JANUARY/FEBRUARY 2006 TRIAL TERM

TRICIA L. HOYLE
V.
BOBBI LYNN THOMAS
NO. 232 OF 2001

Cause of Action: Negligence—Automobile Accident

On January 18, 1999, Plaintiff Tricia Hoyle was driving her vehicle in a northbound direction on State Route 982 in Unity Township, Pa. Defendant Bobbi Lynn Thomas, who was driving in a southbound direction, crossed the center line of the roadway and collided with Plaintiff's vehicle. Plaintiff subsequently filed a complaint against Defendant seeking damages for various injuries to her head, neck, shoulders, and chest, as well as compensation for lost wages and unpaid medical bills.

Plaintiff testified that, following the automobile accident, she experienced ongoing neck and mid-back pain. Plaintiff presented expert testimony in support of her claim.

Although Defendant admitted liability, she disputed the extent and duration of Plaintiff's injuries. Defendant presented the testimony of a medical expert, who opined that Plaintiff had sustained a soft tissue injury to her neck and back, and that her injury had completely resolved.

Plaintiff's Counsel: Dennis B. Rafferty, QuatriniRaffertyGalloway, P.C., Gbg.

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

Trial Judge: The Hon. William J. Ober

Result: Verdict for Plaintiff in the amount of $16,019.98.

JANUARY/FEBRUARY 2006 TRIAL TERM

CHARLES PERSON AND SUSAN PERSON, HIS WIFE
V.
REUSS ENGINEERS, INC., ADVANCE PRODUCTION TOOLS T/D/B/A ADVANCE LIFTS, INC.
NO. 7656 OF 2003

Cause of Action: Product Liability—Industrial Machinery

Plaintiff Charles Person was employed by Timkin Latrobe Steel as worker in its vac arc department. Plaintiff's duties required him to place large, heavy steel objects onto a hydraulic lift table, which had been custom-designed and built by Defendant, Reuss Engineers, Inc. On December 8, 2001, a heavy metal object fell from the hydraulic lift table and crushed Plaintiff's right foot. Plaintiff underwent numerous surgeries including a partial amputation of his right foot, and he was unable to work for months.

Plaintiffs filed suit against, among others, Defendant Reuss Engineers, alleging that the hydraulic lift table was improperly designed and constructed. Plaintiffs' design argument focused on the absence of a chain safety clamp to secure objects to the table. Plaintiffs also argued that the table was defective because it lacked warnings with regard to the use of the device.

Defendant argued that, at the time of the injury, Plaintiff was using the hydraulic lift table to cut and weld, a use for which the table was not designed or intended. Defendant also pointed out that a crane was available to provide support to the heavy metal objects being welded.

Plaintiffs' Counsel: Sandra S. Neuman and John Gismondi, Gismondi & Associates, Pgh.

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

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant. While the product was found to be defective, the jury determined that the defect in the hydraulic lift table did not cause Plaintiff's injuries.

JANUARY/FEBRUARY 2006 TRIAL TERM

KAREN S. FOSTER AND ERNEST FOSTER, HER HUSBAND
V.
DAVID HUTTON, JR., AND RISSINGER'S TRUCKING AND EXCAVATING, INC.
V.
ERNEST FOSTER, ADDITIONAL DEFENDANT
NO. 789 OF 2003

Cause of Action: Negligence—Automobile Accident

On January 9, 2002, Plaintiff-husband Ernest Foster was driving north on State Route 954 in Indiana, Pa. Plaintiff-wife Karen Foster was a passenger. Defendant Hutton failed to yield the right of way at the intersection of State Route 422 with State Route 954, causing Plaintiff-husband to apply his brakes suddenly. As a result, Plaintiffs' vehicle was hit from behind by a coal truck owned by Defendant Rissinger. Plaintiff-wife claimed injuries including complex tear of medial meniscus of the right knee with required surgery, lumbar and cervical injuries, headache. Plaintiff-wife avers total disability as a result of the accident. Plaintiffs claim lost wages of $48,672.00.

Defendant Rissinger denied negligence, claiming the accident was the result of the negligence of Defendant Hutton and Plaintiffs. Defendant Rissinger also disputed the nature and extent of Plaintiff-wife's injuries.

Defendant Hutton denied negligence, claiming the accident happened when Plaintiff-husband unexpectedly came to a stop at the intersection of State Route 422 and State Route 954, causing the coal truck to hit Plaintiffs' vehicle from behind.

At the time of trial, the parties agreed to submit this case to a binding summary jury trial because the Defendants and Additional Defendant admitted liability and agreed on their respective percentages of liability. The only question to a jury was whether Plaintiff-wife was injured and if so, what are her damages. Plaintiffs did select the limited tort option on their insurance.

Plaintiffs' Counsel: Roger D. Horgan, Abes Baumann, P.C., Pgh.
Defendant Rissinger's Counsel: George N. Stewart, Zimmer Kunz, Pgh.
Defendant Hutton's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe
Additional Defendant Foster's Counsel: Walter C. Faderewski, Law Office of Joseph S. Weimer, Pgh.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Plaintiff-wife did not sustain a "serious impairment of bodily function."

MARCH/APRIL 2006 TRIAL TERM

CINDY STOUFFER, PERSONAL REPRESENTATIVE AND/OR
GUARDIAN AD LITEM OF THE ESTATE OF BARRY G. STOUFFER
V.
MAMOON RASHEED, M.D.
NO. 750 OF 2002

Cause of Action: Medical Malpractice—Wrongful Death/Survival

Defendant, Dr. Mamoon Rasheed, treated Decedent, Barry Stouffer, for renal cell carcinoma in 1997. On September 21, 1999, Mr. Stouffer went to Defendant's office complaining of fatigue and weakness. Defendant ordered a CT scan, which was performed at Frick Hospital on September 24, 1999. Although the CT scan revealed the presence of a mediastinal adenopathy suggestive of kidney cancer, Defendant did not inform Mr. Stouffer of the results of the test. Mr. Stouffer did not learn of the metastatic disease until February 2000, when he went to the Frick Hospital emergency room complaining of shortness of breath, chest heaviness, and chest congestion. Mr. Stouffer died on July 14, 2001, and this action by Plaintiff, Cindy Stouffer, ensued.

Plaintiff argued that, despite the fact that the September 24, 1999, CT scan clearly revealed a presence of a metastatic tumor, Defendant failed to diagnose and treat the condition. Defendant's inaction, in Plaintiff's view, was below the standard of care and led to Mr. Stouffer's untimely death. In addition, Plaintiff presented testimony that, when members of Mr. Stouffer's family telephoned Defendant's office to inquire about the test results, the office personnel did not inform them of the positive finding.

Defendant argued Mr. Stouffer was directed to contact his office to confirm that the CT scan was completed. Mr. Stouffer never called, and Defendant disputed the claim that Mr. Stouffer's family had asked his office for the results of the CT scan. Moreover, Defendant asserted that the delay in treatment of Mr. Stouffer's metastatic disease did not have any impact on the ultimate outcome in this situation.

Plaintiff's Counsel: Mark F. Haak, Pribanic & Pribanic, L.L.C., White Oak

Defendant's Counsel: Tyler J. Smith, Pietrogallo, Bosick & Gordon, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

MARCH/APRIL 2006 TRIAL TERM

ANGELA PALIOMETROS
V.
DIEGO LOYOLA, MICHAEL GEYER, ZACHARY PLETCHER, SIGMA TAU GAMMA PI CHAPTER, EDWIN L. PARSONS, D. TERRY KENNEY, INDIVIDUALLY AND T/D/B/A LIGONIER GARDENS

Cause of Action: Negligence

On October 17, 1998, Plaintiff attended a party at the Fort Ligonier Motor Lodge in Ligonier, Pa., hosted by the Defendant Sigma Tau Gamma fraternity at Indiana University of Pennsylvania. During the course of the party, no representative of the Fort Ligonier Motor Lodge was on site or available in case of emergency. At the time of the party, Plaintiff was a freshman at IUP. While at the party, Plaintiff, as well as the other guests, consumed alcohol. The Ligonier Borough Police were dispatched in response to a noise complaint from other guests at the Motor Lodge. The police called an ambulance to the scene to transport a few partygoers to the hospital due to unresponsiveness, cited a number of attendees for underage drinking, but were unable to evict the attendees from the private property without consent of the property owner. At some point after the police arrived, Plaintiff was sexually assaulted by Defendant Loyola in a guest room of the Motor Lodge. Plaintiff contended that the failure of Fort Ligonier Motor Lodge to have someone on site at all times fell below the standard of care of an inn keeper, and that such failure was the proximate cause of her injuries. Plaintiff sued Defendant Loyola for battery and the other remaining Defendants for negligence. Essentially, Plaintiff's damages were for injuries in the nature of emotional distress as a result of the assault, as well as compensation for future expenses related to psychological counseling.

Defendant Fort Ligonier Motor Lodge was the only Defendant to defend at trial. It contended that its conduct did not fall below the standard of care for an inn keeper, as it was not required to have an employee on site at all times.

Plaintiff's Counsel: Susan N. Williams and Timothy B. Kinney, Gbg.

Defendant Fort Ligonier Motor Lodge's Counsel: Mark Neff, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Plaintiff in the amount of $548,700.00. Jury found Plaintiff 7% responsible and Fort Ligonier Motor Lodge 20% responsible. The award was made jointly and severally against the Defendants.

MAY/JUNE 2006 TRIAL TERM

RICHARD LAZORCHIK AND DOROTHY LAZORCHIK, HIS WIFE
V.
MARY HAUS, M.D. AND SALEM ORTHOPAEDIC GROUP, P.C.
NO. 3573 OF 2003

Cause of Action: Professional Negligence—Medical Malpractice

On April 22, 2001, Plaintiff was involved in a dirt bike accident and his injuries included a fractured left tibia. Defendant-orthopedic surgeon repaired the fracture by utilizing an intramedullary rod without locking screws. On January 23, 2002, it was discovered that the rod had migrated and there was non-union. Defendant gave Plaintiff the option to choose a rod exchange or rod removal. Plaintiff declined and another orthopedic surgeon performed a rod exchange with locking screws on March 15, 2002. Although the fracture healed by July 9, 2002, Plaintiff contended that migration of the initial rod caused him to experience constant pain and swelling. Plaintiff's expert testified that Defendant was negligent in failing to secure the rod with locking screws.

Defendant contended that her decision to use a non-reamed nail without cross locking screws was well within the standard of care for treatment of this fracture. Defendant's expert testified that defendant followed proper procedure for treatment of the fracture, and that no screws were required or necessary.

Plaintiffs' Counsel: Robert A. Cohen, Oakdale

Defendants' Counsel: Steven J. Forry, White & Williams, LLP, Pgh.

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

Result: Verdict in favor of Defendant.

JULY 2006 TRIAL TERM

CARL F. MILLER
V.
DREW RAINEY AND DONNA RAINEY, HIS WIFE, AND DREW RAINEY ENTERPRISES, INC.
NO. 2877 OF 2000

Cause of Action: Private Nuisance—Arbitration Appeal

In this arbitration appeal, Plaintiff asserted a claim of private nuisance against the Rainey Defendants stemming from the Defendants' use of a public alley that abuts Plaintiff's residence to access Defendants' business/ residence. Plaintiff contended that the passing traffic of trucks and construction vehicles serving the Rainey's business/residence created noise and dust, as well as fumes and vibrations that caused damage to his garage and hedges. Defendants contended that no damage had occurred from vehicles over which they had control.

Plaintiff: Pro Se

Defendants' Counsel: Kenneth Ficerai, Mears, Smith, Houser & Boyle, P.C., Gbg.

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

Result: Verdict in favor of Defendants.

JULY 2006 TRIAL TERM

MISTY SMELTZ
V.
JOSEPH HIGNETT
NO. 2205 OF 2004

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

On December 12, 2003, at approximately 1:45 p.m., Plaintiff Misty Smeltz was attempting to make a left-hand turn from the exit of Goodwill Industries on to Roseytown Road. Although there was a long line of traffic stopped on Roseytown Road, the driver of a box truck created a gap in the traffic for Plaintiff to enter the roadway. Plaintiff drove her vehicle into the gap and collided with the vehicle of Defendant Joseph Hignett, who was passing the box truck. Thereafter, Plaintiff filed a complaint against Defendant, alleging the Defendant caused the accident by negligently and carelessly passing the stopped truck, and that she suffered serious personal injuries as a result thereof.

By agreement of the parties, a binding summary jury trial was conducted on July 11, 2006. The evidence presented at trial focused on the issue of liability. Plaintiff asserted that Defendant negligently passed the box truck in an area where passing was not permitted and at an unsafe speed. Defendant, on the other hand, argued that Plaintiff was negligent, because she exited Goodwill and drove in front of Defendant. Plaintiff also presented evidence that she underwent an extensive course of chiropractic treatment following the accident.

Plaintiff's Counsel: John N. Scales, Meyer Darragh Buckler Bebenek & Eck, Gbg.

Defendant's Counsel: R. Douglass Klaber, Robb Leonard Mulvihill, Pgh.

Trial Judge: The Hon. William J. Ober

Result: The verdict was molded to provide that Defendant would pay $1,000 to Plaintiff, pursuant to the terms of a pre-trial stipulation.

SEPTEMBER/OCTOBER 2006 TRIAL TERM

MICHAEL COLE
V.
KENNETH CARDIFF, WEST PENN WALL SYSTEMS, CARDIFF CONTRACTING AND JULIE CARDIFF

Cause of Action: Breach of Contract—Breach of Fiduciary Duty—Tortious Interference

Plaintiff and Defendant Kenneth Cardiff entered into a verbal partnership agreement forming a partnership named West Penn Wall Systems. Plaintiff contended that, subsequently, Kenneth Cardiff and his wife, Julie Cardiff, formed Cardiff Contracting and that, through this newly formed company, Defendants took the contracts between West Penn Wall Systems and its various customers, destroyed them, and replaced them with contracts between Cardiff Contracting and the customers, thereby eliminating Plaintiff's right to any share in the profits of the contracts of West Penn Wall Systems.

Defendants contended that Plaintiff voluntarily terminated the partnership with Kenneth Cardiff. There were a number of West Penn Wall System jobs that were partially completed when Plaintiff refused to continue working, which were completed by Cardiff Contracting. Defendants contended that Plaintiff received the benefit of his bargain because he was paid his weekly salary and bonuses for the period of time he worked for West Penn Wall Systems.

Plaintiff's Counsel: Michael J. DeRiso, Monroeville

Defendants' Counsel: Timothy C. Andrews, Gbg.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants. Jury found Plaintiff did not prove the existence of an oral partnership agreement with Defendant Kenneth Cardiff or that Kenneth Cardiff intentionally interfered with the contractual relations between West Penn Wall Systems and any third parties.

SEPTEMBER/OCTOBER 2006 TRIAL TERM

BETTY L. PLATE
V.
HENRY ROLAND
NO. 4762 OF 2000

Cause of Action: Negligence—Motor Vehicle Accident

On December 23, 1998, Plaintiff and Defendant were traveling in the same vehicle through North Carolina on Interstate Highway 77 during a snowstorm when their automobile was involved in a collision with a tractor-trailer truck. Defendant's wife and mother-in-law, passengers in Defendant's vehicle, were killed in the accident. Death actions on their behalf were instituted in North Carolina and resulted in a verdict in favor of defendant trucking company and its driver. Plaintiff was not a party to the North Carolina actions. Plaintiff filed this action in Westmoreland County against Defendant, who was driving the car in which she was a passenger, alleging that the accident was caused by Defendant's negligent operation of the vehicle. In new matter, Defendant contended that the accident was caused by adverse weather and road conditions not within the control of the Defendant.

The case was bifurcated and tried as to liability only. The sole issue for trial was whether the weather and road conditions were so bad at the time of the accident that Defendant should not have been driving.

Plaintiff's Counsel: Amy S. Cunningham, Gbg.

Defendant's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe

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

Result: Molded verdict in favor of Defendant. In special findings, jury found Defendant not negligent in continuing to drive his vehicle in the weather conditions that developed up to the time of the accident.

SEPTEMBER/OCTOBER 2006 TRIAL TERM

MELVIN DRAKULIC
V.
DONNA LEE PLECENIK, INDIVIDUALLY AND TRADING AND DOING BUSINESS AS LEVEL GREEN MINI MART
V.
SEALER KING, SEAL COAT COMPANY
NO. 7866 OF 2001

Cause of Action: Negligence—Premises Liability

On December 26, 1999, Plaintiff entered upon the property of Defendant, Donna Lee Plecenik, in order to patronize the Level Green Mini Mart. As she was walking, Plaintiff slipped on a wet, painted curb and fell to the ground. Six months prior to the accident, Defendant had hired Sealer King, Seal Coat Company, the Additional Defendant, to spray the curb with yellow paint.

Plaintiff's complaint against Defendant alleged that the paint on the curb became slippery when wet and was a hazardous condition. As a result of the fall, Plaintiff claimed various injuries to his left arm, shoulder, neck, back, and right knee. Defendant asserted that she relied upon the knowledge and expertise of the Additional Defendant, an independent contractor, to select the paint and apply it to the curb on which Plaintiff allegedly fell. At trial, evidence was presented that Plaintiff did not immediately seek medical attention following his fall, and that he sustained a stroke subsequent to the fall that affected the left side of his body.

Plaintiff's Counsel: Patrick H. Mahady, Mahady & Mahady, Gbg.
Defendant's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe
Additional Defendant's Counsel: Maria Spina Altobelli, Mears, Smith, Houser & Boyle, P.C., Gbg.
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Defendant and Additional Defendant.

SEPTEMBER/OCTOBER 2006 TRIAL TERM

SANDRA KAY JAKUBAK
V.
HEATHER LEE BOYLE AND GARY R. BOYLE
NO. 352 OF 2004
NO. 357 OF 2004

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

On February 12, 2002, Plaintiff and Defendant, Heather Lee Boyle, were involved in an automobile accident at the intersection of William Penn Highway and School Road in Murrysville, Pa. Defendant was driving on William Penn Highway and stopped at its intersection with School Road, where her view was blocked by a large truck. Defendant proceeded into the intersection and collided with the passenger side of the vehicle driven by Plaintiff, who was entering the intersection from School Road. Plaintiff claimed that she sustained injuries to her neck, back, shoulders, arms, and chest. Defendant asserted the contributory and comparative negligence of the Plaintiff.

Plaintiff's Counsel: Howard F. Murphy, Papernick & Gefsky, L.L.C., Monroeville
Defendant's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Defendant. Jury determined that neither Defendant nor Plaintiff were negligent.

SEPTEMBER/OCTOBER 2006 TRIAL TERM

MYSTIC A. KELLER
V.
VINE STREET ASSOCIATES, A PENNSYLVANIA GENERAL PARTNERSHIP; CATHERINE C. MCCAULEY; CATHERINE M. FLORIANI; PATRICIA S. MCCAULEY; SALLY A. MCCAULEY; CHRISTINE M. FERNANDEZ; AND JOHN W. MCCAULEY, III, TRUSTEES UNDER THE WILL OF J. WILLIAM MCCAULEY, JR., DECEASED, INDIVIDUALLY AND AS GENERAL PARTNERS OF VINE STREET ASSOCIATES; AND LYNN C. MCCAULEY
NO. 9098 OF 2004

Cause of Action: Negligence—Premises Liability

Plaintiff rented an apartment in a multi-unit building owned by Defendants, Vine Street Associates and its general partners. On December 9, 2002, Plaintiff exited the front door of her apartment, walked onto a paved driveway where her vehicle was parked, and slipped and fell on a sheet of ice. The fall fractured Plaintiff's left ankle. On December 13, 2002, Plaintiff underwent surgery to her ankle in the nature of an open reduction and internal fixation.

The parties agreed to bifurcate the case and a trial was conducted on the issue of liability only. Plaintiff presented testimony regarding the circumstances of her slip and fall on the ice in the driveway. Defendants presented testimony that they lacked knowledge of the slippery condition and that the condition was not present for a sufficient period of time such that they should have been aware of the problem and taken corrective action.

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

Defendant's Counsel: Maria Spina Altobelli, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant. Jury found Defendants were negligent but their negligence was not the factual cause of Plaintiff's harm.

NOVEMBER/DECEMBER 2006 TRIAL TERM

JOHN TAMEWITZ
V.
SMEALS ENTERPRISES, INC. D/B/A EASTERN OFF-ROAD AND EASTERN OFF-ROAD, INC.
NO. 7997 OF 2002

Cause of Action: Negligence

At approximately 3:00 a.m. on January 1, 2001, Plaintiff was leaving a New Year's Eve party at a friend's home when he stepped onto the running board to enter the driver's side door of his pick-up truck and the running board gave way and dislodged, thereby causing Plaintiff to fall backwards into two feet of snow. Plaintiff contended that as a result of Defendant's faulty installation of the running boards, he sustained injuries to his back that were chronic and permanent. These injuries affected his ability to perform his work duties as a state trooper and resulted in an impairment of his earning capacity.

Defendant contended that Plaintiff was contributorily and/or comparatively negligent and barred from recovery since Plaintiff's causal negligence was greater than the negligence, if any, of the Defendant.

Plaintiff's Counsel: Gary Ogg, Ogg, Cordes, Murphy & Ignelzi, L.L.P., Pgh.

Defendants' Counsel: Andrew Horvath, Stofko Law Offices, Johnstown

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Plaintiff in the amount of $1,250,000.00.

NOVEMBER/DECEMBER 2006 TRIAL TERM

ROBERT WALTERS AND TINA WALTERS
V.
JOHN SWEENEY
NO. 6585 OF 2005

Cause of Action: Replevin—Advisory Jury Verdict

In 1999, Plaintiffs Robert and Tina Walters, purchased a female beagle dog, which they named "Cole." On October 5, 2003, Cole escaped from Plaintiffs' property and was lost. Plaintiffs conducted a search and placed an advertisement in the local newspaper, but the dog was not found. On May 20, 2005, Plaintiffs learned that Defendant, John Sweeney, was in possession of a female beagle and, after viewing the dog, they concluded that it was, in fact, Cole. Thereafter, Plaintiffs filed an action in replevin, in which they averred that Defendant had wrongful possession of their beagle and that they had the right to immediate possession of the animal.

Trial took place on November 6, 2006, before the trial judge and an advisory jury empaneled pursuant to Pa. R.C.P. 1038.3. Plaintiffs testified regarding the identity of the beagle, the circumstances surrounding its escape from their property, and their search for the dog. In response, Defendant testified that the beagle, which he had named "Dixie," was acquired from a customer of his employer and that he had been caring for the animal for almost two years.

Plaintiffs' Counsel: Brian M. Mancos, Bassi, McCune & Vreeland, P.C., Charleroi

Defendant's Counsel: Kenneth M. Baldonieri and Mark J. Shire, Shire Law Firm, Monessen

Trial Judge: The Hon. William J. Ober

Result: The advisory jury determined that the dog in Defendant's possession was not the same beagle that Plaintiffs had lost in 2003. The Court accepted the advisory jury's verdict and entered a decision in favor of Defendant.

NOVEMBER/DECEMBER 2006 TRIAL TERM

NICHOLAS DELUCA AND NORA J. DELUCA, HIS WIFE
V.
KUKURIN CONTRACTING, INC., D.C. GUELICH EXPLOSIVE COMPANY
NO. 3248 OF 2002

Cause of Action: Blasting Activities—Arbitration Appeal

The Plaintiffs are owners of property located in Saltsburg, Indiana County, Pennsylvania. The contiguous property formerly owned by Plaintiffs was condemned by Conemaugh Township Water and Sewage Authority. Defendant Kukurin Contracting, Inc., a general contractor performing blasting activities on the contiguous parcel, hired Defendant D.C. Guelich Explosive Company to do the blasting. Plaintiffs contended that on or about November 6, 2001, the Defendants conducted blasting activities that caused damage to Plaintiffs' swimming pool. The Plaintiffs sought to recover the costs to repair the pool in the amount of $17,640.00. Defendants denied that the blasting caused any damage to Plaintiffs' pool.

Because the damage to the pool was not observed by a witness contemporaneous with the blasting, the parties relied upon expert testimony as to causation. Pursuant to Pa. R.C.P. 1311.1, Plaintiffs submitted an expert engineering report. *[Editor's note: This is the first time new rule Pa. R.C.P. 1311.1 was utilized at trial before this court. This rule governs the admission of documentary evidence at trial after an arbitration appeal when damages are capped at $25,000.00.]* Defendants submitted the videotape deposition of their expert engineer, as well as two expert reports from the Department of Environmental Protection.

Plaintiffs' Counsel: Jon M. Lewis, Gbg.

Defendants' Counsel: Robert G. Cameron, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

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

Result: Verdict in favor of Defendants.

NOVEMBER/DECEMBER 2006 TRIAL TERM

RONALD G. MCHENRY, JR., A/K/A RONALD JEFFERIES
V.
JOSEPH CAMPANELLI, III, AND PADMA-RAO JEVAJI, M.D.
NO. 5451 OF 2001

Cause of Action: Negligence—Motor Vehicle Accident

This motor vehicle accident occurred on December 5, 2000, on Leechburg Road in Lower Burrell, Westmoreland County. The Plaintiff was a passenger in an automobile operated by Defendant Joseph Campanelli, III. Plaintiff was injured when the Campanelli car skidded on ice, left its lane of travel and collided with an oncoming vehicle driven by Defendant Dr. Jevaji. Plaintiff sustained injuries that included, *inter alia,* loss of consciousness, closed head injury, urethral rupture and severing requiring multiple surgeries, pelvic fractures, multiple rib fractures, blunt chest trauma, multiple right lung hematoma, contusion and post-traumatic lung cyst formation, a right sacral fracture and permanent scarring and disfigurement of the right arm, chest and abdomen.

Plaintiff contended that both Defendants were negligent. Defendant Campanelli paid the limits of his insurance coverage into court, and the trial was bifurcated in order to first resolve the issue of liability of Defendant Dr. Jevaji. The jury returned a verdict placing liability solely on Defendant Campanelli, who had already paid the limits of his insurance coverage into court.

Plaintiff's Counsel: Richard M. Rosenthal, Edgar Snyder & Associates, LLC, Pgh.

Counsel for Defendant Campanelli: Charles A. Buechel, Jr., Grogan Graffam, P.C., Pgh.

Counsel for Defendant Jevaji: Ernest P. DeHaas, III, Radcliffe & DeHaas, L.L.P., Uniontown

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

Result: Molded verdict in favor of Plaintiff and against Defendant Campanelli alone. The jury found that Defendant Campanelli was negligent, that his negligence was a factual cause of the accident, and assigned 100% negligence to Defendant Campanelli.