JANUARY/FEBRUARY 2005 TRIAL TERM

PATRICIA KUCHNA, MARY ANN PEDDER AND FRANCES ROSS, EXECUTRICES OF THE ESTATE OF THEODORE NOVAK V. JEANNETTE DISTRICT MEMORIAL HOSPITAL AND KEVIN M. WONG, M.D. NO. 7210 OF 1998

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

This medical malpractice action arose from Defendants' alleged failure to restrain Plaintiff's decedent, Theodore Novak, while he was a patient in the Defendant-Hospital, which resulted in him sustaining multiple falls. Plaintiff also alleged that Defendants failed to timely diagnose and treat the resulting subdural hematoma, which led to the decedent's death. Decedent presented to the hospital on December 28, 1996, for alcohol withdrawal syndrome. Defendant-Physician was his family doctor and attending physician. After finding decedent lying on the floor on his back on the evening of December 31, 1996, Defendants placed him in a chest restraint. On January 1, 1997, decedent was having gurgling respirations and was transferred to the critical care unit. A CT scan revealed a large, acute subdural hematoma and skull fracture. Decedent was then transferred to West Penn Hospital where he underwent an emergency craniotomy. On March 13, 1997, decedent died as a result of cardiopulmonary arrest, which Plaintiff alleged was caused by the subdural hematoma.

Defendant-Hospital denied all allegations of negligence and proximate causation. Hospital maintained it was a "restraint-free" facility where physical restraint of patients was used only as a last resort upon the order of a physician, and no orders were received prior to the occasion where decedent was found on the floor. Physician asserted that the medical care, diagnosis and treatment provided to decedent were appropriate and in accord with accepted standards of care. The physician maintained that decedent had no apparent signs of injury when found on the floor, and that he ordered physical restraints at that time. Physician asserted the affirmative defenses of assumption of the risk and comparative/contributory negligence.

Plaintiffs' Counsel: Charles A. Frankovic, Pribanic & Pribanic, L.L.C., Pgh.

Defendant-Hospital's Counsel: Stephen M. Houghton, Dickie, McCamey & Chilcote, P.C., Pgh.

Defendant-Physician's Counsel: Robert W. Murdoch, Rawle & Henderson LLP, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiff and against Hospital in the amount of $99,315.92 (for medical and other related expenses; no amount awarded for non-economic loss). Jury found the physician was not negligent.

JANUARY/FEBRUARY 2005 TRIAL TERM

MARY KAY BEITER AND ROBERT N. BEITER, HER HUSBAND V. MARY ANN BERQUIST, EXECUTRIX OF THE ESTATE OF OLDRECK W. SIGUT, A/K/A OLDRECK WALTER SIGUT NO. 7589 OF 2000

Cause of Action: Negligence—Premises Liability—Arbitration Appeal

Ms. Berquist was the executrix of her late father's estate and had placed her father's property located at 438 Pinewood Road, Sewickley, Allegheny County, on the market for sale. On February 9, 1999, at approximately 12:30 p.m., Ms. Berquist was showing Plaintiffs the property as prospective buyers. As Wife-Plaintiff exited the residence onto the exterior porch, she slipped and fell on a slippery, mold substance on the concrete steps. Plaintiff argued that Defendant performed no inspection of the area before she placed the house for sale and should have known of the dangerous condition of the steps. Plaintiff claimed chronic cervical and left shoulder strain; injury to her spine, both shoulders, breast, right knee, left hand, left thigh, head (resulting in blurred vision) and ribs; and severe and persistent headaches. Husband-Plaintiff claimed loss of consortium.

Defendant denied all allegations of negligence and asserted the affirmative defenses of contributory/comparative negligence and assumption of the risk. Defendant argued that there was no clear identification of the substance that allegedly caused Plaintiff to fall. Additionally, Defendant contended that the presence of mold on exterior steps in February did not constitute negligence.

Plaintiffs' Counsel: Richard C. Levine, Ainsman, Levine & Drexler, LLC, Pgh.

Defendant's Counsel: Christopher M. Fleming, Jacobs & Associates, Gbg.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict in favor of Defendant. The jury assigned 40% causal negligence to Defendant and 60% contributory negligence to Plaintiff.

JANUARY/FEBRUARY 2005 TRIAL TERM

MARJORIE L. WICKER, AN INDIVIDUAL, AND JAMES R. WICKER, HER HUSBAND
V.
CHITRINEE SACHUKUL, M.D.
NO. 4484 OF 2002

Cause of Action: Professional Negligence—Medical Malpractice

This action arose from the alleged negligence of Defendant in failing to detect and repair an ano-vaginal fistula. The Wife-Plaintiff was under the prenatal care of Defendant, who specialized in obstetrics and gynecology. On November 19, 2000, Defendant admitted Plaintiff to Westmoreland Regional Hospital for a scheduled induction for delivery of the baby. During the labor, Defendant performed an episiotomy and Plaintiff sustained a tear of the tissue between the vagina and the bowel. Plaintiff subsequently developed an ano-vaginal fistula, caused by Defendant misplacing a suture through the tissue between the anus and vagina upon repair of the tear. This action stemmed from the failure of Defendant to perform a post-repair rectal examination that would have disclosed the suture and provided an opportunity for its removal prior to the onset of complications. As a result, Plaintiff experienced the passing of gas and fecal matter from her vagina, suffered an infection of the ano-vaginal wall and underwent four surgical procedures to repair the fistula. Husband-Plaintiff claimed loss of consortium.

Defendant contended that she exercised proper care and treatment in accordance with accepted medical practices with respect to the circumstances presented in this case. Defendant presented expert testimony that Defendant did not misplace a suture; the standard of care does not require a rectal examination be performed in every case; and, that the fistula was caused by the birth of a large baby. Defendant argued that the birth of a large baby caused trauma to and weakened the tissues which eventually resulted in the fistula, i.e., a spontaneous break in the area.

Plaintiffs' Counsel: Richard H. Galloway, QuatriniRaffertyGalloway, Gbg; David J. Millstein and Jacquelyn A. Knupp, Millstein & Knupp, Youngwood
Defendant's Counsel: Edward D. Klym, Edward D. Klym & Associates, Pgh.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Verdict in favor of Defendant.

JANUARY/FEBRUARY 2005 TRIAL TERM

DONNA LIS, ADMINISTRATRIX OF THE ESTATE OF LOIS WILSON, DECEASED
V.
FRICK HOSPITAL, A PENNSYLVANIA CORPORATION, AND SIVARAMA K. GUNTUR, M.D.
NO. 4625 OF 2001

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

This medical malpractice action stems from the alleged failure of Defendants to adequately assess Plaintiff's decedent, Lois Wilson, as being a high fall risk and failed to initiate fall-prevention methods as mandated by the Defendant-Hospital's policy. On January 17, 2001, decedent was admitted to the hospital with a diagnosis of Coumadin overdose and to rule out a stroke. Plaintiff, age 75, exhibited symptoms of lightheadedness, confusion and an unsteady gait. At approximately 1:45 a.m. on January 20, 2001, the nursing staff found decedent on the floor in the doorway of her hospital room; her head was bleeding and she had a laceration to her left temple. At 1:50 a.m., the nursing staff paged Defendant-Physician. At approximately 2:00 a.m., decedent became unresponsive and the physician was paged again. Tests were ordered and decedent was transferred to the intensive care unit. At 5:00 a.m., she was transported to Presbyterian University Hospital and diagnosed with a very large subdural hematoma. Decedent passed away at approximately 12:40 p.m. on January 21, 2001. Plaintiff argued that full fall-prevention methods should have been used because decedent was extremely high risk, as assessed by the hospital's own fall risk and assessment policy.

Plaintiff contended that the minimum precautions of two side bed rails and tape were inadequate when the policy provided that all bed rails as well as a bed alarm should have been utilized.

The hospital denied all allegations of negligence and proximate causation contained in Plaintiff's complaint. The hospital asserted that the partial fall precautions instituted were sufficient and full precautions were not necessary because the decedent had not previously wandered. The physician denied all allegations of negligence and asserted that he had ordered that decedent's activity be limited to "out of bed to the bathroom with assistance only." The physician argued that fall assessment and precautions were the responsibility of the nursing staff and that he was not advised of some of the changes in the decedent's condition.

Plaintiff's Counsel: Harry S. Cohen and David J. Lozier, Harry S. Cohen & Associates, Pgh.

Defendant-Hospital's Counsel: John K. Heisey, Thomson, Rhodes & Cowie, P.C., Pgh.

Defendant-Physician's Counsel: Mark R. Hamilton and Susan A. Kostkas, Rawle & Henderson, LLP, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants. Jury found that neither Defendant was negligent.

JANUARY/FEBRUARY 2005 TRIAL TERM

DOUGLAS R. CLAIR AND SHIRLEE CLAIR, HIS WIFE
V.
DARYL R. CLAIR
NO. 7220 OF 2002

Cause of Action: Negligence—Premises Liability

This lawsuit arises from Husband-Plaintiff's fall of 10 to 12 feet from the Defendant's steel ladder on June 24, 2001. Husband-Plaintiff and Defendant are brothers. Plaintiff averred that Defendant had asked Plaintiff to assist him in waterproofing Defendant's new log home, specifically, spraying and hand-painting the roof with water-sealant. On the above date, Plaintiff was assisting Defendant in waterproofing the face board of the roof. While beginning to ascend the ladder by himself, the ladder gave way and Plaintiff fell to the ground on his back. Plaintiff sustained a broken back and had to wear a solid body cast. Plaintiff contended that Defendant had a duty to protect Plaintiff from foreseeable harm as an invitee, or business visitor, on Defendant's property. Plaintiff alleged that he worked at the direction and control of Defendant. Wife-Plaintiff claimed loss of consortium.

Defendant denied negligence and averred that he had asked only that Plaintiff hold and position the ladder during the joint project. Defendant contended that Plaintiff ascended the ladder by his own volition at the time of the accident and declined the assistance of Defendant when offered. Defendant denied that Plaintiff was an invitee and alleged that Plaintiff and Defendant jointly agreed to work together in a voluntary way. Defendant raised the affirmative defenses of assumption of the risk and Plaintiff's comparative/contributory negligence.

Plaintiffs' Counsel: Lawrence D. Kerr and Michael E. DeMatt, Berk, Whitehead, Kerr & Turin, P.C., Gbg.

Defendant's Counsel: Bernard P. Matthews, Jr., Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant. Jury found Defendant not negligent.

JANUARY/FEBRUARY 2005 TRIAL TERM

CAROL L. STANNARD AND MIKE STANNARD
V.
CARMEN ANTONIO
NO. 6979 OF 2002

Cause of Action: Negligence—Motor Vehicle Accident

This motor vehicle accident occurred on August 24, 2001, at approximately 11:45 a.m., in South Greensburg, Westmoreland County. Wife-Plaintiff was stopped at a red light at the intersection of Route 119 and Huff Avenue when she was rear-ended by Defendant. Plaintiff sustained cervical bulging discs, cervical strains/sprains and a right rotator cuff tear. Plaintiff had selected limited tort automobile insurance coverage but asserted that she sustained a serious injury, which entitled her to recovery of non-economic damages. Husband-Plaintiff claimed loss of consortium.

Defendant admitted negligence in causing the accident, but argued Plaintiff did not sustain a serious injury as defined by the Pennsylvania Motor Vehicle Financial Responsibility Law. Consequently, Defendant maintained that Plaintiff was not entitled to the recovery of non-economic damages.

Plaintiffs' Counsel: Richard C. Levine, Ainsman, Levine & Drexler, LLC, Pgh.

Defendant's Counsel: Joseph A. Hudock, Jr., Summers, McDonnell, Walsh & Skeel, L.L.P., Pgh.

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

Result: By consent of the parties, verdict entered in favor of Wife-Plaintiff in the amount of $5,500.00 for compensation of economic damages. On the issue of non-economic damages, the jury found in favor of Defendant.

JANUARY/FEBRUARY 2005 TRIAL TERM

PATRICIA LANDER
V.
MARY KOLESAR
NO. 2599 OF 2002

Cause of Action: Negligence—Motor Vehicle Accident

On April 5, 2001, Plaintiff was operating her vehicle on Herminie-Madison Road in Westmoreland County. Defendant was pulling out of her driveway onto Herminie-Madison Road. Although Plaintiff swerved to avoid hitting Defendant, Defendant's vehicle struck the front end of Plaintiff's vehicle. Plaintiff sustained injuries to her neck and upper back, cervical somatic dysfunction, myofascial pain syndrome, and acute-moderate thoracic sprain/strain. Plaintiff had selected the full tort option of automobile insurance coverage.

The parties stipulated to negligence and liability on the part of Defendant for the collision. Defendant argued that Plaintiff, at most, received a cervical strain as a result of the accident. Defendant contended that the neurosurgery performed on Plaintiff almost two years after the accident was unrelated to the automobile accident of April 5, 2001.

Plaintiff's Counsel: David C. Martin, Jr., Martin & Lerda, Pgh.

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

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiff in the amount of $1,000.00.

MARCH/APRIL 2005 TRIAL TERM

LAKE PROPERTIES, INC., A PENNSYLVANIA CORPORATION
V.
JAMES M. BRANT AND JOHN MACPHAIL
NO. 4914 OF 2002

Cause of Action: Breach of Contract

Plaintiff commenced this action as a result of Defendants' alleged breach of an agreement of sale for the purchase of Indian Lake Lodge, which included the lodge, hotel, golf course and business assets, located in Somerset, Pa. The parties entered into the agreement on April 11, 2001, for sale of property in the amount of $2,750,000. Although the agreement provided for a closing date of May 15, 2001, Plaintiff alleged an oral contract for Defendants to take possession of the premises and operate the business prior to closing. In the event the transaction did not close, the property was to be returned to the Plaintiff free of debts and obligations. A closing never took place, Defendants operated the business for eight months, and, in January of 2002, Defendants notified Plaintiff that they did not intend to go through with the purchase. Due to Defendants' breach of contract, Plaintiff sought to retain Defendants' $50,000 deposit, fair rental value for use of the property, loss of business profits and income, and reimbursement for payment of bills left unpaid when the business was returned to Plaintiff. Plaintiff also sought reimbursement for additional costs incurred to correct unauthorized repairs and alterations made by Defendants to the property.

Defendants averred they attempted to secure financing for a number of months following the original closing date, and that they remained in possession of the property and operated the business with the consent of the Plaintiff. Defendants maintained that the contract was terminated by mutual consent of the parties. Defendants denied that Plaintiff was permitted to retain the deposit under the agreement and denied any amounts due for lost profits. In their

counterclaim, Defendants sought reimbursement for unauthorized capital improvements made to the property in the amount of $194,000, which enhanced the value of the premises.

Plaintiffs' Counsel: Christopher R. Opalinski, Eckert Seamans Cherin & Mellott, LLC, Pgh; William C. Stillwagon, Gbg.

Defendants' Counsel: Timothy J. McCormick, Gbg.

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

Result: Verdict in favor of Plaintiff in the amount of $285,307.14. On the counterclaim, the jury found in favor of Plaintiff/Counterclaim Defendant, Lake Properties, Inc.

MARCH/APRIL 2005 TRIAL TERM

JOANNE T. HART AND JOHN T. HART, HER HUSBAND
V.
THOMAS CLOUD AND DENNIS TOWE
NO. 7565 OF 2000

Cause of Action: Negligence—Motor Vehicle Accident

Plaintiff was involved in two separate and unrelated motor vehicle accidents within less than one month of each other. Plaintiff sued both Defendants separately, but during the course of the litigation, the cases were consolidated at this number and term. On April 3, 1998, at about 10:39 a.m., Plaintiff was operating her motor vehicle on Fifth Avenue in an easterly direction in the Shadyside section of Pittsburgh, Allegheny County. Plaintiff was stopped for a red light at the intersection between Fifth and Shady Avenues and was rear ended by Defendant Towe, who failed to stop at the red light. On April 27, 1998, at about 2:30 p.m., Plaintiff was operating her automobile in a southwesterly direction on the Branthoover Cutoff approaching Route 22 West in Murrysville. Plaintiff was stopped at the stop sign at the intersection of Branthoover Cutoff and Route 22 West when she was rear ended by Defendant Cloud who failed to stop at the stop sign. Plaintiff claimed injuries to the bones, muscles, tissues and ligaments of the head, neck, upper extremities, lower extremities, back and hips; internal injuries, shock and injury to the nerves and nervous system. Plaintiff selected the full tort option of automobile insurance coverage.

Both Defendants denied Plaintiff's allegations of negligence and also contested causation at trial. Defendants argued that Plaintiff had numerous pre-existing conditions as well as a significant history of prior chiropractic treatment for injuries she claimed as a result of the accidents that were the subject matter of this lawsuit.

Plaintiff's Counsel: Melissa B. Catello, Evans, Portnoy, Quinn & O'Connor, Pgh.

Defendant Towe's Counsel: Gregg A. Guthrie, Summers, McDonnell, Hudock, Guthrie & Skeel, Pgh.

Defendant Cloud's Counsel: Kenneth Ficerai, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants. Jury found Defendant Towe was not negligent and that Defendant Cloud was negligent, but that his negligence was not a factual cause of the injuries complained of by the Plaintiff.

MARCH/APRIL 2005 TRIAL TERM

ROGER DEAN CICHETTI
V.
CATHERINE B. KUHNS
NO. 6188 OF 2003

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

This motor vehicle accident occurred on May 10, 2002, at approximately 2:15 p.m., on State Route 66 in Washington Township, Westmoreland County. While traveling northbound on Route 66, Plaintiff was waiting for a vehicle in front of him to make a left turn across oncoming traffic. Defendant, who was operating her vehicle behind Plaintiff, failed to stop and collided with the rear of Plaintiff's vehicle. Both vehicles were driveable after the accident, and Plaintiff drove his vehicle from the accident scene. Plaintiff alleged that the accident caused various injuries to his neck and upper back, which required medical and chiropractic care.

Defendant admitted liability and the parties litigated the issue of whether Plaintiff was entitled to recover damages. Defendant contended that the accident was not the factual cause of Plaintiff's neck and back complaints. The defense also focused on the history and frequency of Plaintiff's chiropractic care, and the minimal amount of damage to Plaintiff's vehicle.

Plaintiff's Counsel: James R. Antoniono, DeBernardo, Antoniono, McCabe & Davis, Gbg.

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

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant. The jury found that Defendant's negligence was not the factual cause of Plaintiff's injuries.

MAY/JUNE 2005 TRIAL TERM

RYAN M. ADAMS AND FRANCES M. EMERT
V.
MARY M. HAUS, M.D., AN INDIVIDUAL, AND SALEM ORTHOPEDIC GROUP, P.C., A PROFESSIONAL CORPORATION
NO. 3475 OF 1998

Cause of Action: Professional Negligence—Medical Malpractice

Plaintiff, Ryan M. Adams, was treated by Defendant, Dr. Mary M. Haus, an orthopedic surgeon, over a four-day hospital admission in September 1996 for a displaced fracture of the left ulna and radius. Defendant performed two surgeries on Plaintiff's arm during that time, whereupon Plaintiff developed compartment syndrome. Plaintiff transferred his care to two more physicians, who performed two additional surgeries on the Plaintiff. Plaintiff claimed injuries of permanent atrophy of his left forearm with hypersensitive surgical scars, as well as loss of function in his right arm, wrist and hand. Plaintiff's mother, Frances M. Emert, asserted a claim for reimbursement of medical bills during Plaintiff's minority. The Defendant maintained that she exercised appropriate judgment and complied with the relevant standard of care at all times during her treatment of Plaintiff.

The contested issues at trial concerned the timing of the initial surgery and whether any delay contributed to the development of compartment syndrome, the appropriateness and placement of the hardware (plates and screws) installed during the initial surgery, and whether a subsequent fasciotomy was properly performed.

Plaintiffs' Counsel: William J. Gagliardino, Gilardi, Cooper & Lomupo, Pgh.

Defendants' Counsel: James W. Kraus, Picadio Sneath Miller & Norton, P.C., Pgh.

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

Result: Verdict in favor of Defendants.

MAY/JUNE 2005 TRIAL TERM

BONNIE SUPRANO
V.
ANNA MARIE BEATTY
NO. 689 OF 2002

Cause of Action: Negligence—Motor Vehicle Accident

This automobile accident occurred on February 7, 2000, in Allegheny Township, Westmoreland County. Plaintiff was traveling north on State Route 4048, approaching its intersection with State Route 56. Defendant was traveling east on State Route 56. As Plaintiff reached the green light at the intersection, Defendant's vehicle struck the vehicle operated by Plaintiff in the front driver's side. Plaintiff claimed injuries to her lower back and severe headaches that caused her to pass out. Plaintiff had previously selected the full tort option of automobile insurance coverage.

The Defendant admitted liability at trial. Defendant contested the extent of Plaintiff's injuries regarding her claim for unreimbursed chiropractic bills. Defendant also argued that Plaintiff's headaches were not related to the accident.

Plaintiff's Counsel: Robert Paul Vincler, Vincler & Knoll, P.C., Pgh.

Defendant's Counsel: Scott O. Mears, 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 Plaintiff in the amount of $5,000.

MAY/JUNE 2005 TRIAL TERM

FRANK M. MILLER
V.
JAMES R. FALCONE
NO. 5213 OF 1998

Cause of Action: Negligence—Motor Vehicle Accident

This action arose from an accident involving three motor vehicles that occurred on December 23, 1996. Defendant's vehicle went through a stop sign, collided with a vehicle driven by Leslie Mlakar, and thereby forced the Mlakar vehicle to collide with the vehicle operated by Plaintiff. Plaintiff suffered a fractured wrist and, after the accident, began to complain of cervical and thoracic pain, as well as pain in his low back and left hip. In addition, Plaintiff claimed that persistent pain prevented him from working as a percussionist, choreographer, and competition judge for various drum corps groups. Plaintiff had selected limited tort automobile insurance coverage.

Defendant conceded negligence, but contested causation at trial. Defendant argued that Plaintiff's pain was caused by degenerative disc disease, which was unrelated to the motor vehicle accident. Defendant also asserted that Plaintiff did not suffer a serious injury for purposes of limited tort insurance coverage.

Plaintiff's Counsel: Daniel Ernsberger, Behrend & Ernsberger, Pgh.

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

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant. While the jury found that Defendant was the factual cause of Plaintiff's harm, no damages were awarded.

MAY/JUNE 2005 TRIAL TERM

STANLEY LINGELBACH, JR., D/B/A VINALPRIDE
V.
JOHN THOMAS CLOSE
NO. 3855 OF 2002

Cause of Action: Breach of Contract—Home Remodeling

Plaintiff and Defendant entered into a contract to remodel the residence of Defendant. After a dispute erupted between the parties over the quality of Plaintiff's work, Defendant refused to pay the final installment of the contract, which was in the amount of $24,216. Plaintiff filed suit to recover the final installment of the contract. Defendant filed a counterclaim for damages to his residence allegedly caused by Plaintiff's faulty workmanship.

At trial, Plaintiff presented evidence showing the details of the construction contract and the work he performed on Defendant's home. Defendant, who was proceeding *pro se*, presented a videotape to the jury, which he narrated, pointing out alleged defects in Plaintiff's work.

Plaintiff's Counsel: Matthew L. Prather, McCalister & Associates, New Kensington

Defendant's Counsel: Pro se

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiff in the amount of $20,100, which was subsequently molded to $23,747.70. On the counterclaim, verdict in favor of Defendant in the amount of $93.

MAY/JUNE 2005 TRIAL TERM

ROBERT FINE AND SUSAN FINE, HIS WIFE
V.
SALEM ORTHOPAEDIC GROUP
NO. 1399 OF 2003

Cause of Action: Negligence—Medical Office Injury

Plaintiff, Robert Fine, was a patient of Dr. E. William Kennen, who is an employee and corporate officer of Defendant. On April 4, 2002, Plaintiff went to Defendant's medical office to receive a knee injection. Dr. Kennen

injected Plaintiff's knee while Plaintiff was seated on an examination table. After Dr. Kennen had completed the injection and left the room, Plaintiff suddenly fell from the examination table and struck his face and mouth on a desk, which caused significant damage to his teeth.

The key issue at trial was whether Defendant's conduct fell below the standard of care for a patient in an orthopedic office. Plaintiff relied upon the expert testimony of an orthopedic nurse, who opined that Defendant increased the risk of harm by not conducting a proper assessment of Plaintiff and by permitting an X-ray technician to assist Dr. Kennen with the knee injection. Defendant offered the testimony of an orthopedic surgeon, who opined that Defendant followed the appropriate standard of care, and he stated that the X-ray technician was qualified to assist Dr. Kennen.

Plaintiffs' Counsel: Thomas J. McClain, Pgh.

Defendant's Counsel: Marian Schleppy, Gaca Matis Baum & Rizza, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

JULY 2005 TRIAL TERM

DIANA PALOMBO
V.
MUNICIPALITY OF MURRYSVILLE
NO. 1632 OF 2001

Cause of Action: Negligence—Defect/Dangerous Condition of Road

On March 14, 1999, the Plaintiff was driving her vehicle on School Road near Millstream Court in Murrysville, Pa., when she hit a patch of ice, causing her to lose control of her vehicle and strike a telephone pole. Plaintiff alleged that runoff water bypassed the catch basins and flowed across School Road, which caused an accumulation of ice on the road. Plaintiff averred that the Defendant knew or should have known of the dangerous condition of the roadway. Plaintiff underwent six surgeries relating to fractures of her right ankle and shin, had damage to the circulation of her right leg and sustained permanent and disfiguring scarring to the right leg.

Defendant denied the existence of a defect or dangerous condition of the roadway. Defendant raised the affirmative defense of governmental immunity pursuant to the Political Subdivision Tort Claims Act.

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

Defendant's Counsel: Jennifer Keadle Mason, Mintzer Sarowitz Zeris Ledva & Meyers, Pgh.

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

Result: Verdict in favor of the Defendant. Jury found no defect in the municipality's road that created a dangerous condition for motorists.

JULY 2005 TRIAL TERM

DENNIS T. POLLOCK
V.
GREGORY D. BADER
NO. 6772 OF 2002

Cause of Action: Negligence—Motor Vehicle Accident

On November 15, 2001, Plaintiff stopped his motorcycle at a stop sign on Old William Penn Highway at the intersection with the Cozy Inn Cutoff in Murrysville, Westmoreland County. Plaintiff then proceeded in an easterly direction on Old William Penn Highway when Defendant, who was operating his automobile in a westerly direction on Old William Penn Highway, turned left onto Cozy Inn Cutoff, entering the intersection and striking Plaintiff's motorcycle. Plaintiff argued that Defendant's turn signal was damaged prior to the accident and was not working at the time of the accident. Plaintiff alleged injuries, including a fractured nose and deviated septum, and three or four fractures to his cheek bones.

Defendant averred that traffic traveling from William Penn Highway onto Cozy Inn Cutoff (Defendant's direction of travel) was not controlled by a stop sign or other traffic control device. Defendant contended that Plaintiff failed to

stop at the stop sign that controlled Plaintiff's direction of travel, causing the front of Plaintiff's motorcycle to strike the front passenger side of the Defendant's vehicle. Defendant denied negligence in causing the accident and argued that some of the injuries claimed by Plaintiff, apart from the fractures, were not related to this motor vehicle accident.

Plaintiff's Counsel: Sean P. Duff, Patberg, Carmody, Ging & Filippi, Erie

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

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

Result: Molded verdict in favor of the Defendant. Jury found that Defendant was negligent in the operation of his automobile, but that Defendant's negligence was not a factual cause in bringing about the harm to Plaintiff.

SEPTEMBER/OCTOBER 2005 TRIAL TERM

ISAAC MOGEL AND RASAMEE MOGEL, HIS WIFE
V.
MARY HAUS AND SALEM ORTHOPAEDIC GROUP, P.C.
NO. 7455 OF 2003

Cause of Action: Professional Negligence—Medical Malpractice

Plaintiff, Isaac Mogel, fractured his right wrist in a hiking accident. Treated at the emergency room of Frick Memorial Hospital, doctors determined Plaintiff sustained a severely comminuted fracture of the right radius and avulsion of the ulnar styloid. The hospital referred Plaintiff to Defendant, Dr. Mary Haus, to treat Plaintiff for his injuries. During the course of treatment, the fracture became displaced and the bone angled out of position. Plaintiff ultimately received corrective surgery from another physician, Dr. Joseph Imbriglia, which involved re-breaking Plaintiff's radius. Surgery did not restore complete function to Plaintiff's arm and hand.

Plaintiff contended that Defendant negligently allowed his radius to heal into an improper position, which forced him to undergo additional surgery, causing a permanent diminution of function. Plaintiff's medical experts opined that Defendant's treatment fell below the standard of care because Defendant did not recognize the inherent instability of the fracture, did not take steps to halt the shifting fracture and did not forcefully recommend surgery to Plaintiff.

Defendant presented expert testimony indicating that Plaintiff was provided with conservative treatment within the applicable standard of care. Defendant also claimed Plaintiff was given the option of surgery and that it was his decision whether to undergo such treatment.

Plaintiffs' Counsel: Deborah S. Maliver, Biacheria, Erikson & Maliver, P.C., Pgh.

Defendants' Counsel: Giles J. Gaca, Gaca Matis Baum & Rizza, P.C, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

SEPTEMBER/OCTOBER 2005 TRIAL TERM

YVONNE AVAMPATO, EXECUTRIX OF THE ESTATE OF MARY LOUISE AVAMPATO, DECEASED
V.
M. NASIR SHAIKH, M.D.
NO. 3179 OF 2002

Cause of Action: Professional Negligence—Medical Malpractice

On May 16, 2000, Mary Louise Avampato went to the Westmoreland Regional Hospital Emergency Room, was diagnosed with deep vein thrombosis of the right thigh, and was admitted to the hospital. On May 18, 2000, in treating the deep vein thrombosis, Dr. Shaikh inserted a Greenfield filter to reduce the chance of clotting. During this procedure, Mrs. Avampato's heart was punctured, resulting in a perforation of the heart and cardiac tamponade, ultimately causing her death. Plaintiff alleged Dr. Shaikh was negligent in inserting the Greenfield filter in such a manner as to puncture the heart and thereafter failed to adequately treat Mrs. Avampato, causing her death. Plaintiff also alleged a lack of informed consent.

Dr. Shaikh denied negligence in both the placement of the Greenfield filter and the treatment provided thereafter, and denied that he failed to adequately inform Mrs. Avampato of the risks involved in the procedure.

Plaintiff's Counsel: Rolf Patberg, Patberg, Carmody, Ging & Filippi, Pgh.

Defendant's Counsel: Steven J. Forry, White and Williams, LLP, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant. Jury found Defendant was not negligent and that he adequately informed Mrs. Avampato of the risks involved in the procedure.

SEPTEMBER/OCTOBER 2005 TRIAL TERM

MATTHEW HOFFER
V.
PHYLLIS LOVERIDGE, ADMINISTRATRIX OF THE ESTATE OF ROBERT LOVERIDGE, SR., DECEASED
NO. 2543 OF 2001

Cause of Action: Negligence—Motor Vehicle Accident

This motor vehicle accident occurred on December 23, 2000, at approximately 11:35 p.m. in Fairfield Township, Westmoreland County. Plaintiff was travelling east on State Route 1006, approaching its intersection with State Route 711. Traffic proceeding east on State Route 1006 was controlled by a stop sign. Defendant Robert Loveridge was traveling south on State Route 711. Plaintiff averred he stopped at the stop sign, observed no oncoming traffic, and proceeded through the intersection. Plaintiff contended that Defendant was operating his vehicle at an excessive rate of speed as he travelled through the intersection, causing the front of his vehicle to collide with the left side of Plaintiff's vehicle. Plaintiff sustained a neck fracture, which required surgical removal of a disc and fusion of two vertebrae. Plaintiff wore a halo cast for an extensive period of time. During the trial, the court ruled as a matter of law that Plaintiff's injuries constituted a "serious injury" and met the threshold required in this limited tort case.

Defendant denied negligence and averred that he operated his vehicle in a careful, prudent and lawful manner at all times. Defendant argued that Plaintiff failed to stop at the posted stop sign, failed to yield the right-of-way to the vehicle operated by Defendant, and proceeded directly into the path of the Defendant's vehicle.

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

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

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

Result: Molded verdict in favor of Defendant. Jury found Defendant was not negligent in the operation of his vehicle.

NOVEMBER/DECEMBER 2005 TRIAL TERM

LINDA KOWAL AND MICHAEL KOWAL, HER HUSBAND
V.
GIANT EAGLE, INC.
NO. 8147 OF 2003

Cause of Action: Negligence—Personal Injury

On September 14, 2002, Plaintiff, Linda Kowal, entered a supermarket owned by Defendant, Giant Eagle, Inc. While shopping in the store, an employee of Defendant struck Plaintiff in the back of her right foot with a loaded metal flat. The flat inflicted a deep cut in Plaintiff's right heel and knocked her to the floor. Plaintiff alleged that she sustained injuries in the form of a laceration to her right heel, soft tissue damage to the heel, protrusion and hypertrophy of the bone near the insertion of the Achilles tendon, damage to the Achilles tendon, inflammation of the subtalar joint, and left wrist pain.

Although Defendant conceded negligence, it contested causation at trial. Defendant did not present any expert medical testimony, but rather based its defense on the testimony of fact witnesses and its cross-examination of Plaintiffs' witnesses.

Plaintiff's Counsel: Kelly L. Enders, Caroselli, Beachler, McTiernan & Conboy, Pgh.

Defendant's Counsel: James F. Rosenberg, Marcus & Shapira, LLP, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiff in the amount of $9,236.66.

NOVEMBER/DECEMBER 2005 TRIAL TERM

PETER J. RASPANTI AND ROBBIN D. RASPANTI, HIS WIFE
V.
GERALD R. VENSEL, JR.
NO. 6092 OF 2003

Cause of Action: Negligence—Motor Vehicle Accident

The action arises from a motor vehicle accident, which took place in Upper Burrell Township on September 26, 2002. Plaintiff, Peter J. Raspanti, while attempting to enter State Route 4032 from his driveway, collided with the vehicle of Defendant, Gerald Vensel, Jr. As a result of the accident, Plaintiff sustained multiple fractures and was required to undergo a long period of rehabilitation.

The parties agreed to bifurcate the case and conduct a jury trial solely on the question of negligence. At trial, Plaintiff argued that Defendant caused the accident by driving at an excessive and unreasonable speed. Defendant, on the other hand, argued that Plaintiff caused the accident by failing to yield the right of way while exiting his driveway. Both parties presented the testimony of accident reconstruction experts.

The jury was instructed to make findings on the negligence of Defendant, the contributory negligence of Plaintiff, and, if necessary, to quantify the percentage of causal negligence attributable to each party.

Plaintiff's Counsel: Fred C. Jug, Brant, Milnes & Rea, Pgh.

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

Trial Judge: The Hon. William J. Ober

Result: Defendant, 39% negligent; Plaintiff, 61% negligent. Verdict for Defendant.

NOVEMBER/DECEMBER 2005 TRIAL TERM

BARBISH ENVIRONMENTAL SERVICES TECHNOLOGY, INC. AND E.S.T.I., INC.
V.
VOLVO GM HEAVY TRUCK CORPORATION, INC., AND PITTSBURGH MACK SALES & SERVICE, INC. T/D/B/A VOLVO HEAVY TRUCKS OF PITTSBURGH
NO. 4744 OF 1997

Cause of Action: Contract—Breach of Express Warranty

Plaintiffs are engaged in the business of hauling. In 1995 and 1996, Plaintiffs entered into lease and purchase agreements with the Defendants, the seller and manufacturer of industrial trucks, with respect to four Volvo trucks. Plaintiffs alleged that almost immediately upon lease and purchase, the Volvo trucks sustained numerous mechanical malfunctions, including clutch, suspension and drive train problems. Plaintiffs redelivered the leased vehicles to Defendant, and were unable to use the broken down purchased vehicle for extended periods of time. Plaintiffs proceeded to trial against Defendants for breach of the express warranties set forth in the lease and purchase agreements.

Defendants denied any breach of express warranties and contended that the trucks were of merchantable quality. Defendants asserted that any damages sustained by plaintiff were caused by the failure of Plaintiffs and/or others to properly operate, maintain, repair and/or service the Volvo trucks.

Plaintiffs' Counsel: Peter A. McClenahan, Streib & McClenahan, Pgh.

Defendants' Counsel: Arnd N. von Waldow and Wayne W. Ringeisen, Reed Smith, LLP, Pgh.

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

Result: Verdict in favor of Plaintiffs in the amount of $73,390.87.

NOVEMBER/DECEMBER 2005 TRIAL TERM

KATHLEEN MANCUSO
V.
MARY WEAVER
NO. 279 OF 2004

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

On July 10, 2002, Plaintiff was preparing to enter her vehicle onto State Route 30 in Greensburg, Westmoreland County, via the entrance ramp from Greensburg-Mt. Pleasant Road. Defendant was operating her vehicle in an easterly direction directly behind Plaintiff's vehicle. While Plaintiff was waiting for oncoming traffic to pass before turning onto Route 30, Defendant's vehicle struck Plaintiff's vehicle, causing her to sustain injuries to her neck, shoulders and cervical spine. Defendant denied all allegations of negligence and asserted the contributory/comparative negligence of the Plaintiff.

Plaintiff's Counsel: Jeffrey A. Pribanic, Pribanic & Pribanic, L.L.C., White Oak
Defendant's Counsel: Christopher M. Fleming, Jacobs & Associates, Gbg.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Summary jury verdict in favor of Defendant.

NOVEMBER/DECEMBER 2005 TRIAL TERM

KENNETH SLABY
V.
GAIL O'TOOLE
NO. 5723 OF 2000

Cause of Action: Battery—Assault—Intentional Infliction of Emotional Distress

This case arose out of an incident which occurred on May 7, 2000. Plaintiff alleged that Defendant assaulted him by pouring a glue-like substance believed to be Superglue in the crack of Plaintiff's buttocks and into his rectal area, Superglued Plaintiff's penis to his upper abdomen and poured Superglue over Plaintiff's genital area resulting in Plaintiff's testicles being glued to his inner thigh. Plaintiff also alleged Defendant poured a red and blue substance believed to be nail polish over his head causing a discoloration of Plaintiff's head and hair. Plaintiff further alleged that Defendant wrote "cute asshole" on Plaintiff's lower back and buttocks in red nail polish. Plaintiff sought compensatory and punitive damages.

Defendant denied all allegations of wrongful conduct and pled that Plaintiff consented to all activities that occurred on May 7, 2000.

Plaintiff's Counsel: Jeffrey Monzo, Belden Law, Gbg.; Grey Pratt, Hanchak & Pratt, LLC, Pgh.
Defendant's Counsel: Charles Evans, Meyers, Kenrick, Giuffre & Evans, LLC, Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict in favor of Plaintiff in the amount of $46,200.00

NOVEMBER/DECEMBER 2005 TRIAL TERM

GEORGE SHINKO AND MARY ANN SHINKO, INDIVIDUALLY AND AS ADMINISTRATORS OF THE ESTATE OF KEITH R. SHINKO, DECEASED
V.
ROBERT T. DUNN, M.D.
NO. 507 OF 2003

Cause of Action: Medical Malpractice

On October 15, 2001, Keith Shinko presented to Defendant, his primary care physician, complaining of persistent cough, sinus symptoms and headache. Defendant prescribed an antibiotic and instructed Keith to call the office if his condition worsened. Keith was found dead in his apartment on October 17, 2001. An autopsy performed on October 18, 2001 determined that he died of bacterial meningitis, associated with bilateral bronchopneumonia. Plaintiffs alleged that the Defendant was negligent in his care of Keith in failing to obtain an appropriate medical history, failing to order STAT lab work, failing to recognize that Keith's uncontrolled diabetes increased his risk for developing infections and complications and in general in failing to properly diagnose and treat Keith for meningitis. Additionally, Keith had a history of meningitis from 1999.

Defendant denied the allegations in Plaintiffs' complaint and averred that the treatment rendered to Keith Shinko was within the standards of the medical community. Defendant's expert testified that the type of meningitis Keith died

from, fulminant meningitis, is characterized by a short period of symptoms and in most cases, death within one or two days after the onset of illness and that Keith suffered from an abnormal anatomical connection between the central nervous system and either the middle ear or his sinuses that would allow him to contract meningitis twice in his lifetime, which is extremely rare.

Plaintiffs' Counsel: Douglas Price, Harry S. Cohen & Assoc., Pgh.

Defendant's Counsel: Thomas Anderson, Thomson, Rhodes & Cowie, PC, Pgh.

Trial Judge: The Hon. Gary P. Caruso

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