cavalier in a westerly direction on East Pittsburgh Street in the City of Greensburg, Westmoreland County, at its intersection with North Urania Avenue, when he was involved in a three-car motor vehicle accident. Plaintiff stopped his vehicle in response to a traffic signal at the intersection. Additional Defendant Marion A. Jarek brought her vehicle to a complete stop behind plaintiff's vehicle. Additional Defendant Luella R. Boston, however, failed to stop her vehicle and struck Ms. Jarek's vehicle from behind, forcing the Jarek vehicle into the rear of the plaintiff's vehicle.

Plaintiff alleged that he was thrown backward upon collision because the driver's seat of his vehicle tipped rearward unexpectedly. As a result, plaintiff was thrown into the back seat, hitting his head against various parts of the automobile. Plaintiff brought suit against GM for designing, manufacturing and assembling the 1984 Chevrolet Cavalier so as to cause the driver's seat to tip rearward upon collision. Plaintiff argued that the seat collapsed, when it should have remained upright. Plaintiff alleged injuries, including, but not limited to, a herniated disc of the C5-6 region, which required surgery and fusion, and exacerbation of pre-existing medical conditions. Plaintiff claimed that prior accidents resulted in only short periods of treatment, and that he worked five years prior to the collision without neck, shoulder and leg pain. Plaintiff sought lost wages for the period of approximately ten months that he was unable to work because of said injuries. Plaintiff claimed that he was reduced to light-duty work after the 1985 accident until he suffered a stroke in 1997.

GM denied that the seat in the 1984 Chevrolet Cavalier vehicle failed to perform, and maintained that it was reasonably safe for its intended purposes and uses, including, but not limited to, the driver's seat area. GM denied that a failure of the seat to perform caused any injury or exacerbation of the same to the plaintiff. Defendant's position at trial was that the seat yielded and deformed as designed to absorb energy that would otherwise be borne by the occupant. Defendant did not dispute that plaintiff suffered a neck injury, which required surgery six months following the accident, but asserted that the same was caused by the rear impact and not the seat. Defendant brought out prior and subsequent injuries sustained by the plaintiff. Among those incidents and prior to the 1985 accident, plaintiff had two falls at work where he fell twelve feet, sustaining fractures to his neck and spine. Following the 1985 collision, plaintiff was involved in a vehicle accident where his truck rolled over while he was unrestrained. Defendant also maintained that the release entered into by plaintiff with the additional defendants operated as a complete bar to recovery against defendant.

The trial was bifurcated. In this initial trial limited to causation and damages, the jury was asked to determine if Ms. Boston's negligence was a substantial factor in bringing about plaintiff's injuries, whether the seat broke upon impact, whether the breaking of the seat was a substantial factor in causing plaintiff's injuries, apportionment of liability, and the amount of money damages awarded to plaintiff for all injuries sustained in the accident.

Plaintiff's Counsel: David L. Robinson, Gbg.

Counsel for General Motors Defendants: Evan A. Burkholder, McGuireWoods, LLP, Richmond, Va.; and Brian K. Parker, McGuireWoods, LLP, Pgh.

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

Result: Molded verdict in favor of GM. Jury found that the seat did not break. Jury awarded $300,000.00 to Plaintiff as against Luella R. Boston, who had previously entered into a release with the Plaintiff. That verdict was reduced by $15,000 for first-party benefits previously paid to Plaintiff based upon stipulation of the parties.

JULY 2003 TRIAL TERM

HELEN W. WISE AND WILLIAM WISE, HUSBAND AND WIFE
V.
JOEL M. KICHLER, M.D.
NO. 6707 OF 2000

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

This medical malpractice action stems from an operative procedure performed by Defendant Joel M. Kichler, M.D. at Citizens General Hospital on October 30, 1998. At that time, Plaintiff Helen W. Wise underwent esophagogastroduodenoscopy (EGD) in an attempt to dilate an esophageal stricture. During the course of that procedure, Dr. Kichler perforated plaintiff's cervical esophagus. Plaintiff sustained various injuries, including esophageal perforation and excessive bleeding, all of which required her to undergo additional surgeries to repair the perforation and to treat various complications resulting therefrom. Plaintiffs alleged Dr. Kichler failed to perform the procedure in accordance with the appropriate standards of care in, among other things, failing to discontinue the procedure when he knew or should have known that to continue would cause harm to the plaintiff, and in allowing the procedure to be performed by a nurse anesthetist. Plaintiff also alleged battery based upon lack of informed consent, while her husband claimed loss of consortium.

Dr. Kichler argued that he properly provided medical treatment, and that the procedure was medically necessary and appropriate based upon the patient's symptoms. In his pre-trial statement, Dr. Kichler asserted that he had been consulted two days after plaintiff had been admitted for other symptoms as a result of severe esophageal stricture that caused her difficulty in swallowing. The procedure presented difficulties due to the medical condition of the patient at that time. Despite multiple attempts to pass the endoscope through the esophagus, defendant was unable to pass the scope beyond the posterior pharynx. A nurse anesthetist attempted to directly look at the larynx and she and defendant made further attempts to pass the endoscope. After numerous attempts, the nurse advised that she believed she had inserted the scope into the esophagus. Upon visualization, however, Dr. Kichler noted that the area was hemorrhagic. A perforation of the cervical esophagus was confirmed by CT scan and was surgically repaired by an otolaryngologist.

Plaintiffs' Counsel: George M. Kontos, Swensen Perer & Kontos, Pgh.

Counsel for Defendant Joel M. Kichler, M.D.: Ronald M. Puntil, Jr., Israel, Wood & Puntil, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Defendant. Jury found no negligence and that there was informed consent.

JULY 2003 TRIAL TERM

BILLIE SALSER, JR. AND PATRICIA SALSER, HIS WIFE
V.
DAYS INN
NO. 2344 OF 2001

Cause of Action: Negligence—Premises Liability—Loss of Consortium

Plaintiff Billie Salser, Jr. was a business invitee at Defendant Days Inn's establishment in Donegal, Westmoreland County. At approximately 9:00 a.m. on January 31, 2000, plaintiff exited his motel room to walk to his automobile. While cleaning off fresh snow from his vehicle, plaintiff slipped and fell on snow and ice that had accumulated overnight on defendant's parking lot. Plaintiff alleged that this overnight accumulation fell upon previously existing snow and ice, which created hills and ridges and an uneven, slippery, dangerous and hazardous walking surface. Plaintiff averred that defendant failed to exhaust reasonable efforts and measures to remove snow and ice from the lot, particularly when defendant knew or should have known that patrons would attempt to access their vehicles in the morning. Plaintiff also claimed that defendant failed to salt and/or chemically treat the lot to prevent accumulation or to increase traction, and failed to warn patrons of an inherently dangerous condition that existed on the parking lot. Injuries included a right ankle fracture, which failed to completely heal, a closed head injury with resulting cognitive defects, visual disturbances (blurred vision, vertigo), severe headaches, nausea, vomiting, right ulnar neuropathy, seizure disorder, and post-traumatic osteo-arthritis of the right ankle and subtalar joint. His wife claimed loss of consortium.

Defendant denied that hills and ridges existed on its parking lot or that an uneven, slippery, dangerous or hazardous walking surface existed. Defendant denied that it allowed any dangerous accumulation of ice or snow and that such

action contributed to or was the proximate cause of plaintiff's alleged injuries. In new matter, defendant averred that all injuries and damages alleged in plaintiff's complaint were due to the negligence of other entities. In its pre-trial statement, defendant denied plaintiff's claimed permanency as to the ankle fracture and closed head injury, which plaintiff contended rendered him totally, permanently disabled. Defendant attempted to prove that plaintiff did not have a closed head injury, that his ankle fracture had totally healed, that the only residual effect of the fracture is mild post-traumatic arthritis and that he is capable of returning to medium-duty work on a full-time basis without restrictions.

Plaintiff's Counsel: Todd Berkey, Edgar Snyder & Associates, LLC.

Defendant's Counsel: John L. Kwasneski, Eiseman, Myers and Liero, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for Plaintiff in the amount of $321,922.11. Jury awarded $643,844.22, but attributed 50% contributory negligence to Plaintiff. No award for loss of consortium.

SEPTEMBER/OCTOBER 2003 TRIAL TERM

THEODORE A. MAKARA AND KAREN A. MAKARA
V.
PLUM BOROUGH, ANDREW McNELIS, CITY OF NEW KENSINGTON AND FRANK C. GEROMITA
V.
THE ESTATE OF ROGER JAMES SCHMIDT, JOHN L. FRIEDMAN, AND DIANE SWETOS IN THEIR CAPACITY AS THE ADMINISTRATORS OF THE ESTATE OF ROGER JAMES SCHMIDT, ADDITIONAL DEFENDANTS
NO. 1954 OF 1999

Cause of Action: Negligence— Police Officers' Pursuit of Vehicle

Plaintiffs alleged that on September 12, 1998, at approximately 2:30 a.m., the defendant police officers negligently commenced a high-speed chase of a vehicle driven by Roger J. Schmidt, who evaded a DUI sobriety checkpoint in Plum Borough near the Westmoreland County/City of New Kensington border. The pursuit was initiated by defendant McNelis and continued into New Kensington, where defendant Geromita joined in the pursuit. At approximately two miles from the checkpoint, the Schmidt vehicle failed to negotiate a curve in the road and collided head on with the vehicle operated by plaintiff, who was traveling in the opposite direction. Schmidt was killed instantly; plaintiff was life-flighted to UPMC Presbyterian Hospital, where he remained until October 30, 1998. His injuries included a sternal fracture, closed left femur fracture, right distal ankle fracture of the talus, left tibia fracture and broken right hand and ribs. Complications included acute renal failure, staph infection and cardiac arrest during a CAT scan. On September 29, a right below-knee amputation was performed. He was treated at Harmarville Rehabilitation for a year and a half, and has been unable to return to work as a construction laborer. Wife-plaintiff asserted loss of consortium.

The defendants averred that their actions were at all times reasonable, prudent, justified, proper and in keeping with their duties and obligations as law enforcement officers. Defendant McNelis stated that he observed Schmidt evade the checkpoint, so he attempted to affect a traffic stop. Schmidt then accelerated his vehicle and appeared to swerve toward another Plum Borough police officer who was engaged in a traffic stop further down the road. McNelis initially pursued Schmidt, but after observing him continue to accelerate and commit a number of traffic violations, McNelis slowed to a slack pursuit mode in order to monitor the vehicle and attempted only to keep the Schmidt vehicle in view at a distance. Defendant Geromita stated that he did not know the initial cause of the pursuit, but observed Schmidt nearly hit another police officer at a traffic stop. Geromita followed McNelis to render assistance, if necessary. Geromita contended that he acted only in a backup/assistance capacity with respect to the pursuit.

Plaintiff contended that failure to stop at a DUI checkpoint did not justify a police chase; that defendants only had probable cause to believe that Schmidt committed either summary offenses or misdemeanors for which he could have been cited and/or arrested in due course; that defendants' actions caused unreasonable risk of harm to innocent motorists and placed the public at large in imminent danger; and that the continuing pursuit was unwarranted because the vehicle did not, except for the pursuit, pose an immediate threat to public safety. Plaintiff argued that the defendants waived any immunity defenses under the Pennsylvania Political Subdivision Tort Claims Act (PSTCA).

Defendant McNelis contended that he had probable cause to believe that Schmidt had committed a felonious assault based upon Schmidt's conduct as observed by McNelis, and had probable cause to believe that Schmidt's further operation of his vehicle that night might constitute a serious danger to the public health and safety. Defendants asserted the doctrines of governmental and official immunity under the PSTCA, and that plaintiff's damages were caused solely by the superseding, intervening criminal conduct of a third party beyond their control. Schmidt's estate was joined for contribution and indemnity.

Plaintiffs' Counsel: James R. Mall, Meyer, Unkovic & Scott LLP, Pgh.

Counsel for Defendant Plum and McNelis: Paul D. Krepps, Marshall, Dennehey, Warner, Coleman & Goggin, P.C.

Counsel for Defendant New Kensington and Geromita: John M. Giunta, Zimmer Kunz P.L.L.C.

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

Result: Molded verdict in favor of all defendants. Jury found that defendant police officers were not negligent in the operation of their vehicles.

Author's note: an identical verdict had been reached in a summary jury trial.

SEPTEMBER/OCTOBER 2003 TRIAL TERM

LEILA M. SPAUN
V.
DONEGAL MUTUAL INSURANCE COMPANY
NO. 4109 OF 1996

Cause of Action: Insurance— Breach of Contract—Bad Faith

This dispute arose from the defendant-insurance company's cancellation of plaintiff-insured's policy of automobile insurance upon its determination that plaintiff untimely paid insurance premiums. Plaintiff alleged that she mailed her premium payment in the amount of $191.50 on October 10, 1994, but defendant rejected the same as untimely and cancelled plaintiff's coverage on said policy. On October 17, plaintiff was involved in a motor vehicle accident. Plaintiff averred that defendant did not notify her until October 20 that her coverage had been cancelled effective October 12, 1994, for non-payment of the premium. The cancellation notice indicated a due date of October 12 and receipt of plaintiff's check on October 17. Defendant refused to provide coverage for plaintiff's injuries suffered in the October 17 accident. Plaintiff lost her full tort coverage and was considered by law to hold limited tort status. Because of the termination of coverage, she could claim neither non-economic loss nor first party benefits. In addition to breach of contract, plaintiff claimed that the defendant acted in bad faith by unjustifiably canceling coverage upon receiving notice of an automobile accident and in retroactively canceling her policy based upon non-payment of premiums, which, in fact, were forwarded to defendant on a timely basis.

Defendant averred that plaintiff did not pay the premium due on or before September 9. On September 21, defendant sent a cancellation notice to plaintiff, which informed her that the policy was cancelled if payment was not received on or before October 12. Defendant received plaintiff's check on October 17. On October 19, defendant returned plaintiff's check and again informed her that her insurance coverage was cancelled effective October 12. Defendant asserted that plaintiff's claims were barred because defendant properly cancelled the insurance policy. Plaintiff had also filed a complaint with the Pennsylvania Insurance Department. Defendant contended that plaintiff was barred or estopped from asserting a claim against defendant for cancellation of her policy because the Pennsylvania Insurance Department had determined that defendant did not violate any insurance statute or regulation.

Plaintiff's Counsel: Timothy Paul Dawson, Adamsburg

Defendant's Counsel: Lee Demosky, Meyer, Darragh, Buckler, Bebenek & Eck, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of defendant. Jury found that defendant did not receive plaintiff's premium on or before October 12, 1994, and that defendant properly cancelled plaintiff's policy due to her failure to pay the premium by its due date of October 12, 1994.

SEPTEMBER/OCTOBER 2003 TRIAL TERM

CARL KURINKO
V.
LAUREL MOUNTAIN SKI COMPANY, A PENNSYLVANIA CORPORATION
NO. 338 OF 2001

Cause of Action: Negligence—Premises Liability

On January 25, 2000, plaintiff was a visitor/invitee at the defendant's resort in Ligonier. As he walked from the parking lot to the main lodge, he slipped and fell on an accumulation of ice and snow in an area that was also used by skiers. Plaintiff contended that defendant was negligent, inter alia, in failing to construct or maintain an appropriate walkway to the resort, free and clear of ice and snow, to insure the safety of its patrons. Plaintiff sustained a displaced fracture of the mid-shaft of the right clavicle.

Defendant averred that plaintiff was aware of the risks of walking on a slippery surface, chose to walk and assumed the risk of injury. Defendant contended that plaintiff was negligent in failing to keep a proper lookout, in placing himself in an area which he knew or should have known posed danger; in wearing improper footwear, in walking too fast for conditions and in failing to use due care and caution under the circumstances.

Plaintiff's Counsel: Jerome L. Tierney, North Huntingdon
Defendant's Counsel: Gerard J. Cipriani, Cipriani & Werner, P.C., Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict in favor of defendant. Jury attributed 51% causal negligence to the plaintiff.

SEPTEMBER/OCTOBER 2003 TRIAL TERM

DAWNA MACIOCE AND RICK MACIOCE, HER HUSBAND
V.
ERNEST E. LONG
NO. 435 OF 2000

Cause of Action: Negligence—Motor Vehicle Accident

This motor vehicle collision occurred on April 8, 1998, at approximately 11:15 p.m. on Route 30 in Hempfield Township. Plaintiff was a passenger in an F150 Ford Truck operated by her husband. They were traveling in the outermost lane of the four-lane highway near Christopher's Pizza Shop. Plaintiff alleged that the Cadillac vehicle driven by defendant was traveling in the same lane at a high rate of speed when it negligently struck the rear end of the vehicle occupied by plaintiff. In his pre-trial statement, defendant contended that upon crossing into the outer lane of travel, he encountered the plaintiffs' pickup truck, which was either stopped or slow-moving. Defendant argued that he did not have time to stop and impacted the rear of the pickup.

Plaintiff sought emergent treatment for cervical strain, muscle strain and spasm. She returned to the hospital on April 12, 1999, for numbness in her left arm, and pain and swelling in her neck. She received numerous shots to the shoulder and neck for pain. Plaintiff had three operations on her left shoulder and left side of her neck, and is scheduled for a fourth operation. Plaintiff claimed that she was unable to work for approximately two and one-half years because of these injuries and lost her employment due to the length of time she was off work. Husband-plaintiff submitted a claim for loss of consortium.

Plaintiffs' Counsel: Robert M. Stefanon, Herminie; Donald R. Rigone, Fisher, Long & Rigone, Gbg.
Defendant's Counsel: John M. Noble, Meyer, Darragh Buckler Bebenek & Eck, Gbg.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Molded verdict for plaintiff in the amount of $30,000. No award for husband-plaintiff for loss of consortium.

SEPTEMBER/OCTOBER 2003 TRIAL TERM

PATRICIA A. RODGERS AND DAVID H. CULLIS
V.
JAMES BEERE, DECEASED
NO. 6927 OF 1999

Cause of Action: Negligence—Motor Vehicle Accident

Plaintiffs were involved in a motor vehicle collision that occurred in North Huntingdon Township on December 22, 1997, at approximately 6:40 p.m. at the intersection of Route 30 and the entrance to Kenny Ross Chevrolet. Plaintiff Patricia Rodgers was a passenger in a vehicle operated by her husband, plaintiff David Cullis. Plaintiffs were traveling west on Route 30 and stopped to allow traffic to clear before turning south into the entrance of Kenny Ross Chevrolet. Plaintiffs contended that the turn signal on their vehicle was properly activated. The defendant, James Beere, was traveling directly behind the plaintiffs' vehicle. Plaintiffs averred that defendant failed to stop, causing the front of defendant's vehicle to collide with the rear of plaintiffs' vehicle. Plaintiff Rodgers sustained injuries of disc herniation of L3-4, disc bulge and facet hypertrophy at L4-5, narrowing of the neurofaremen at L5-S1, blunt force trauma to the left index finger and soft tissue injuries. Plaintiff Cullis also sustained soft tissue injuries. Both asserted claims for loss of consortium.

Defendant denied that he operated his vehicle in a negligent, careless or reckless manner, and contended that he at all times acted reasonably and with due care. In new matter, defendant asserted the affirmative defenses of contributory/comparative negligence, the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL), as amended, and that plaintiffs' injuries were caused solely by third parties over which defendant has no control.

Plaintiffs' Counsel: Ned J. Nakles, Jr., Nakles and Nakles, Latrobe

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

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of defendant.

SEPTEMBER/OCTOBER 2003 TRIAL TERM

JOSEPH A. LAWRENCE AND JOAN M. LAWRENCE, HIS WIFE
V.
RALPH P. CRONIN
NO. 1959 OF 1998

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

On April 13, 1996, at approximately 12:45 p.m., husband-plaintiff was operating his pickup truck, in which his wife was a passenger, in an easterly direction on State Route 130 in Unity Township. The defendant was driving his pickup truck in a northerly direction on State Route 981 at its intersection with Route 130. Plaintiff alleged that due to the negligence of the defendant, the plaintiff's pickup truck was caused to run into and collide with the pickup truck of defendant. Plaintiffs averred that defendant was negligent, inter alia, in failing to stop at the intersection of State Routes 981 and 130 in disregard of a flashing red signal and in failing to yield the right-of-way to the plaintiff's vehicle. Husband-plaintiff sustained cervical stiffness, posterior bilateral shoulder pain and discomfort, closed avulsion fracture of the proximal phalanx of the left thumb and various soft tissue injuries. Wife-plaintiff claimed recurring frequent migraine headaches, contusions of the right knee and right leg, cervical crepitus on right and left lateral rotation, cervical strain and sprain and soft tissue injuries.

The defendant denied that plaintiffs' injuries were caused by any negligence of defendant. Defendant asserted the affirmative defenses of contributory negligence/assumption of the risk of husband-plaintiff in operating his vehicle at an unsafe speed and in failing to slow his vehicle at a flashing yellow light. Defendant also asserted any and all defenses available to him under the Pennsylvania MVFRL, as amended, including its limited tort provisions.

Plaintiffs' Counsel: Denis P. Zuzik, Gbg.

Defendant's Counsel: Robert A. Loch, Robb, Leonard & Mulvihill, Pgh.

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

Result: Summary jury found defendant's negligence was a factual cause of plaintiffs' injuries, but that plaintiffs did not suffer serious impairment of a bodily function.

NOVEMBER/DECEMBER 2003 TRIAL TERM

JEFFREY FENNELL AND CHRISTINE FENNELL, HIS WIFE
V.
CRYSTAL PIOVESAN
NO. 3104 OF 1999

Cause of Action: Negligence— Motor Vehicle Accident

This pedestrian/motor vehicle accident occurred on June 14, 1997, at Hempfield Plaza in Hempfield Township, Westmoreland County. Husband-plaintiff was giving directions to a motorist in the travel lane of the parking lot of the McDonald's restaurant building. The defendant's automobile was parked in a stall immediately behind where plaintiff was standing. The defendant backed up and collided with plaintiff, knocking him against the stopped vehicle of the motorist who had asked for directions. Plaintiff claimed severe and permanent injuries to his legs and knees (bruises and contusions), strains and sprains of the muscles, tendons, nerves and ligaments, and injuries and soreness to his neck, cervical region, shoulders, back, head and face, chest, stomach, arms, hips and buttocks. Wife claimed loss of consortium.

Defendant denied negligence and asserted that she acted reasonably and with due care in the operation of her vehicle. In new matter, defendant raised the affirmative defenses of the Pennsylvania Comparative Negligence Act, assumption of the risk of the defendant in knowingly subjecting himself to risk of the injury/damage incurred, and the Pennsylvania Motor Vehicle Financial Responsibility Law (MVFRL), as amended by Act 6, including but not limited to its "limited tort" provisions.

Plaintiffs' Counsel: John N. Scales and Brian Aston, Scales and Murray, Gbg.

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

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

Result: Verdict for defendant on non-economic damages claim. Jury found that plaintiff did not sustain a serious injury. Directed verdict on causation/liability issue because defendant's expert physician testified that this accident caused soft tissue injuries to the plaintiff. Molded verdict entered on stipulation of the parties to pay plaintiff's economic claim of $6,780.78.

NOVEMBER/DECEMBER 2003 TRIAL TERM

DAWN JOHNSON
V.
FRANK SANTAMARIA, M.D.
NO. 7649 OF 1996

Cause of Action: Professional Negligence —Medical Malpractice

The plaintiff brought this malpractice action against the defendant-physician for the failure to diagnose Crohn's disease. Plaintiff averred that defendant failed to render reasonable health care under the circumstances in failing to order tests and diagnostic procedures required, including oscopy and barium enema, to rule out the possibility of Crohn's disease; in performing an unnecessary laparotomy with appendectomy on plaintiff; in failing to take a correct and proper history from her so as to be able to properly diagnose her condition on November 11, 1994; and, in that plaintiff was required to undergo additional surgeries and medical treatment as a result of defendant's failure to diagnose. Husband brought a claim for loss of consortium.

Defendant averred that all care rendered to plaintiff by him was in accordance with accepted standards of medical practice, that no negligent care was rendered to plaintiff, and that no act of defendant directly and proximately caused harm to plaintiff.

Plaintiff's Counsel: Frank R. Fleming, III, Frank R. Fleming, III, P.C., Pgh.

Defendant's Counsel: Henry M. Sneath, Kathryn M. Kenyon, Picadio McCall Miller & Norton, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of the defendant. Jury found that defendant was not negligent.

NOVEMBER/DECEMBER 2003 TRIAL TERM

MARWAN E. SADEKNI AND ANNETTE R. SADEKNI, HIS WIFE
V.
JEFFREY A. MONSOUR, INDIVIDUALLY, AND JEFFREY A. MONSOUR, D/B/A MONSOUR CONSTRUCTION
NO. 5034 OF 1998

Cause of Action: Breach of Contract

In March 1997, plaintiff-homeowners entered into a written contract with the defendant as a general contractor or builder to construct a 2,900 square foot addition to plaintiffs' residence. The total cost of the work to be performed by defendant was $142,500.00. The complaint specifically enumerated defendant's alleged delays, improper installation and failure to complete certain work, which plaintiffs asserted constituted material breaches of the contract. Plaintiffs requested damages in the amount of $60,451.15.

Defendant asserted that the work was completed in a commercially reasonable fashion and in such a manner as to pass without objection in the construction industry. Defendant averred that plaintiffs agreed to pay defendant an additional sum of $22,500.00 for completion of numerous and extensive modifications, but only tendered $5,600.00 for the extra work. Defendant claimed that plaintiffs' failure to pay an outstanding balance of $16,900.00 represented a material breach of contract, which relieved defendant from completing any remaining work yet to be performed. Defendant sought $16,900.00 in a counterclaim filed against the plaintiff.

In reply to defendant's new matter, plaintiff averred that many changes were necessitated by the defendant's failure to follow architectural drawings and specifications.

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

Defendant's Counsel: Francis R. Murrman, Gbg.

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

Result: Molded verdict for defendant on his counterclaim against plaintiffs in the amount of $6,600.00. (Jury found that Mr. Monsour fulfilled his obligations under the contract and that the Sadeknis materially breached the contract.)

NOVEMBER/DECEMBER 2003 TRIAL TERM

TERRY T. BELZER, INDIVIDUALLY AND AS ADMINISTRATOR OF
THE ESTATE OF TAMMY S. BELZER, DECEASED
V.
JOHN A. PASKAN AND ELIZABETH M. PASKAN, CO-ADMINISTRATORS OF
THE ESTATE OF ANDREW J. PASKAN, DEFENDANTS
V.
WEST PENN POWER AND TIMOTHY C. SZOLEK, ADDITIONAL DEFENDANTS
NO. 4844 OF 2002

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

This accident occurred on July 31, 2000, at approximately 10:53 p.m. on State Road 119 in East Huntingdon Township, Westmoreland County. Husband-plaintiff, Terry T. Belzer, was operating a truck in which wife-plaintiff was a passenger. The complaint alleged that plaintiffs' truck was in a stationary position on the far right northbound lane of SR 119, with emergency lights activated due to a tractor-trailer that had wrecked in front of plaintiffs. Plaintiffs alleged that defendants' decedent, Andrew J. Paskan, was traveling directly behind plaintiffs at a high rate of speed, when he failed to stop his vehicle, colliding into the rear of plaintiffs' vehicle. Husband-plaintiff claimed serious injury to his neck and back, numbness in both legs, injury to the groin, numbness and pain in his right shoulder, arm, elbow and hand, right lateral epicondylitis, cervical radiculopathy and muscle spasms of the cervical spine. Plaintiffs' policy of insurance provided full tort coverage.

The defendants joined the additional defendants, West Penn Power Company and Timothy C. Szolek, the operator of a vehicle owned by West Penn Power at the time of the accident, for contribution and/or indemnity. Defendants alleged that at the time of the accident, Mr. Szolek caused his vehicle to cross the medial strip into the northbound lanes of SR 119 into the path of the vehicles driven by Mr. Belzer and Mr. Paskan.

Additional defendant averred that he was operating his motor vehicle in a reasonable and prudent manner within the right-hand southbound lane of SR 119 when, suddenly and without warning, one of the vehicle's tires failed or blew, which caused the vehicle to cross the medial strip onto the northbound lanes of SR 119. Mr. Szolek alleged that his vehicle came to a stop without making contact with the vehicle driven by Mr. Belzer, after which time Mr. Paskan failed to bring his vehicle to a stop before colliding with the rear of the stationary Belzer vehicle. New matter pursuant to Rule 2252(d) was filed against the original defendants for contribution and/or indemnity.

Plaintiffs' Counsel: Thomas E. Crenney and Mark Neff, Thomas E. Crenney & Assoc., P.C., Pgh.

Defendants' Counsel: Michael C. Maselli, Law Office of Marianne C. Mnich, Pgh.

Additional Defendants' Counsel: John M. Noble, Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C., Gbg.

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

Result: Jury found that Mr. Belzer sustained damages in the amount of $6,000.00, attributing 75% negligence to Mr. Paskan and 25% negligence to Mr. Szolek. (Wife-plaintiff's claims were settled prior to summary jury trial.)

NOVEMBER/DECEMBER 2003 TRIAL TERM

FABIAN M. GIOVANNAGELO
V.
LAWRENCE MERVA
NO. 2539 OF 2000

Cause of Action: Negligence—Motor Vehicle Accident

On May 25, 1998, at 8:33 p.m., the plaintiff was traveling north on Ligonier Street, at or near its intersection with Cedar Street, in Latrobe, Westmoreland County. The defendant was operating his vehicle in a southerly direction on Ligonier Street. Plaintiff averred that the defendant attempted to make a left turn directly across and into the path and lane of the plaintiff, causing their vehicles to collide. Injuries included a disc herniation at T2-3; an injury to the discs at C5-6 and C6-7; injury to the cervical and thoracic spines; injury to his left shoulder and arm; acute sprain to the cervical and thoracic paraspinal musculature; and a cervical strain with nerve impingement in the left trapezeous region.

The defendant denied all allegations of negligence and asserted the affirmative defenses of contributory/comparative negligence and assumption of the risk. Defendant also raised the provisions of the Pennsylvania MVFRL and its amendments known as Act 6. At trial, defendant contended that plaintiff was speeding. He also contested the scope of the plaintiff's injuries and that plaintiff's injuries were related to this accident.

Plaintiff's Counsel: Richard H. Galloway and Joyce Novotny-Prettiman, QuatriniRaffertyGalloway, P.C., Gbg.

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

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict for plaintiff in the amount of $59,500.00. (Jury awarded total damages in the amount of $85,000.00, but attributed 30% causal negligence to plaintiff.)