JANUARY/FEBRUARY 2004 TRIAL TERM

ELAINE HIGHDUCHECK AND ROBERT HIGHDUCHECK, HER HUSBAND
V.
ZEPIR BENJAMIN
NO. 61 OF 2000

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

At approximately noon on January 7, 1998, Wife-Plaintiff brought her vehicle to a stop in a line of traffic in the parking lot of Maxwell Elementary School in Hempfield Township as she awaited discharge of the school children. It was alleged that Defendant's vehicle was at a stop, then caused her vehicle to collide with the rear of Plaintiff's vehicle before the children were dismissed. Plaintiff sought recovery for the following injuries: effusion in and multiple contusions to the right knee, chondral contusion of the patella, multiple contusions to the right elbow, headaches and lumbar strain. Husband-Plaintiff claimed loss of consortium of his wife.

In new matter, Defendant raised the affirmative defenses of contributory/ comparative negligence and assumption of the risk. Further, Defendant raised the affirmative defense of the Pennsylvania Motor Vehicle Financial Responsibility Act (MVFRL), and its amendments known as Act 6. Defendant contended that Plaintiff's selection of the limited tort option of insurance coverage precluded recovery of noneconomic damages because Plaintiff's injuries did not meet the threshold of a serious injury or serious impairment of a bodily function.

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

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

Trial Judge: The Hon. Gary P. Caruso

Result: Molded Verdict for Wife-Plaintiff in the amount of $12,586.00 for economic damages sustained by Plaintiff (Jury found no serious impairment of a bodily function). No award for Husband-Plaintiff for loss of consortium.

JANUARY/FEBRUARY 2004 TRIAL TERM

JOHN T. DELUCA
V.
JEROME P. YASHER
NO. 601 OF 2002

Cause of Action: Defamation

The Plaintiff was the City Administrator for the City of Monessen, Westmoreland County, for a period of approximately two and one-half years ending on or about October 31, 1999. The Defendant was an Auditor for Sarp & Company, Certified Public Accountants, who audited the books and financial records of the City of Monessen for the year ended December 31, 1999.

On August 16, 2000, Defendant issued a report of the audit of the City for the year ended December 31, 1999. A second report entitled "Management Letter" was issued on March 14, 2001, and stated that: (1) the former City Administrator unilaterally authorized payment to a City employee, which resulted in an overpayment to the employee of at least 22 days; (2) Plaintiff's action was a "material weakness" and violation of the internal control structure of the City; (3) the City was due a refund for the overpayment; (4) the actions of Plaintiff were "actions of noncompliance which comprises illegal acts," and (5) recommended that the "matter be referred to the Ethics Commission for a possible surcharge and reimbursement to the City."

Plaintiff contended that the statements were untrue and that Defendant had no reason to revisit/reopen the audit that he had previously performed. Rather, Plaintiff averred that Defendant was acting at the behest of political enemies at a time when Plaintiff was running for the public office of Mayor of Monessen for the sole purpose of harming Plaintiff's reputation.

Defendant maintained that statements made by him in the Management Letter were true, were made under immunity and/or privilege, constituted fair comment, were and are "proper for public information or investigation," were not maliciously or negligently made, were made by Defendant in his capacity as an independent auditor of the financial statements of the City of Monessen and that the audit was performed in accordance with generally accepted auditing standards.

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

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

Trial Judge: The Hon. William J. Ober
Result: Verdict for Defendant. Jury found that the content of the Management Letter was not defamatory).

JANUARY/FEBRUARY 2004 TRIAL TERM

PATRICIA MURRAY AND DAVID MURRAY, HER HUSBAND
V.
JOSHUA PRITTS
NO. 1332 OF 1999

Cause of Action: Negligence—Motor Vehicle Accident

This automobile accident occurred on March 14, 1997, in North Huntingdon Township, Westmoreland County. At approximately 4:20 p.m., Wife-Plaintiff was operating her vehicle on State Route 3049 ("Clay Pike Road") in an easterly direction, and stopped her vehicle at the red traffic signal at the intersection of State Route 3049 and Main Street. Defendant took his eyes off the roadway as his vehicle approached the Plaintiff's vehicle from behind, and caused his vehicle to collide with that of the Plaintiff. Plaintiff claimed injuries to the head, shoulder, neck, knee, jaw and back, a laceration of the forehead, postconcussion syndrome, conjunctivitis, trapezius spasm with neck strain, headaches' blurred vision, memory loss and confusion, loss of mental functions, and depression resulting from her injuries. Husband-Plaintiff claimed loss of consortium.

Defendant contended that he began to slow down in response to the traffic signal, but turned his head momentarily. When he looked back to the roadway, Defendant was unable to avoid striking the rear of Plaintiff's vehicle. Although Plaintiff had selected the full tort option of insurance coverage, Defendant maintained that Plaintiff did not sustain serious and compensable injuries.

Plaintiffs' Counsel: Michael C. Pribanic, Pribanic & Pribanic, P.C., Pgh.
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 $14,000.00. (Jury awarded $6,000.00 in economic damages for past lost earnings and $8,000.00 in noneconomic damages for pain and suffering, embarrassment and humiliation, loss of enjoyment of life and/or disfigurement. No award for husband's loss of consortium claim.)

JANUARY/FEBRUARY 2004 TRIAL TERM

DANIEL M. BLISSMAN AND JOSEPH F. BLISSMAN
V.
MATTHEW HETRICK
NO. 4731 OF 2002

(No. 4732 of 2002 was consolidated at this number.)

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

On August 7, 2000, Plaintiff Daniel M. Blissman was operating his vehicle in the Wimmerton Development Plan in Latrobe, Unity Township. Plaintiff was transporting his father, Plaintiff Joseph F. Blissman and his son. Plaintiff Daniel M. Blissman brought his vehicle to a complete stop at a stop sign when his vehicle was impacted in the rear by the vehicle operated by the Defendant, Matthew Hetrick. Plaintiff Daniel M. Blissman claimed that the negligence of the Defendant caused injuries to his lumbar spine, acute myospasms to the neck and shoulders, radiculopathy of the cervical spine with cephalgia, parasthesia and tingling in the right hand and wrist, straightening of the cervical lordosis with myospasm, bulging of the cervical discs with encroachment of the nerves and injury to the left knee. Plaintiff Joseph F. Blissman suffered the following injuries: compression fracture T12 vertebrae, acute neck and shoulder soft tissue trauma, increased cervical lordosis with myospasm and pre-existent aggravated cervical, dorsal and lumbar spondylosis.

At trial, Defendant admitted negligence. However, Defendant argued that Plaintiffs' injuries amounted to minor soft-tissue strains.

Plaintiffs' Counsel: Wm. Jeffrey Leonard, Gbg.
Defendant's Counsel: John K. Bryan, Zimmer Kunz, P.L.L.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso
Result: Verdict for Defendants. (Jury found no compensable injuries to Plaintiffs.)

MARCH/APRIL 2004 TRIAL TERM

JOSEPH SCOTT HIXENBAUGH AND LANA ANNE HIXENBAUGH, INDIVIDUALLY AND AS ADMINISTRATORS OF THE ESTATE OF CHEYANNE ADELE HIXENBAUGH, DECEASED
V.
PAUL J. TRAINER, M.D., TIMOTHY A. DEBIASSE, M.D., INDIVIDUALLY AND T/D/B/A EAST SUBURBAN PEDIATRICS AND EAST SUBURBAN PEDIATRIC ASSOCIATES; A. PROFESSIONAL ANSWERING SERVICE, INC., A PENNSYLVANIA CORPORATION
NO. 790 OF 1999

(No. 933 of 1999 was consolidated at this number.)

Cause of Action: Professional Negligence—Medical Malpractice—Wrongful Death and Survival Actions

This medical malpractice action was instituted over the death of Plaintiffs' daughter, Cheyanne, who was 22 months of age. Defendants were Cheyanne's pediatricians since she was a newborn. On the afternoon of February 24, 1997, Cheyanne presented to Defendant Dr. Trainer at the Murrysville Office with symptoms of nasal congestion, labored respiration, barking cough, decreased energy and appetite and a temperature of approximately 102 degrees. Dr. Trainer examined Cheyenne and diagnosed her with mild croup, a viral infection for which no medication was given. Plaintiffs were told that should Cheyanne's condition worsen, they should try to soothe the infected airways by using a vaporizer or taking her out into the cold. Later in the evening, Cheyanne's breathing became more difficult and irregular and her wheezing and coughing became more severe. At approximately 6:00 a.m. on the morning of February 25,1997, Cheyanne appeared pale, unresponsive and would not eat or drink. At this time, Plaintiff-mother called the emergency number for Defendants and reported that Cheyanne's condition had worsened, that she thought Cheyanne was dehydrating and that she had a high temperature. At approximately 7:00 a.m., Defendants' receptionist returned the call and an appointment was scheduled for 9:00 a.m. at the Irwin office.

When Cheyanne's condition worsened at approximately 7:30 a.m., Plaintiff-mother rushed her to Defendants' Irwin office. When she arrived, Cheyanne was completely unresponsive and could not be roused. At that time, Defendant Dr. DeBiasse administered CPR and mouth-to-mouth resuscitation. Cheyanne was transported by ambulance to Jeannette District Memorial Hospital and then life-flighted to Children's Hospital in Pittsburgh. Cheyanne was placed on full ventilatory support and was declared brain dead at approximately 3:00 p.m. on February 28, 1997. Her cause of death was reported as upper airway obstruction/hypoxic Ischemic Encephalopathy; viral laryngotracheobronchitis (a viral form of croup). Plaintiffs alleged negligence of Defendant-physicians in failing (1) to properly diagnose and treat Cheyanne's condition; (2) to inform Plaintiffs that croup was an inflammation of the airways that could result in death; and (3) to provide adequate instructions regarding emergency calls to the answering service. As to the answering service, Plaintiffs asserted negligence in handling the phone call on the morning of February 25, 1997, in failing to conform to Defendants' directions for emergency situations and in failing to recognize the emergent nature of Plaintiff-mother's call and either immediately notify Defendant-physicians or instruct Plaintiffs to report directly to the emergency room.

Defendant-physicians contended that the care and treatment they rendered was at all times in accordance with acceptable standards of care. Defendants averred that Plaintiffs were instructed that croup worsens at night and that cold air and vapor mist can be helpful in treating symptoms. Plaintiffs were also instructed to call Defendants' office if the symptoms worsened. At 6:30 a.m. the next morning, Plaintiff-mother reported to the answering service that Cheyanne was worse, very hot and had not taken liquids since 3:00 p.m. the previous day. Plaintiff-mother requested an appointment for the same day or to speak with the doctor. The written instructions given by Defendants to the answering service was to communicate all calls to Defendants' office within one hour of receipt of the call, unless the call was described as an emergency by the caller or the patient called twice within one hour. The answering service relayed the message to Defendants' receptionist twenty minutes later, who returned Plaintiff-mother's call at 6:55 a.m. When asked if she would like the doctor to be paged, Plaintiff-mother declined. An appointment was made for Cheyanne to be seen in the Irwin office at 9:00 a.m. When Plaintiff-mother arrived at the office, Cheyanne was in full cardiac arrest.

Plaintiffs' Counsel: William G. Merchant and Howard F. Murphy, Papernick & Gefsky, P.C., Monroeville
Counsel for Defendant Physicians: Daniel P. Carroll, Davies, McFarland & Carroll, P.C., Pgh.
Counsel for Defendant Answering Service: Charles P. Falk, Solomon & Associates, Pgh.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Molded verdict in favor of all Defendants.

MARCH/APRIL 2004 TRIAL TERM

ROBERT W. LACKEY, JR.
V.
NASIR SHAIKH, M.D.
NO. 5944 OF 2000

Cause of Action: Professional Negligence—Medical Malpractice

Plaintiff brought this medical malpractice action against the Defendant-general surgeon with respect to Defendant's treatment of a recurring benign tumor in plaintiff's chest. Plaintiff alleged that from December 1998 through September 1999, Defendant negligently and carelessly failed to aggressively excise the recurring mass, failed to order appropriate wound care, failed to prescribe antibiotics and failed to timely refer Plaintiff to an infectious disease specialist. From October 1999, to November 2000, Plaintiff underwent extensive treatment by surgeons at University of Pittsburgh-Presbyterian Hospital. Plaintiff argued that Defendant knew or should have known that the recurring chest tumor contained an infectious process requiring aggressive antibiotic therapy and infectious disease consultation from at least March of 1999. Injuries claimed included the development of staphylococcus aureus, exacerbation of abscess of the sternum and chest wall, excessive debridement and surgical removal of large amounts of soft tissue and muscle of the chest and abdomen, excision of the sternal mass and pectoral flap surgery to close the wound, multiple hospitalizations, permanent physical deformities and scarring, and permanent disability.

Defendant denied negligence in his treatment of Plaintiff with respect to the mass. Defendant denied the implication of negligence from Defendant's failure to order antibiotic treatment for the instances where there was no evidence of infection. In new matter, Defendant maintained that any injuries of Plaintiff were sustained as the result of superseding, intervening and/or independent causes and from the acts or omissions of others over which Defendant had no control or in any way participated.

Plaintiff's Counsel: Harry S. Cohen and David J. Lozier, Harry S. Cohen & Associates, Pgh.
Defendant's Counsel: Tyler J. Smith, Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Verdict in favor of Defendant. Jury found that Defendant was not negligent.

MARCH/APRIL 2004 TRIAL TERM

GLENN T. LAMISON AND MARJORIE LAMISON, HUSBAND AND WIFE
V.
FRANCA TWELE, INDIVIDUALLY AND T/D/B/A THE KNOTTY PINE MOTEL; AND HENRY TWELE, INDIVIDUALLY AND T/D/B/A THE KNOTTY PINE MOTEL
NO. 5136 OF 2002

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

The Defendants operated, managed and maintained the premises known as The Knotty Pine Motel in Belle Vernon, Westmoreland County. On September 7, 2001, Plaintiff-husband proceeded from the parking lot to a motel room on the premises. As Plaintiff walked from the asphalt pavement onto the concrete sidewalk, his foot struck the difference in height of approximately one inch between the sidewalk and the parking lot, causing him to lose his balance and fall. Plaintiff claimed exacerbation of an arthritic right shoulder and contusion to the coccyx and coccydynia. Plaintiff-wife claimed loss of consortium.

In New Matter, Defendants asserted that Plaintiffs' injuries and/or damages, if any, were due to the actions and/or inactions of Plaintiffs and that Plaintiffs' damages are limited to the extent they failed to mitigate their damages.

Plaintiffs' Counsel: James C. Heneghan, Feldstein Grinberg Stein & McKee, Pgh.
Defendants' Counsel: Sharon M. Menchyk, Dell, Moser, Lane & Loughney, LLC, Pgh.
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Plaintiffs. Plaintiff Glenn T. Lamison awarded $5,000.00 for medical expenses and $15,000.00 for past and future physical pain, suffering, discomfort, distress, mental anguish and enjoyment of life. Plaintiff Marjorie Lamison awarded $5,000.00 for loss of consortium.

MARCH/APRIL 2004 TRIAL TERM

RANDY GERHART
V.
JAMES W. LEWIS
NO. 6270 OF 1997

Cause of Action: Negligence—Hunting Accident

On October 16, 1995, Plaintiff was archery hunting for deer on the Conemaugh Flood Control property along State Route 1016 in Westmoreland County. Defendant was hunting in the same general vicinity as Plaintiff when Defendant discharged his firearm, a 12-gauge single barrel pump shotgun, in the direction of Plaintiff, causing two gunshot pellets to lodge in Plaintiff's scalp. Plaintiff alleged that Defendant was negligent in discharging a firearm prior to insuring that the direction he was pointing the firearm was free and clear of other hunters or any other individual, and in discharging a firearm at only movement as opposed to an identifiable object.

In New Matter, Defendant raised the affirmative defense of contributory negligence in that the injuries and damages allegedly suffered by Plaintiff were directly and proximately caused by the failure of Plaintiff to exercise that degree of care for his own safety and well-being, which a reasonably prudent person would have exercised under the same or similar circumstances. Defendant asserted that Plaintiff was contributorily negligent by failing to comply with the statutory provision regarding required protective material, which requires hunters to wear a minimum amount of daylight florescent orange color material so that it is visible in a 360-degree arc, because it was not hunting season only for deer with a bow and arrow, but rather the season was concurrent with small game season. In his pre-trial narrative, Defendant alleged that Plaintiff was attired in tree bark camouflage.

Plaintiff's Counsel: Victor H. Pribanic, Pribanic & Pribanic, LLC, White Oak
Defendant's Counsel: Kim Ross Houser, Mears, Smith, Houser & Boyle, Gbg.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Verdict in favor of Defendant.

MARCH/APRIL 2004 TRIAL TERM

MARY ANN DEFORTY
V.
THOMAS MEEHAN; AND WALTER J. GREENLEAF CO., A/K/A WALTER GREENLEAF CO., A CORPORATION
NO. 6232 OF 1998

Cause of Action: Negligence—Motor Vehicle Accident

On November 5, 1996, at approximately 1:30 p.m., Plaintiff was operating her vehicle in an easterly direction in the left, passing lane of Interstate 70, a four-lane highway. Defendant Thomas Meehan was operating a vehicle owned by his employer on an access ramp near Exit 20 in North Belle Vernon, Westmoreland County. The complaint alleged that Defendant attempted to pass the vehicle directly in front of him on the access ramp by first turning his vehicle into the right, slow lane of I-70, and then suddenly entering the left, passing lane, striking the right rear passenger side and front fender of Plaintiff's vehicle. Plaintiff claimed injuries including cervical and lumbar strain, fibromyalgia syndrome, traumatic brain injury, post-traumatic stress and/or anxiety disorder and major depression. Plaintiff elected the full tort option of automobile insurance coverage.

In New Matter, Defendants averred that any injuries and/or damages alleged by Plaintiff were the result of superseding, intervening and/or independent causes over which Defendants had no control and in no way participated.

Defendants raised the affirmative defense of the sudden emergency doctrine, and asserted that Plaintiff's injuries and damages were the result of a pre-existing condition unrelated to this accident. In his pre-trial statement, Defendant asserted that he was proceeding down the on-ramp to I-70 when the vehicle in front of him stopped or slowed suddenly. Defendant stated that he entered the right lane of I-70 to avoid the vehicle, then began to enter the left lane of travel because he was concerned that the vehicle stopped on the ramp may pull into the right lane of I-70. Defendant's vehicle then came into contact with Plaintiff's vehicle, which was traveling in the left lane.

Plaintiff's Counsel: Joseph P. Moschetta and Stephen P. Moschetta, Joseph P. Moschetta & Associates, Washington, Pa.

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

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendants. Jury found that conduct of Defendants was not the factual cause in bringing about Plaintiff's injuries and damages.

MARCH/APRIL 2004 TRIAL TERM

TIFFANY SHRUM, A MINOR, BY AND THROUGH HER PARENT AND GUARDIAN, KIRK SHRUM
V.
CARLENE MUSSER, ORIGINAL DEFENDANT
V.
CHRISTINE SHRUM, ADDITIONAL DEFENDANT
NO. 1471 OF 2002

Cause of Action: Negligence—Motor Vehicle Accident

This automobile collision occurred on July 25, 2000, on Andara Road, near its intersection with State Route 30 in North Huntingdon Township, Westmoreland County. Plaintiff, who was a minor, was a passenger in a vehicle that was traveling in a westerly direction on Route 30. The complaint alleges that Plaintiff's vehicle had just turned right onto Andara Road when it collided with a vehicle operated by Original Defendant. Plaintiff's injuries included serious and permanent disfigurement of her face, maxillary anterior alveolar bone fractures; anterior maxillary buccal mucosal lacerations; total avulsion of two teeth; permanent loss of sight in her right eye; marked scarring in the center of the macula; and central permanent scotoma.

Original Defendant denied all liability to Plaintiff and filed a complaint to join Additional Defendant, which asserted that any losses, injuries and/or damages sustained by Plaintiff were directly and proximately caused by the negligence of Additional Defendant, Plaintiff's mother, for failing to have her vehicle under proper control and colliding with Original Defendant while Original Defendant was in her own lane of travel.

Plaintiffs' Counsel: Steven L. Morrison, Harrison City

Counsel for Original Defendant: Maria Spina Altobelli, Jacobs & Saba, Gbg.

Counsel for Additional Defendant: Amy DeMatt, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Original Defendant and against Plaintiff. Jury attributed 100% causal negligence to Additional Defendant.

MAY/JUNE 2004 TRIAL TERM

SOFIA B. PLISKO AND FRANK PLISKO, HER HUSBAND
V.
LARRY E. WILKINS, D.C., AN INDIVIDUAL, AND LARRY E. WILKINS, D.C., P.C.
D/B/A LAUREL MOUNTAIN CHIROPRACTIC CLINIC, A CORPORATION
NO. 1346 OF 2000

Cause of Action: Professional Negligence—Medical Malpractice

Wife-plaintiff, eighty-three years of age, sought chiropractic treatment from the defendants on November 6, 1998, due to back pain. Plaintiff alleged that during her treatment on November 23, 1998, defendant-chiropractor performed a spinal manipulation in a negligent manner and with excessive force, fracturing plaintiff's L4 vertebra. From and after the

fracture of her vertebra, plaintiff has suffered a complete loss of mobility and is confined to a wheelchair. Husband-plaintiff sued for loss of consortium.

Defendants denied all allegations of negligence and contended that defendant-chiropractor complied with all applicable standards of chiropractic care. In new matter, defendants asserted that plaintiffs' claims were barred by assumption of the risk or consent, plaintiff's injuries were the result of intervening or superseding acts, omissions or other conduct by person or entities not under the control of defendants and for which defendants had no duty or responsibility, and plaintiff's injuries were the result of pre-existing conditions and/or unrelated medical conditions, diseases or maladies of plaintiff and are not related to any negligent conduct of defendants.

Plaintiffs' Counsel: Robert L. Potter, Strassburger McKenna Gutnick & Potter, Pgh.

Defendants' Counsel: Dennis J. Roman, Grogan Graffam, P.C., Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of defendant.

MAY/JUNE 2004 TRIAL TERM

RESOLVE, INC.
V.
STONE AND COMPANY, INC.
NO. 3096 OF 2003

Cause of Action: Breach of Contract

In January, 2003, plaintiff and defendant entered into an oral contract wherein plaintiff agreed to supply heavy construction equipment, operators and maintenance for use by defendant at defendant's construction site at hourly rates agreed upon by defendant. Plaintiff contended that defendant was obligated to plaintiff in the amount of $22,874.35 ($31,390.90 for the equipment and labor less certain credits).

Defendant claimed that it was not obligated to plaintiff and set forth a counterclaim, wherein defendant averred that plaintiff breached its agreement by failing to spread, compact and stabilize the soil where the structures were to be placed such that it would not subside. Plaintiff performed excavation, dirt moving and compaction work for defendant in January and February, 2003, at defendant's location in preparation for the construction and placement of a new ready-mix concrete plant and materials silo, which defendant subsequently erected on the property. During March, 2003, defendant discovered that the fill underneath the plant and silo had eroded away, causing the structures to shift and sink. As a result, defendant was required to raise the concrete plant and replace the silo and underlying soil, incurring expenses in the amount of $25,374.47.

The issues at trial focused on which party was responsible for directing the excavation and procuring the fill material used. Plaintiff argued that its sole responsibility under the contract was to provide defendant with machinery and operators, and had no responsibility for the design of the project. Defendant argued that plaintiff was responsible for the excavation work and that the work was not performed appropriately.

Plaintiff's Counsel: S. Michael Streib, Pgh.

Defendant's Counsel: Bernard T. McArdle, Stewart, McArdle & Sorice, LLC, Gbg.

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

Result: Molded verdict in favor of plaintiff in the amount of $22,874.35. On the counterclaim, verdict entered in favor of plaintiff/counterclaim defendant.

MAY/JUNE 2004 TRIAL TERM

ROSEMARY SKAGGS
V.
JEFF BURKHOLDER, INDIVIDUALLY AND T/D/B/A J.L. BURKHOLDER ASPHALT PAVING
NO. 4800 OF 2002

Cause of Action: Breach of Contract—Arbitration Appeal

On July 17, 2001, plaintiff and defendant entered into a written contract whereby defendant was to blacktop a commercial parking lot and driveways owned by plaintiff for $9,700.00. The work was completed in August or

September of 2001. On or before May 2002, the surface of the blacktopped parking lot and driveways began breaking up in areas where water would accumulate after rainstorms. Plaintiff brought this action against defendant for failure to complete the asphalt work in a workmanlike manner by improperly constructing, pouring and leveling the blacktop such that it was uneven, misformed and misaligned. Plaintiff paid $2,500.00 for temporary repair of the damage to the blacktop, and contended that permanent repair would cost an additional $9,700.00.

At trial, defendant contended that he properly constructed, poured and leveled the blacktop in a workmanlike manner. Defendant argued that the base for the asphalt was inadequate and was prepared by another contractor. Defendant maintained that plaintiff permitted heavy vehicles to pass over the asphalt after defendant had advised plaintiff that the base may not be sufficient to hold heavy vehicles. Plaintiff contended that she was neither advised by defendant not to permit heavy vehicles to traverse the asphalt, nor did she allow such vehicles over the asphalt. Plaintiff argued that the asphalt laid by defendant was thinner than the terms of the contract required. Further, she argued that if the base of the asphalt was inadequate, defendant should have remedied the base to accommodate the asphalt work performed.

Plaintiff's Counsel: J. E. Ferens, Jr., Waggoner & Ferens, Uniontown.
Defendant's Counsel: Ronald L. Chicka, Gbg.
Trial Judge: The Hon. Gary P. Caruso
Result: Verdict in favor of defendant.

MAY/JUNE 2004 TRIAL TERM

JOANNE BRODRICK AND WILLIAM BRODRICK, HER HUSBAND
V.
EDWARD HALUSIC, D.M.D. AND DAVID O. STEFFENSEN, M.D.
NO. 671 OF 2001

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

Wife-plaintiff brought this medical malpractice action against the defendants, Dr. Halusic, an oral surgeon, and Dr. Steffensen, an infectious disease specialist, with respect to the care and treatment rendered to plaintiff during her admission to the hospital in March, 1999. On March 9, 1999, plaintiff was referred to Dr. Halusic by her treating dentist. Dr. Halusic determined that plaintiff had a massenteric infection. On March 13, 1999, she was admitted to Westmoreland Regional Hospital and diagnosed with a massenteric space infection, placed on an antibiotic and Dr. Steffensen was consulted. On March 18, 1999, Dr. Halusic performed an incision and drainage of a left masticator abscess. On March 19, 1999, Dr. Halusic removed a previously placed surgical drain. Plaintiff had a difficult post-operative course that included undulating fevers and an episode of anemia, which required a blood transfusion. On March 24, 1999, Dr. Halusic discharged plaintiff from the hospital. On April 11, 1999, plaintiff was admitted to Allegheny General Hospital, and she was diagnosed with osteomyelitis of the mandible and related jaw bones. Surgery was performed on April 12, 1999, and plaintiff was discharged on April 16, 1999.

Plaintiff alleged that Dr. Halusic deviated from the appropriate medical standard of care in failing to take all reasonable steps to extract all infectious material during surgery, in prematurely removing a surgical drain on March 19, 1999, in failing to administer appropriate antibiotics, in failing to timely and appropriately treat plaintiff's post-operative infection after surgery, and in prematurely discharging the plaintiff on March 24, 1999, when she had an ongoing infection. Plaintiff also claimed that Dr. Halusic failed to disclose the material risks of surgery to plaintiff. Plaintiff alleged that Dr. Steffensen deviated from the standard of care in his management of plaintiff's antibiotics throughout her admission, particularly as to his choice of antibiotic at discharge and that he discontinued her antibiotic therapy prematurely. Plaintiff's husband brought a claim for loss of consortium.

Dr. Halusic contended that he properly managed the plaintiff by admitting her to the hospital, performing an incision and drainage and consulting with an infectious disease specialist. When plaintiff experienced continued difficulties, Dr. Halusic arranged for plaintiff to be seen by Dr. Clemenza and admitted to Allegheny General Hospital. Dr. Halusic contended that he advised plaintiff of the risks of the procedure and alternatives to treatment. Dr. Steffensen contended that he properly provided antibiotic therapy to plaintiff. Plaintiff had significant allergic reactions to a number of antibiotics. Although the chosen antibiotic was not his first choice, he maintained that the antibiotic he prescribed was appropriate for treatment of plaintiff's infection.

Plaintiff's Counsel: Rolf L. Patberg, Ludwig, Patberg, Dixon & Ging, Pgh.
Counsel for Defendant Halusic: Gayle L. Godfrey, Pietragallo, Bosick & Gordon, Pgh.
Counsel for Defendant Steffensen: Ronald M. Puntil, Jr., Israel, Wood & Puntil, P.C., Pgh.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Molded verdict entered in favor of defendants. Jury found that neither defendant was negligent in their care and treatment of plaintiff.

JULY 2004 TRIAL TERM

CATHERINE SUSIN
V.
NASIR SHAIKH, M.D., ALSO KNOWN AS M. NASIR SHAIKH, M.D.
NO. 215 OF 1999

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

On January 16, 1997, plaintiff was admitted to Jeannette District Memorial Hospital for elective surgical treatment of an abdominal aortic aneurysm. On that date, defendant Dr. Shaikh, a thoracic and cardiovascular surgeon, performed a replacement of the abdominal aneurysm of the aorta with a graft. During the surgery, plaintiff suffered surgical perforations of her small bowel. Although defendant repaired one of the perforations, plaintiff claimed that defendant failed to detect another perforation at the time of surgery and left the perforation untreated post-surgery. Plaintiff underwent a series of surgeries to repair the perforation and to irrigate liquid that was pooling in plaintiff's abdomen. Plaintiff argued that defendant was negligent in failing to recognize and administer treatment for the progressive infection plaintiff developed after surgery. As a result, Plaintiff received extensive periods of total parental nutrition and intestinal tube feedings, had a drainage tube placed through the abdominal wall, and received a skin graft to the abdomen. As to the informed consent claim, plaintiff asserted that defendant did not obtain her informed consent in that he failed to take an appropriate history of her prior surgeries which would have revealed that the surgery would have been complicated due to the scarring plaintiff sustained from previous surgeries.

Defendant denied negligence and contended that any damage that was done to any of the surrounding tissue was a result of the severe adhesions which were encountered at the time of the surgery. Defendant also contended that he did not miss the second perforation at the time of surgery. Defendant maintained that he rendered appropriate treatment in the post-surgical period. Defendant further argued that if the second perforation opened up post-surgery, it did so spontaneously and at a time later than contended by plaintiff.

Plaintiff's Counsel: Ned J. Nakles, Jr., Nakles and Nakles, Latrobe
Defendant's Counsel: Robert W. Murdoch, Rawle & Henderson LLP, Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict in favor of Plaintiff in the amount of $600,000.00. (Jury found that the surgery by defendant was done without the informed consent of the plaintiff. Jury also found defendant negligent, but that such negligence was not the factual cause of plaintiff's harm.)

JULY 2004 TRIAL TERM

PATRICIA R. CHOLOCK AND STEVEN R. CHOLOCK, HER HUSBAND
VS.
HERITAGE MANUFACTURING, INC., REESE SUPPLY, AND ACUSPORT, INC.
NO. 5856 OF 2002

Cause of Action: Strict Products Liability—Loss of Consortium

This action arose out of an accidental discharge of a .22 caliber single action Colt-style Rough Rider revolver manufactured by Defendant Heritage Manufacturing, Inc. The gun was registered in the name of wife-plaintiff and was purchased for her personal safety. Husband-plaintiff stored the loaded gun on a shelf in the bedroom armoire, on top of a cardboard box and underneath a pile of sweaters. On February 26, 2002, wife-plaintiff removed a sweater from the armoire, causing the loaded revolver to fall to the floor and discharge a bullet into wife-plaintiff in her groin and abdominal area, causing multiple injuries to internal organs. The bullet was never removed from wife-plaintiff's body. Plaintiffs contended that the revolver contained a design defect in that it should have been equipped with a transfer

safety bar, a passive safety mechanism, which would have prevented the gun from firing even if all active safety mechanisms on the revolver had been activated by plaintiffs.

Defendants contended that the revolver did not contain a defect and did not require a transfer safety bar in addition to the two active safety mechanisms that were incorporated into the historic design of the gun. Defendants also asserted, as a defense to strict liability, that husband-plaintiff was reckless in storing the loaded gun without activating the safety mechanisms and in such a location and manner that it could fall to the floor and discharge.

Plaintiffs' Counsel: James L. Welsh, III, Robert C. Klingensmith, Payne, Welsh and Klingensmith, P.L.L.C., Turtle Creek

Defendants' Counsel: Timothy A. Bumann, Bridgette E. Eckerson, Budd Larner, Rosenbaum, Greenberg & Sade, Atlanta, Ga.; Stanley A. Winikoff, Swartz Campbell, LLC, Pgh.

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

Result: Verdict for Defendants. Jury found that the Heritage revolver did not have a design defect and was not unsafe when sold.

JULY 2004 TRIAL TERM

ROBERT A. ROCKWELL
V.
DERRY MEDICAL ASSOCIATES, A PENNSYLVANIA CORPORATION, AND ROBERT L. DAVOLI, M.D.
NO. 6100 OF 2000

Cause of Action: Professional Negligence—Medical Malpractice

This medical malpractice action was filed by plaintiff against his treating physician, Dr. Davoli, as a result of injuries plaintiff allegedly suffered after taking a medication prescribed by the defendant. In July of 1998, plaintiff reported to Dr. Davoli with complaints of shoulder pain. Plaintiff alleged that he communicated to Dr. Davoli that he had a history of bleeding ulcer in 1991 and 1997, and that the ulcer was related to the use of non-steroidal anti-inflammatory drugs. On July 9, 1998, Dr. Davoli prescribed Cataflam ("Diclofenac"), a non-steroidal anti-inflammatory medication, to treat plaintiff's shoulder pain. Plaintiff was instructed to take Cataflam for shoulder pain as needed. In April of 1999, after using the medication, plaintiff was admitted to Latrobe Hospital as a result of severe abdominal pain and upper GI bleeding. He was further diagnosed as having a severe and bleeding ulcer, which required him to undergo surgery, receive substantial transfusions, and be hospitalized in the intensive care unit. Plaintiff alleged that the cause of the bleeding ulcer and surgery was determined to be secondary to the use of Cataflam. Plaintiff is required to take Prilosec, Prevacid and/or other medications on a permanent basis and developed dumping syndrome, which is a permanent condition.

In addition to asserting the provisions under the applicable medical care services malpractice act, defendants asserted the comparative negligence of plaintiff and the existence of intervening and superseding causes. Defendants asserted that Dr. Davoli attempted to treat plaintiff's condition as best as he could in light of plaintiff's restrictions with taking various medications. Defendants contended that plaintiff was instructed to take the medication sparingly and was informed of the dangers associated with the medication, which was denied by plaintiff. Defendants also maintained that plaintiff suffered from the chronic condition of bleeding ulcer and argued that the medication prescribed by Dr. Davoli was not a substantial factor in contributing to plaintiff's injuries.

Plaintiff's Counsel: Alan H. Perer, Matthew T. Logue, Swensen Perer & Kontos, Pgh.

Counsel for Defendants: Diane Barr Quinlan, Olszewski & Quinlan, P.C., Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendants.

JULY 2004 TRIAL TERM

OLGA B. GETTINS AND JAMES A. GETTINS
V.
JOHN A. MORRISON
NO. 5316 OF 2003

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

On May 18, 2002, at approximately 1:15 p.m., husband-plaintiff was operating his vehicle, in which wife-plaintiff was a passenger, in an easterly direction on State Route 3099 in Hempfield Township. Plaintiffs' vehicle began to proceed through the intersection of State Routes 3099 and 119 on a green light for their direction of travel. Defendant was operating his vehicle in a northerly direction on Route 119. Plaintiffs alleged that defendant failed to stop at the red light, causing his vehicle to collide with the passenger's side of plaintiffs' vehicle. As a result of the accident, wife-plaintiff sustained the following injuries: multiple fractured ribs; bilateral lung contusion; respiratory arrest; concentric left ventricular hypertrophy with mitral and tricuspid insufficiency; cardiac contusion; irregular heart rhythms; aggravation of pre-existing heart condition; and anxiety and emotional distress. Husband-plaintiff asserted a claim for loss of consortium.

At trial, defendant did not contest negligence. However, defendant argued that such negligence was not a substantial factor in causing most of the injuries to the plaintiff. Defendant contended that plaintiff suffered from an existing heart condition that was aggravated by the accident, and that such aggravation ceased after a short period of time. Defendant argued that plaintiff was hospitalized immediately following the accident, but never treated with any medical providers after the hospital stay. Defendant also contended that any injuries plaintiff received in the accident resolved within a short amount of time.

Plaintiffs' Counsel: Christopher M. Miller, Edgar Snyder & Associates, LLC, Pgh.

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

Trial Judge: The Hon. William J. Ober

Result: Summary jury rendered verdict in favor of Plaintiff in the amount of $12,000.00. The parties had previously entered into a high-low agreement with respect to damages.

SEPTEMBER/OCTOBER 2004 TRIAL TERM

IRENE GLASS AND JAMES R. GLASS, HER HUSBAND
V.
BARBARA J. BOWERS, M.D., INDIVIDUALLY, AND GLAUCOMA-CATARACT CONSULTANTS, INC., A CORPORATION
NO. 1819 OF 1999

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

This medical malpractice action stems from the alleged negligence of Defendant Dr. Bowers, an ophthalmologist, during surgery she performed on wife-Plaintiff on March 18, 1997. The surgery involved the removal of a cataract and the implantation of an intraocular lens in Plaintiff's right eye. Plaintiff alleged negligence of Defendant-corporation in failing to properly measure Plaintiff's right eye for acceptance of her intraocular lens implant, resulting in her receiving an incorrect or improper power of lens. Plaintiff also alleged negligence on behalf of Defendant-doctor in implanting the improper lens, which caused a condition in Plaintiff known as anisometropia (the surgically repaired eye is nearsighted while the unaffected eye is farsighted). Additionally, Plaintiff alleged negligence of Defendant-doctor in failing to detect and remove vitreous humor (a transparent gel) which entered the anterior chamber of the eye after Defendant-doctor ruptured the posterior lens capsule (located behind the lens) during surgery. Although the rupture of the lens capsule was an acceptable risk of surgery, Plaintiff contended that the failure of Defendant-doctor to identify the vitreous humor at the time of rupture and remove it at the time of surgery fell below the acceptable standard of medical care. The presence of the vitreous humor caused Plaintiff to experience blurred vision. Plaintiff subsequently underwent correctional surgery of her right eye by another ophthalmologist who removed and inserted the proper power of intraocular lens and removed the vitreous humor. Husband-Plaintiff asserted a claim for loss of consortium.

Defendants contended that the measurements of Plaintiff's right eye were done correctly and that the correct lens was inserted to replace the cataract. Defendants maintained that Plaintiff also had a cataract in the left eye, which worsened by the time she had seen the second ophthalmologist. When that left cataract was removed by the second ophthalmologist and a new lens was inserted in the left eye, Plaintiff reported that her eyesight was improved. When the second ophthalmologist subsequently performed measurements of Plaintiff's right eye, Defendants contended that he calculated the measurements incorrectly because he used an improper formula. Defendants contend that based upon those improper measurements, the second ophthalmologist was negligent in inserting an incorrect lens into Plaintiff's right eye. Defendants also disputed that vitreous humor was present during surgery. Defendants maintained that at the time of surgery, Defendant-doctor performed tests in addition to making observations to detect the vitreous humor,

because of the difficulty in detecting the clear fluid. These tests revealed no leakage. Further, Defendants contended that the presence of vitreous humor is problematic only if it is associated with pain from inflammation and scarring. Because Plaintiff complained only of blurred vision and not of pain associated with the vitreous humor, Defendants contended that Plaintiff's vision complaints were not related to the vitreous humor.

Plaintiffs' Counsel: Ronald J. Bergman, Robert A. Nedwick, Nedwick & Bergman, Gbg.
Defendants' Counsel: Thomas A. Matis, Gaca Matis Baum & Rizza, Pgh.
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Defendants. Jury found no negligence associated with either Defendant.

SEPTEMBER/OCTOBER 2004 TRIAL TERM

SONDRA L. McCURDY
V.
JOSEPH J. ZIEGLER
NO. 7529 OF 2000

Cause of Action: Negligence —Premises Liability

Defendant-landlord was the owner of a duplex located on McFarland Street in Derry, Westmoreland County. Plaintiff-tenant occupied the second floor apartment of the duplex. Access to the second floor apartment was provided by a wooden stairway on the outside of the premises, which was not covered or protected from weather. On May 21, 1999, it was raining as Plaintiff attempted to descend the stairway to place a letter in her mailbox. Plaintiff slipped on the wet steps and fell, causing her to sustain a fracture to her upper left arm. Plaintiff had previously fallen in 1994, which prompted Defendant to add backs to the steps and add handrails. Defendant had also added sandpaper strips, which provided substantial grip on the steps. Prior to the 1999 accident, Defendant removed the sandpaper strips from the steps and had the steps repainted with an oil-based paint. After the steps were repainted but before the accident, Plaintiff complained to Defendant about the steps and requested that sandpaper strips be placed again on the steps. Defendant promised that he would add the sandpaper strips but did not do so before the fall occurred. Plaintiff contended that the removal of the sandpaper strips coupled with the slippery nature of the paint caused Plaintiff to fall and sustain injuries. In addition to the fracture requiring surgical intervention, Plaintiff suffered dislocation of her left shoulder, right parietal head injury, exacerbation of pre-existing hypokalemic condition, aggravation of a pre-existing lupus erythematosus condition, significant impressive ecchymosis petechia involving her left upper extremity, and anemia secondary to blood loss associated with her left upper extremity fracture.

Defendant denied that he had exclusive care, custody and control over the property, and averred that Plaintiff had exclusive possession, care, custody and control over the premises, including the stairs leading to and from the second floor apartment. Defendant alleged that Plaintiff, as tenant, had the duty to repair and maintain the stairway. In addition, Defendant contended that the stairway in question was not in a dangerous or defective condition. Because he had difficulty keeping the sandpaper strips attached to the steps, Defendant removed the strips. Defendant also maintained that an abrasive was added to the paint when the steps were repainted. In the alternative, Defendant argued that he neither knew nor had reason to know of a dangerous condition of the stairway. Defendant pursued a contributory negligence claim against the Plaintiff.

Plaintiff's Counsel: Richard H. Galloway, QuatriniRaffertyGalloway, P.C., Gbg.
Defendant's Counsel: Thomas W. Smith, Mears, Smith, Houser & Boyle, P.C., Gbg.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict in favor of Defendant. Jury found that Defendant was not negligent.

SEPTEMBER/OCTOBER 2004 TRIAL TERM

MICHAEL MATTHEWS
V.
SARA DAWSON
NO. 2894 OF 2000

Cause of Action: Negligence—Motor Vehicle Collision

This action arose out of a motor vehicle collision that occurred at approximately 6:45 p.m. on May 14, 1998, on State Route 819 near its intersection with Glencove Road in Greensburg, Westmoreland County. While operating his vehicle in a northerly direction on Route 819, Plaintiff alleged that he engaged his right turn signal and slowed his vehicle in anticipation of making a right turn onto Glencove Road. Plaintiff averred that Defendant attempted to pass or veer around Plaintiff's vehicle to the right, causing Defendant's vehicle to collide into the right side of Plaintiff's vehicle. Plaintiff asserted injuries such as a herniated disc and related symptoms including stiffness and pain to his neck and back, headaches, dizziness and confusion, as well as loss of earnings and earning capacity.

Defendant admitted negligence at trial. Defendant denied that her negligence was a factual cause in bringing about harm to Plaintiff and denied that Plaintiff sustained a serious injury such that non-economic damages could be recovered.

Plaintiff's Counsel: Thomas P. Pellis, Aimee R. Jim, Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C., Gbg.

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

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

Result: Verdict in favor of the Defendant. Jury found that Defendant's negligence was not a factual cause in bringing about harm to Plaintiff.

SEPTEMBER/OCTOBER 2004 TRIAL TERM

JAMES F. BARRON, INDIVIDUALLY AND T/D/B/A JAMES F. BARRON TRUCKING
V.
ANGELO IAFRATE CONSTRUCTION COMPANY, A CORPORATION
NO. 7944 OF 2001

Cause of Action: Negligence—Arbitration Appeal

Plaintiff was the owner and operator of a 1998 Western Star tri-axle truck. On August 30, 2000, at approximately 7:45 p.m., Plaintiff's employee was operating the Western Star truck on a construction project on the Pennsylvania Turnpike between Exits 8 and 9 in Westmoreland County. An employee of Defendant, a high lift operator, was also working at the construction site. As Plaintiff's employee was emptying a load of shale from the Western Star truck, Defendant's employee caused the high lift that he was operating to back into and collide with the Western Star truck, causing property damage to the truck in the amount of $22,333.84. Plaintiff alleged that the accident rendered the truck inoperable for a period of 27 working days. Plaintiff sought to recover lost profits for the period of inoperability in the amount of $7,094.25.

Defendant denied negligence and asserted various affirmative defenses, including that the incident, injuries and/or damages alleged to have been sustained by Plaintiff were not proximately caused by Defendant.

Plaintiff's Counsel: Wesley T. Long, Fisher, Long & Rigone, Gbg.

Defendant's Counsel: Thomas M. Witowski, Post & Schell, P.C., Lancaster

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Plaintiff in the amount of $6,000.00.

NOVEMBER/DECEMBER 2004 TRIAL TERM

RAMONA M. RUSSO AND MARK J. RUSSO, HER HUSBAND
V.
MERIT CONTRACTING, INC.
NO. 422 OF 2001

Cause of Action: Negligence— Premises Liability

This slip and fall occurred in the Port Royal Village mobile home park located in Belle Vernon, Westmoreland County. Plaintiffs rented a mobile home lot in the park. Adjacent to Plaintiffs' lot was an open field whereupon Plaintiffs had placed a playground swing set for their minor child. The owner of the mobile home park had decided to expand the park and build additional sites where the field was located. Defendant performed the renovation and earth-moving work associated with the new construction. On June 18, 1999, Wife-Plaintiff was walking across the yard to find out why the

swing set had been moved when she slipped and fell on grease allegedly deposited by Defendant. Plaintiff contended that Defendant was negligent in failing to properly police the construction area and in failing to avoid depositing waste material onto the premises occupied by Plaintiff.

Defendant denied the allegations of negligence and defended on the following alternative grounds: (1) the fall occurred in the construction area and, therefore, no legal duty was owed to Plaintiff as a trespasser; (2) if Plaintiff did fall in her yard, Defendant did not commit acts of negligence; and (3) the condition that caused Plaintiff's fall was open and obvious. The case was bifurcated and tried only as to the issue of liability.

Plaintiffs' Counsel: Anthony J. Seneca, Washington, Pa.

Defendant's Counsel: Joseph S. Weimer, Pgh.

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

Result: Molded verdict in favor of Defendant. Jury found that Plaintiff fell outside the construction area (therefore, a higher duty of care was owed Plaintiff), but determined that Defendant was not negligent.

NOVEMBER/DECEMBER 2004 TRIAL TERM

STEPHANIE A. MOSTOLLER
V.
MARY M. HULL
NO. 5766 OF 1998

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

This motor vehicle accident occurred on November 18, 1996, at approximately 10:00 a.m. on State Route 1058 in Donegal Township, Westmoreland County. Plaintiff was traveling west on Route 1058 (County Line Road) and proceeded through its intersection with Township Road 754 (Back Creek Road). Defendant was traveling north on Back Creek Road. Plaintiff alleged that Defendant either failed to stop or failed to stop for a sufficient period of time at the stop sign that controlled northbound traffic on Back Creek Road at the intersection. As Plaintiff was negotiating a left curve in the road, the right side of Defendant's vehicle collided with the left front side and corner of Plaintiff's vehicle. Plaintiff claimed injuries to her back, arms, neck and shoulder, as well as the bilateral anterior displacement of the discs of both temporomandibular joints of her jaw.

Defendant denied Plaintiff's allegations of negligence and asserted the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law and the contributory negligence of Plaintiff. Defendant contended that Defendant stopped her car at the stop sign, proceeded forward slightly and then stopped her car again at the controlled intersection. Defendant also argued that Plaintiff was negligent in operating her vehicle at an excessive speed.

Plaintiff's Counsel: John K. Bryan, Zimmer Kunz, PLLC, Pgh.

Defendant's Counsel: Timothy D. Appelbe, Pgh.

Trial Judge: The Hon. William J. Ober

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

NOVEMBER/DECEMBER 2004 TRIAL TERM

JOHN GELSDORF
V.
BONNIE BUKOSKEY, EXECUTRIX OF THE ESTATE OF THEODORE BUKOSKEY, DECEASED
NO. 7944 OF 2001

Cause of Action: Negligence—Motor Vehicle Accident

This action arose from a motor vehicle accident that occurred on December 29, 1998, at 3:00 p.m., in Derry Township, Westmoreland County. Plaintiff was traveling west on State Route 1025 (Pizza Barn Road) as he passed through its intersection with Township Road 887 (Seger Road). Defendant was traveling north on Seger Road. Plaintiff alleged that Defendant failed to stop at the stop sign controlling Defendant's entry onto Pizza Barn Road, causing the passenger side of Defendant's vehicle to collide with the front of Plaintiff's vehicle. Plaintiff had selected the full-tort option of automobile insurance coverage and claimed a herniated disc and aggravation of a pre-existing arthritic condition.

Defendant conceded negligence, but contested causation at trial. Plaintiff was involved in two automobile accidents subsequent to the accident that was the subject of this lawsuit. Defendant argued that Plaintiff's disc injuries were pre-existing arthritic changes unrelated to the accident of December 29, 1998.

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

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

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

Result: Verdict in favor of Plaintiff in the amount of $1.00.

NOVEMBER/DECEMBER 2004 TRIAL TERM

IN RE: CONDEMNATION OF RIGHT OF WAY FOR STATE ROUTE 0022, SECTION B05, AND TOWNSHIP ROUTES T-885 AND T-628, IN THE TOWNSHIP OF SALEM

PROPERTY OF BRYAN E. GORDON, ET AL.

NO. 1107 OF 1998

Cause of Action: Eminent Domain—Board of Viewers Appeal

This condemnation case involves a taking of 1.05 acres of a 2.58-acre parcel of property, upon which was erected a one-story commercial building, in Salem Township, Westmoreland County. As a result of the taking, the condemnees asserted a loss in the fair market value of their property. The condemnor paid estimated just compensation of $49,000.00. Before the Board of Viewers, the condemnees' expert opined damages of $135,000.00 and the condemnor's expert opined that damages resulting from the taking were $49,000.00. The Board of Viewers found that the condemnees were entitled to just compensation for the taking in the amount of $100,000.00. Both parties appealed from the award of the Board of Viewers. The case was tried before a jury to determine the amount of damages sustained by condemnees as a result of the taking. The condemnees submitted an appraisal showing damages in the amount of $135,000.00. The condemnor's appraisal reflected damages from the taking in the amount of $65,000.00.

Condemnor's (Commonwealth of Pa., Dep't of Transp.) Counsel: Walter F. Cameron, Jr., Office of Chief Counsel, Pgh.

Condemnees' Counsel: John N. Scales, Scales and Murray, Gbg.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of the condemnees in the amount of $126,000.00.