JANUARY 2007 TRIAL TERM

JOSEPH LANE, A MINOR, BY HIS PARENT AND NATURAL GUARDIAN AMY LANE, AND AMY LANE AND THOMAS LANE, INDIVIDUALLY V. EAST SUBURBAN PEDIATRIC ASSOCIATES, LTD., T/D/B/A EAST SUBURBAN PEDIATRIC ASSOCIATES, TIMOTHY DEBIASSE, M.D., PAUL J. TRAINER, M.D., ROBIN HAUSER, M.D., RAJAV R. VARMA, M.D., PITTSBURGH PEDIATRIC NEUROLOGY ASSOCIATES, P.C., T/D/B/A RAJAV R. VARMA, M.D. & ASSOCIATES NO. 4637 OF 2000

Cause of Action: Negligence—Medical Malpractice

Plaintiff Amy Lane gave birth to her son, Joseph Lane, on July 28, 1998. Thereafter, Joseph was treated by the Defendants, Dr. Timothy DeBiasse, Dr. Paul Trainer and Dr. Robin Hauser, who were all employed by East Suburban Pediatric Associates. During his first months of life, Defendants frequently examined Joseph for symptoms of vomiting, crying, gassiness, and abdominal pain. Amy Lane told Defendants that she was concerned that Joseph's symptoms could be caused by a Wilm's tumor, a condition that Joseph's father, Thomas Lane, had as a child. Defendants, however, elected not to test Joseph for this condition.

Joseph developed cardiac and neurological symptoms, and Defendants referred him to specialists for treatment. On February 2, 1999, a cardiologist discovered a mass on Joseph's kidney during an echocardiogram. Doctors at Children's Hospital subsequently determined that Joseph had a Wilm's tumor. Ultimately, Joseph had both of his kidneys removed and received a kidney transplant. Joseph also had extremely high blood pressure and suffered a severe stroke. As a result, Joseph is mentally retarded and has significant cognitive and speech impairments. He is unable to walk, run, jump, or climb steps.

At trial, Plaintiffs sought to prove that Defendants negligently failed to diagnose the Wilm's tumor and, that due to the delay in diagnosis, Joseph sustained a stroke and the tumor continued to grow. Plaintiffs introduced, among other things, expert medical testimony and a videotape illustrating Joseph's development during his first months of life. Defendants argued that their treatment of Joseph was reasonable and within the acceptable standard of care. In addition, Defendants presented expert testimony to show that Wilm's tumor is an extremely rare condition and that Joseph's stroke occurred sometime before his birth.

Plaintiffs' Counsel: Victor H. Pribanic and Sherie L. Painter, Pribanic & Pribanic, L.L.C., White Oak
Defendants' Counsel: Daniel P. Carroll, Davies, McFarland & Carroll, P.C., Pgh.
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Defendants.

JANUARY 2007 TRIAL TERM

SHAWN F. BINDA AND SHERI ANN BINDA, HIS WIFE V. DAVID MARSOLO, JR. NO. 4365 OF 2004

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

On July 24, 2002, Plaintiff Shawn Binda was traveling west on Park Street in the city of Jeannette. The Defendant was traveling south on Lewis Avenue. Plaintiff alleged that he brought his vehicle to a complete stop at the stop sign controlling the intersection of Park Street and Lewis Avenue. The Defendant stopped at the stop sign, turned left in an easterly direction onto Park Street and struck the front driver's side of the Plaintiff's stopped vehicle. Plaintiff claimed injuries to his left shoulder, which eventually required surgery. Wife-Plaintiff claimed loss of consortium. At trial, Defendant admitted negligence but contended that the shoulder injury was not causally related to the motor vehicle accident.

Plaintiffs stipulated to $25,000.00 as the maximum amount of damages recoverable at trial of this appeal from the award of arbitrators, pursuant to Pa. R.C.P. 1311.1. Plaintiffs and Defendant offered documentary expert evidence pursuant to this rule; Defendant also offered the videotaped deposition of a medical expert.

Plaintiffs' Counsel: Robert L. Blum, Blum Reiss & Plaitano, Mount Pleasant
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. The jury found that Defendant's negligence was not a factual cause of any harm to the Plaintiff.

JANUARY 2007 TRIAL TERM

JAMES G. MCELWAIN, JR. AND JANET MCELWAIN, HIS WIFE
V.
WILLIAM SUPANCIC
NO. 4097 OF 2002

Cause of Action: Negligence—Motor Vehicle Accident

On July 27, 2000, Husband-Plaintiff was driving in a westerly direction on SR 130, near its intersection with Bushy Run Road, in Penn Township, Westmoreland County. Defendant, who was also driving in a westerly direction on SR 130, crossed the centerline of the roadway, struck an eastbound vehicle and then re-crossed the center into the westbound lane and collided with the rear of Plaintiff's vehicle, driving it into the vehicle in front of it. Plaintiff contended that, due to Defendant's negligence, he sustained physical injuries that resulted in pain and suffering, impairment of earning capacity, and loss of earnings. Wife-Plaintiff claimed loss of consortium.

Defendant contested damages and argued that Plaintiff's claims should be barred and/or limited by the defenses of contributory negligence, comparative negligence and assumption of the risk.

Plaintiffs' Counsel: Richard H. Galloway, Quatrini Rafferty Galloway, P.C., Gbg.
Defendant's Counsel: Gregg A. Guthrie, Summers, McDonnell, Hudock, Guthrie & Skeel, L.L.P., Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Verdict in favor of Defendant.

JANUARY 2007 TRIAL TERM

DWIGHT SAUL
V.
CONNIE PETROSKE
NO. 6497 OF 2004

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

On May 12, 2003, Plaintiff was operating his vehicle in Youngwood, Westmoreland County. Plaintiff pulled out onto the right lane of Route 119 South. After traveling in a southerly direction for approximately half a block, the right front side of a vehicle operated by Defendant, who was also traveling in a southerly direction, struck the left rear side of Plaintiff's vehicle. Plaintiff maintained that Defendant was operating her vehicle in a careless and negligent manner and, as a direct and proximate result of the accident, Plaintiff's vehicle sustained property damage.

Defendant contested both liability and damages and raised the affirmative defenses of contributory/comparative negligence and assumption of the risk.

Plaintiff's Counsel: Scott A. Fatur, David K. Lucas & Associates, Gbg.
Defendant's Counsel: Kenneth Ficerai, Mears, Smith, Houser & Boyle, P.C., Gbg.
Trial Judge: The Hon. Gary P. Caruso
Result: Judgment in favor of Defendant.

MARCH 2007 TRIAL TERM

FRANCES T. APICELLA, ADMINISTRATRIX OF THE ESTATE OF ALBERT A. APICELLA
V.
INTEGRATED HEALTH SERVICES OF GREATER PITTSBURGH
NO. 6220 OF 1997

Cause of Action: Negligence—Wrongful Death—Survival

This action arose from the alleged negligence of Defendant, by and through its agents, servants and/or employees, while providing respiratory therapy to Plaintiff's decedent. On October 15, 1995, a respirator providing oxygen to Plaintiff's decedent became disconnected and/or failed and no alarm sounded. Plaintiff's decedent was deprived of oxygen for a substantial period of time and suffered respiratory distress and cardiac arrest. His condition deteriorated into a vegetative state, in which he remained until his death on April 1, 1996. Plaintiff argued that all of the injuries, damages, and death of the decedent were caused solely and exclusively by the negligence of Defendant, its agents, servants, and/or employees.

Defendant countered that Plaintiff's decedent disconnected the ventilator pipe and pressed it against his leg. These actions prevented the alarm from sounding. As a result, Defendant argued, decedent's respiratory distress and death were not the direct and proximate result of any act or omission of Defendant's employees and that Plaintiff's claims should be barred and/or limited by the affirmative defense of contributory negligence.

Plaintiff's Counsel: Thomas E. Crenney, Crenney O'Keefe, P.C., Pgh.

Defendant's Counsel: William K. Herrington, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Plaintiff in the amount of $76,500 wrongful death damages and $25,500 survival damages, for a total award of $102,000. (The jury attributed 51% causal negligence to Defendant and 49% causal negligence to Plaintiff.)

MARCH 2007 TRIAL TERM

DEBORAH MOSLANDER
V.
422 HOME SALES, INC.
NO. 5853 OF 2005

Cause of Action: Negligence

Plaintiff Deborah Moslander was shopping for a mobile/modular home at the sales lot of defendant, 422 Home Sales, Inc., on February 4, 2002. Defendant places temporary stairways at the front doors of its mobile homes to provide customers with access. Plaintiff, while attempting to enter a mobile home using such a stairway, fell from the landing and fractured her left tibia and fibula.

Plaintiff contended that lack of a railing on the temporary stairway constituted a dangerous and hazardous condition, and that Defendant should have recognized that the absence of a railing posed a hazard to business guests and invitees. The evidence indicated that stairs were not properly positioned against the mobile home, which resulted in an open area with no handrail on the landing portion of the steps.

Defendant argued that it had no notice of the condition that allegedly caused Plaintiff's injuries. Furthermore, Defendant argued that the condition of the stairway was open and obvious and that Plaintiff's injuries were the result of her own contributory negligence.

Plaintiff's Counsel: Jeffrey A. Pribanic, Pribanic & Pribanic, L.L.C., White Oak

Defendant's Counsel: Ronald P. Carnevali, Jr., Spence, Custer, Saylor, Wolf & Rose, LLC, Johnstown

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiff in the amount of $50,000. (The jury attributed 80% causal negligence to Defendant and 20% causal negligence to Plaintiff.)

MARCH 2007 TRIAL TERM

JAMIE DANKO
V.
WAL-MART SUPER CENTER STORE #2611, A/K/A WAL-MART CORPORATION
NO. 6278 OF 2004

Cause of Action: Negligence

On August 11, 2003, Plaintiff Jamie Danko was shopping at Wal-Mart Super Center Store #2611 (Defendant), which is located in Mount Pleasant, Pa. Plaintiff bent down to look at a travel mug that was located on the lower shelf of a display. When Plaintiff stood up, she struck her head on a paper towel dispenser that was attached to a pole and positioned above the shelf. Plaintiff alleged that the impact damaged her teeth and that she was required to undergo a course of restorative dental work.

At trial, Plaintiff sought to prove that the paper towel dispenser was suspended directly above the area where Defendant's customers would have bent down to examine merchandise. Plaintiff asserted that, because of Defendant's attractive display, she bent down and then became positioned below the paper towel dispenser, which led to her injuries. Defendant maintained that the paper towel dispenser was not a dangerous condition and that it was open and obvious.

Plaintiff's Counsel: Darrell J. Arbore, North Huntingdon
Defendant's Counsel: Patrick J. Loughney, Dell, Moser, Lane & Loughney, LLC, Pgh.
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Defendant.

MARCH 2007 TRIAL TERM

FLORENCE RUGGERI
V.
BILLIE B. MEKIC, A.K.A. BILLIE C. MEKIC, A.K.A. BILLIE BRAY MEKIC, A.K.A. BILLIE BRAY-MEKIC
NO. 5230 OF 2004

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

This case arose out of a motor vehicle accident that occurred on July 29, 2002, on Route 30 near the Latrobe Regional Airport. Plaintiff was traveling west on Route 30 and came to a stop at a red light. Plaintiff alleged that Defendant, who was traveling behind the Plaintiff, failed to come to a complete stop at the red light, causing the front portion of Defendant's vehicle to collide with the rear portion of Plaintiff's vehicle. Plaintiff claimed injuries resulting in severe headaches and neck pain. Plaintiff had selected the full-tort option of automobile insurance coverage.

Defendant did not contest negligence at the time of trial. Trial was limited to the issue of causation and damages. Defendant contended that Plaintiff's injuries were not caused by the motor vehicle accident of July 29, 2002, but rather were sustained in a subsequent accident that occurred on September 20, 2002. Plaintiff contended that she did not sustain any injuries in the second accident, a contention that was contradicted in the report of one of her treating physicians. (The parties stipulated to the limit of monetary recovery in this trial of an arbitration appeal and submitted expert reports pursuant to Pa. R.C.P. No. 1311.1.)

Plaintiff's Counsel: Richard G. Talarico, Woomer & Hall LLP, Pgh.
Defendant's Counsel: Maria Spina Altobelli, Mears, Smith, Houser & Boyle, P.C., Gbg.
Trial Judge: The Hon. Daniel J. Ackerman, President Judge
Result: Verdict in favor of Defendant.

MAY 2007 TRIAL TERM

MAURICE A. NERNBERG & ASSOCIATES
V.
KISKI AREA SCHOOL DISTRICT
NO. 5649 OF 2004

Cause of Action: Breach of Contract Assignment

Plaintiff commenced this action as a result of Defendant's alleged breach of a contract assignment. Plaintiff maintained there was an effective assignment of funds to Plaintiff relating to its representation of Lanmark, Inc. (hereinafter "Lanmark") in a legal action with Defendant. The underlying action involved a dispute between Lanmark and Defendant over a construction project. A settlement agreement was reached between Defendant and Lanmark and Lanmark requested that payment of remaining funds be made directly to it. However, at a Motion to Enforce Settlement, a representative of Plaintiff's firm notified Defendant's counsel that there was a purported assignment of funds to Plaintiff and payment should not be made directly to Lanmark. Notwithstanding, Defendant tendered a settlement check to Lanmark in the amount of $430,000.00 pursuant to the written settlement agreement. Plaintiff sought $189,369.10 in damages based upon the purported contract assignment breach.

Defendant countered that Plaintiff produced no documentation containing words of assignment or other evidence that any assignment of present rights by Lanmark ever occurred. Defendant maintained the purported assignment language in the contingency fee agreement was specifically stricken by the President of Lanmark at the time it was signed. Defendant also argued that a contingency fee agreement is a contractual agreement to satisfy legal fees out of the proceeds of a future judgment and does not assign ownership of a client's actual underlying legal claim to the lawyer. Absent a valid assignment, Defendants claimed its payment to Lanmark was proper.

Plaintiff's Counsel: Jon Pushinsky, Pgh.

Defendant's Counsel: James M. Doerfler, Reed Smith LLP, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Plaintiff in the amount of $79,671.34. The verdict was modified to include prejudgment interest in the amount of $27,166.85, for a total award of $106,838.19.

MAY 2007 TRIAL TERM

LEE LEWIS KUKULSKI
V.
JOSEPH A. TOTH
NO. 3858 OF 2005

Cause of Action: Negligence—Motor Vehicle Accident

On September 7, 2003, Plaintiff Lee Lewis Kukulski, parked her Toyota Avalon along Lemon Alley in New Kensington, Pa. While she was getting into her vehicle, Defendant Joseph A. Toth backed his Ford F-150 truck into Plaintiff's vehicle, striking the rear bumper. Thereafter, Plaintiff filed a complaint, alleging that Defendant negligently struck her vehicle and thereby caused her to sustain various injuries, including lumbar strain, multi-level annular bulging with mild neural foraminal stenosis, and chronic low back pain. Plaintiff sought both economic and non-economic damages from Defendant.

The evidence presented at trial focused on the circumstances of the accident, the force of the impact on Plaintiff, and the causal connection between the accident and Plaintiff's alleged injuries.

Plaintiff's Counsel: Joseph Bock, Pgh.

Defendant's Counsel: Scott Mears, Mears, Smith, Houser and Boyle, P.C., Gbg.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

JULY 2007 TRIAL TERM

PAUL E. GROSE AND ESTELLA GROSE, HUSBAND AND WIFE
V.
GEOFFREY J. BISIGNANI, M.D., AN ADULT INDIVIDUAL AND G.U. INC., A PENNSYLVANIA CORPORATION
NO. 2790 OF 2005

Cause of Action: Professional Negligence—Medical Malpractice

Husband-Plaintiff, Paul E. Grose, age 78, went to the office of the Defendant-Physician to have a prostate procedure performed. The procedure was successful and Husband-Plaintiff left the office. He waited outside the building under a covered entranceway while his wife, who accompanied him, went to get the car. When his wife brought the car, she saw him fall backwards onto the pavement, where he struck his head. Eventually, it was determined that he suffered a permanent brain injury, which has caused some cognitive impairment. In the action against Defendants for negligent discharge, Plaintiffs contend that Husband-Plaintiff fainted prior to falling and that Defendant-Physician was negligent in failing to monitor his vital signs by checking his blood pressure and pulse before he left the office and by failing to provide an escort.

The Defendants' contention was that the prescriptions used relative to the procedure would not have caused Husband-Plaintiff to faint or cause a decrease in blood pressure, and that he was in good health when he left the office in the company of his wife. Further, Defendants maintained that it is not necessary to check vital signs of a patient prior to discharge after this type of procedure.

Plaintiffs' Counsel: Douglas L. Price, Harry S. Cohen & Associates, PC, Pgh.
Defendants' Counsel: Bernard R. Rizza, Matis Baum Rizza O'Connor, Pgh.
Trial Judge: The Hon. Daniel J. Ackerman
Result: Molded verdict in favor
of Defendant. The jury found that Defendant-Physician was not negligent in the manner he discharged the Plaintiff.

JULY 2007 TRIAL TERM

MELISSA A. TORRANCE
V.
ANDREW HEROLD AND JOYCE E. HEROLD
NO. 4180 OF 2004

Cause of Action: Negligence—Motor Vehicle Accident

On June 15, 2002, Plaintiff Melissa A. Torrance was stopped in her vehicle at a traffic light, when a vehicle driven by Defendant Andrew Herold struck her from behind. The impact caused Plaintiff's vehicle to move forward and strike the vehicle in front of her. Thereafter, Plaintiff filed a complaint alleging that, as a result of Defendant's negligence, she sustained various injuries including a torn rotator cuff, herniated cervical discs, and neck pain and spasms. Plaintiff also indicated in the complaint that she had selected limited tort insurance coverage and was seeking non-economic damages on the theory that she sustained serious bodily injuries.

At trial, Plaintiff testified with regard to the circumstances of the vehicle accident, her medical history and treatment, and the physical problems that she experiences. Plaintiff presented medical evidence indicating that she sustained cervical disc injuries and radiculopathy as a result of the June 15, 2002, accident. She underwent surgery to treat her cervical condition in April of 2003, and additional surgery is recommended.

Defendants admitted liability for the accident, but disputed causation and damages. Defendants presented medical evidence showing that Plaintiff's complaints are unrelated to the June 15, 2002, accident. The evidence demonstrated that, prior to the accident, Plaintiff had complaints of neck pain, and that she suffered from pre-existing degenerative cervical spondylitic disease and degenerative discogenic disease. The evidence also revealed that Plaintiff had a remarkable medical history and was suffering from a host of serious medical conditions.

Plaintiff's Counsel: Thomas D. Hall, Woomer & Hall, L.L.P., Pgh.
Defendants' Counsel: Mark J. Golen, Summers, McDonnell, Hudock, Guthrie & Skeel, Pgh.
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Defendants.

JULY 2007 TRIAL TERM

ORBIN SWISSHELM AND KAY SWISSHELM, HIS WIFE
V.
EDS DESIGN, INC.
NO. 9413 OF 2005

Cause of Action: Breach of Contract—Arbitration Appeal

On or about June 20, 2005, the parties entered into a contract for Defendant to install a custom kitchen and new floor. The contract was subsequently amended to include the installation of a medallion in the front hallway, a new dining room floor, a new front door, and all of the window treatments in the Plaintiffs' residence. Plaintiffs paid Defendant approximately one-half of the total price. Defendant began working on the kitchen and building cabinets but did not complete the contract. Plaintiffs asserted that Defendant failed to perform the job in a good and workmanlike manner and, as a result, Plaintiffs were required to hire other contractors to complete the work. Plaintiffs maintained they suffered losses in the amount of $21,450.00, as well as the loss of the use of the kitchen and other areas of their home.

Defendant argued it performed in a proper and workmanlike manner in accordance with the contract, Plaintiffs failed and/or refused to permit the Defendant to complete the job, Plaintiffs failed and/or refused to cooperate in making various selections required to complete the job, and Plaintiffs otherwise breached the contract. Defendant filed a counterclaim asserting it was owed the sum of $20,774.19 pursuant to the contract, as amended.

Plaintiffs' Counsel: David J. Eckle, Monroeville

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: A nonsuit was granted as to Plaintiffs' claim. As to the counterclaim, a verdict was entered in favor of Counterclaim Plaintiff and against Counterclaim Defendants, but no monetary damages were awarded (the jury found that both parties breached the contract).

JULY 2007 TRIAL TERM

MICHAEL J. LEGGENS
V.
JOAN PETRAS
NO. 8327 OF 2004

Cause of Action: Negligence—Motor Vehicle Accident

On June 6, 2003, Plaintiff was operating his vehicle in New Kensington, Westmoreland County, traveling north on Tarentum Bridge Road. Defendant was operating her vehicle traveling east on Carl Avenue. At the four-way intersection of Tarentum Bridge Road and Carl Avenue, the front of Plaintiff's vehicle collided with the passenger's side of Defendant's vehicle. Plaintiff maintained that Defendant was operating her vehicle in a careless and negligent manner and, as a direct and proximate result of the accident, Plaintiff sustained serious bodily injuries, including injuries to the spine, shoulder, wrist, and knees. Plaintiff sought recovery for unpaid medical expenses, lost wages, and damages for pain and suffering.

Defendant averred that Plaintiff had not suffered a serious injury as defined in the Pennsylvania Motor Vehicle Financial Responsibility Law. At trial, Defendant contested causation, arguing that Plaintiff had numerous pre-existing conditions and a history of treatment for injuries that he claimed resulted from the accident. Defendant presented testimony of a medical expert, who opined that the unreimbursed medical bills in question were not related to the subject accident and, additionally, that none of the claimed lost wages or unreimbursed chiropractic bills were reasonable or necessary.

Plaintiff's Counsel: Robert Paul Vincler, Robert Vincler & Associates, Pgh.

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

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Defendant.

SEPTEMBER 2007 TRIAL TERM

MEDDX, INC., AND MORRIS CECIL, AN INDIVIDUAL
V.
AMERICAN PORTABLE MEDICAL SERVICES, INC.
NO. 1703 OF 2004

Cause of Action: Contract—Sale of Business

Morris Cecil was the owner of Meddx, Inc., an entity that provided mobile X-ray services to nursing homes. Meddx expanded to the point where it had contracts to serve more than 60 nursing homes. Because he was trained as an X-ray technician, and not a businessman, Cecil wanted assistance in running his business. To that end, Cecil entered into a management agreement with American Portable Medical Services (APMS), wherein APMS agreed to manage the business aspects of Meddx. APMS subsequently became interested in acquiring Meddx, and APMS agreed to purchase its assets for the sum of $1,500,000.00. The sale was financed with a $1,000,000.00 promissory note, under the terms of which APMS agreed to pay Cecil $17,361.00 per month for 66 months.

The sale was consummated on July 1, 2003, and APMS began to provide X-ray services to the nursing homes previously served by Meddx. APMS made two partial payments to Cecil and then made no further payments. Meddx and Cecil filed a complaint against APMS to recover the remaining balance owed under the sales agreement.

At trial, Meddx and Cecil presented evidence to show that APMS took control of the business and received the benefit of the bargain, but failed to pay the purchase price. In response, APMS asserted that Meddx and Cecil breached the sales agreement by failing to provide written nursing home service contracts at the time of closing.

Plaintiffs' Counsel: William J. Moorhead, Merchant, Moorhead & Kay, Pgh.

Defendant's Counsel: Michael E. Flaherty, Karlowitz, Cromer & Flaherty, P.C., Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiffs in the amount of $1,283,320.00.

SEPTEMBER 2007 TRIAL TERM

IN RE: ESTATE OF DAVID H. PRAGER, DECEASED
NO. 65-05-734

Cause of Action: Unjust Enrichment

David H. Prager (Decedent) was terminally ill. Prior to his death, Decedent asked Mary Stoltz (Plaintiff) to provide him with personal care services in his home. Plaintiff agreed, and she cared for Decedent for more than one year. Her services included maintaining his personal hygiene, doing housework, cooking, acting as a companion, and taking Decedent to medical appointments. Plaintiff was available to Decedent at all hours of the day and night. Decedent never entered into a written contract with Plaintiff to compensate her for her services.

Following the death of Decedent, Plaintiff filed an unjust enrichment action against the Estate of David H. Prager (Defendant) to recover the value of the services she performed.

At trial, evidence was presented with regard to the nature of the services Plaintiff performed for Decedent and the reasonable value of those services. The Court considered evidence regarding the fee that Decedent would have likely paid had he contracted with a business that provides personal care services. The Plaintiff was disqualified from testifying under the Dead Man's Act.

Plaintiff's Counsel: Melvin L. Vatz, Grossinger Gordon Vatz, L.L.P., Pgh.

Defendant's Counsel: Frank W. Jones, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiff in the amount of $65,000.00.

SEPTEMBER 2007 TRIAL TERM

DANIEL E. LUCAS, ADMINISTRATOR OF THE ESTATE OF DOLORES L. LUCAS, DECEASED
V.
JOHN ABER, M.D., AN INDIVIDUAL, AND PRIME MEDICAL GROUP, P.C.
NO. 7602 OF 2004

Cause of Action: Negligence—Medical Malpractice

On October 11, 2002, Plaintiff's Decedent, Dolores Lucas, presented to Dr. John Aber and Prime Medical Group, Defendants, with complaints of chest pain in her mid-epigastric area. Ms. Lucas was diagnosed as suffering from chest pain secondary to gastritis. On October 14, 2002, Ms. Lucas left on a bus trip to Atlantic City. She began suffering severe chest pains, nausea, and vomiting. At the Atlantic City Medical Center Emergency Room she was diagnosed with a large post infarction ventricular septal defect. Her physicians at Atlantic City Medical Center attempted to surgically repair the defect but Ms. Lucas died on October 16, 2002. Plaintiff introduced expert medical testimony that Defendant, Dr. Aber, did not provide treatment to Ms. Lucas within the standard of care and that the failure to properly diagnose Ms. Lucas' condition resulted in her death.

Defendant argued that Plaintiff's Decedent had a medical history of stress-related GI problems, depression, and anxiety for which he was treating Decedant. Defendant presented expert medical testimony that the standard of care provided by Dr. Aber was well within the standard of care for a primary care physician. Dr. Aber maintains he performed a physical exam and EKG, which were consistent with gastritis and hypertension. He advised her to return to the office in seven days for a recheck of her blood pressure. Additionally, he advised her not to depart on her scheduled trip to Atlantic City until her blood pressure was rechecked. Notwithstanding this advice, Ms. Lucas failed to have her blood pressure rechecked before going to Atlantic City.

Plaintiff's Counsel: Michael T. Collis, Wilkes and McHugh, P.A., Pgh.
Defendants' Counsel: Alan S. Baum, Gaca Matis Baum & Rizza, Pgh.
Trial Judge: The Hon. Gary P. Caruso
Result: Molded verdict in favor of Defendants.

SEPTEMBER 2007 TRIAL TERM

CANDACE COVELLI
V.
JACK W. CLAYCOMB
NO. 6532 OF 2003

Cause of Action: Negligence—Premises Liability—Bifurcated

On October 20, 2001, Plaintiff was a guest at a pig roast on the premises owned by Defendant in Champion, Westmoreland County. During the course of the evening, Plaintiff was playing with a soccer ball with the children when someone kicked the ball over a brick retaining wall. When Plaintiff crossed over the retaining wall to retrieve the ball, she stepped into a depression or drop-off that was approximately one foot deep and fell. As a result, she injured her knee and required surgery. Plaintiff contended that the drop-off was not visible because it was covered by fallen leaves.

The Defendant maintained that no defect or dangerous condition existed on the property, that Plaintiff had visited the property on prior occasions and was familiar with the property, and that no leaves had accumulated to hide the drop-off. The case was bifurcated and tried as to liability.

Plaintiff's Counsel: Kevin R. O'Malley, O'Malley & Magley, L.L.P., Pgh.
Defendant's Counsel: Maria Spina Altobelli, Mears, Smith, Houser & Boyle, P.C., Gbg.
Trial Judge: The Hon. Daniel J. Ackerman
Result: Molded verdict in favor of Defendant. In special findings, the jury found that there was no unsafe condition on the property.

NOVEMBER 2007 TRIAL TERM

JAMES MAUTINO D/B/A TRI STATE TRAP & SKEET CO.
V.
PAT-TRAP, INC., A NEW HAMPSHIRE CORPORATION T/D/B/A HENNIKER PALLET CO., INC.
NO. 3673 OF 2003

Cause of Action: Breach of Contract

The Defendant, a New Hampshire manufacturer of a trap machine that throws clay targets in the sport of trap shooting, entered into an oral agreement with the Plaintiff by which the Plaintiff became an agent distributor of the Defendant's product in the mid-Atlantic states. After ten years, the Defendant terminated the relationship because of the antagonism that developed between the Plaintiff and the Defendant's vice president, who managed the business on a day-to-day basis.

Plaintiff sued on the distributorship contract, contending that he had been promised: (1) that he would be the exclusive distributor in his region; and (2) that the relationship would continue until he reached a retirement age of 65. Plaintiff requested damages on the first claim for loss of profits on the Defendant's direct sale of specific machines to customers in his region. As to his claim of early termination, Plaintiff requested damages for a general loss of profits for a period of five years. The total damages sought by Plaintiff exceeded $400,000.00.

Plaintiff's Counsel: Richard A. Swanson and William S. Stickman IV, Del Sole Cavanaugh Stroyd, LLC, Pgh.

Defendant's Counsel: Joshua R. Lorenz and Jason Yarbrough, Meyer, Unkovic & Scott, LLP, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict in favor of Defendant.

NOVEMBER 2007 TRIAL TERM

DIRTINA S. KUTZER AND SCOTT KUTZER, HER HUSBAND
V.
SAMUEL MILLER
NO. 7949 OF 2002

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

The Defendant, Mr. Miller, appealed a $15,000.00 arbitration award in favor of Plaintiff, Mrs. Kutzer, arising out of an intersection collision on Greengate Road on January 14, 2000. Mrs. Kutzer claimed injuries to her neck, back, and knee as a result of the accident. At trial, the Defendant admitted liability and the case was tried on the issue of the extent of the injuries caused by the accident. Mrs. Kutzer, in regard to some of her injuries, had a history of prior physical problems, but claimed that they were aggravated by the accident. The defense argued that the Plaintiff denied being injured at the scene and subsequently denied the physical problems that were the basis for her claim in questionnaires completed for other physicians and in an application for insurance.

The case was submitted pursuant to Pa. R.C.P. 1311.1. Plaintiffs' medical evidence was advanced through the treating orthopedic surgeon's written report and the videotaped testimony of the Defendant's expert, also an orthopedic. The Defendant's medical expert agreed that wife-Plaintiff had sustained soft tissue injuries that could produce pain, but that her condition should have resolved itself in six to twelve weeks.

Plaintiffs' Counsel: Dwayne E. Ross, Reeves and Ross, P.C., Latrobe

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

Trial Judge: The Hon. Daniel J. Ackerman

Result: Verdict in favor of Plaintiff in the amount of $900.00.

NOVEMBER 2007 TRIAL TERM

JENNIFER KEEFER
V.
THERESA L. WISNIEWSKI
NO. 2503 OF 2005

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

The Plaintiff, Ms. Keefer, appealed a $3,750.00 arbitration award in her favor, arising out of an automobile collision at a traffic light at the intersection of SR 0030 and New England Motor Freight on June 23, 2003. As Plaintiff stopped at the light, Defendant collided with the rear end of Plaintiff's vehicle. Plaintiff contended that Defendant was operating her vehicle in a careless and negligent manner and, as a direct and proximate result of the accident, Plaintiff sustained physical injuries that resulted in pain and suffering, medical expenses, impairment of earning capacity, and loss of earnings. Specifically, she claimed injuries to her bones, muscles, tissues, ligaments of her neck, cervical spine, shoulder, right arm, headaches, shock and injury to the nerves and nervous system as a result of the accident.

At trial, Defendant contested both liability and damages and argued that Plaintiff's claims were barred and/or limited by the defenses of contributory negligence, comparative negligence, assumption of the risk, and the statute of limitations. The case was submitted pursuant to Pa. R.C.P. 1311.1.

Plaintiff's Counsel: Frank R. Fleming, III, Frank R. Fleming, III, P.C., Pgh.
Defendant's Counsel: Dennis J. Slyman, Gbg.
Trial Judge: The Hon. Gary P. Caruso
Result: Verdict in favor of Plaintiff in the amount of $7,500.00.

NOVEMBER 2007 TRIAL TERM

FRANK R. MINNICK AND BRIDGET A. MINNICK
V.
D & M CONTRACTING, INC.
NO. 5184 OF 2003

Cause of Action: Contract—Breach of Agreement to Restore Real Property

The Hempfield Township Municipal Authority (authority) was engaged in a sanitary sewer project and, to that end, executed a right-of-way agreement with the Plaintiffs. The agreement allowed the authority to install water and sewer lines along a right-of-way that traversed Plaintiffs' property and the authority promised to return Plaintiffs' property to the same or better condition than it was prior to the installation. The authority hired Defendant to clear the right-of-way and construct the water and sewer lines. In February 2002, Defendant entered Plaintiffs' property and installed the lines.

Plaintiffs subsequently filed a complaint against Defendant alleging that Defendant failed to restore their property following the installation of the water and sewer line. They contended that Defendant damaged their property by cutting trees outside of the right-of-way to make an access road, dumping gravel, burying tree stumps and by leaving debris scattered across their land. At trial, the parties presented evidence on, inter alia, the condition of the property following the sewer and water line installation, the actions of Defendant, oral side agreements entered into by the parties, and Plaintiffs' efforts to restore the property. The case turned on the credibility of the witnesses.

Plaintiffs' Counsel: David C.
Martin, Jr., Martin & Lerda, Pgh.
Defendant's Counsel: Albert J. Zangrilli, Jr., Yukevich, Marchetti, Liekar & Zangrilli, P.C., Pgh.
Trial Judge: The Hon. William J. Ober
Result: Verdict in favor of Defendant.