JANUARY 2008 CIVIL TRIAL TERM

ROADWAY PHARMACY, INC., A PENNSYLVANIA CORPORATION V. GERRY & ASSOCIATES, A PARTNERSHIP NO. 4319 OF 2002 – ROADWAY PHARMACY, INC., A PENNSYLVANIA CORPORATION V. EDWARD DALLAPE, INDIVIDUALLY AND T/D/B/A GERRY & ASSOCIATES, A PENNSYLVANIA GENERAL PARTNERSHIP, HERMAN C. ROLES, INDIVIDUALLY AND T/D/B/A GERRY & ASSOCIATES, A PENNSYLVANIA GENERAL PARTNERSHIP AND VIOLA TAORMINA, EXECUTRIX OF THE ESTATE OF GERALDINE ZUCCO, DECEASED NO. 1130 OF 2006 (CONSOLIDATED AT NO. 4319 OF 2002)

Cause of Action: Breach of Contract — Right of First Refusal

This was an action for breach of contract arising out of the Defendants' failure to honor the Plaintiff's right of first refusal relative to undeveloped acreage adjacent to a strip mall in Seward, Westmoreland County. The Defendants sold the property for $80,000 to a third party without first offering it for sale to the Plaintiff, an owner of a pharmacy in the strip mall.

In a motion for summary judgment, Defendants contended that the right of first refusal was extinguished when the subject property was sold at a tax sale and subsequently repurchased by the Defendants, a contention that the court denied as a matter of law. At trial, Defendants argued that the right of first refusal did not include the vacant land, which Plaintiff's expert valued at $510,000. The jury viewed the property in question.

Plaintiff's Counsel: Jeffrey T. Olup, Bassi, McCune & Vreeland, P.C., Charleroi

Counsel for Defendant Gerry & Associates: Eric D. Hochfeld, Sahlaney & Dudeck Law Office, Johnstown

Counsel for Defendant Estate: Richard T. Williams, Sr., Johnstown

Defendant Edward Dallape: Pro Se

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict in favor of Plaintiff in the amount of $410,000.

JANUARY 2008 CIVIL TRIAL TERM

KEVIN WELDON V. LOUIS J. PHILLIPS, O.D., SIGHTLINE LASER EYE CENTER LLC, KIMBERLY R. RIGGS, O.D., GLENN C. COCKERHAM, M.D. NO. 3100 OF 2002

Cause of Action: Negligence—Medical Malpractice

On May 11, 2001, Plaintiff Kevin Weldon was examined by Defendant Louis Phillips, O.D., and LASIK surgery was performed by Defendant Glenn C. Cockerham, M.D., on Plaintiff's left eye at Defendant Sightline Laser Eye Center's facility. Plaintiff was referred to Dr. Cockerham by Defendant Kimberly Riggs, O.D., after her initial evaluation indicated he was an appropriate candidate for LASIK surgery. Plaintiff experienced post-operative vision complications. Plaintiff alleged that, as a result of Defendants' negligence, he developed nighttime starburst and halo vision problems because of pupil dilation beyond the treated portion of his eye.

At trial, Plaintiff introduced expert medical testimony that Defendants did not take an accurate pre-surgical exam and failed to appropriately measure his pupil size and clear him for surgery. Defendant Cockerham argued that, prior to surgery, he disclosed the common side effects of the procedure to Plaintiff and obtained his informed consent. Defendants Phillips, Riggs, and Cockerham presented expert medical testimony that the care and treatment they provided Plaintiff met the applicable standard of medical care.

Plaintiff's Counsel: Ralston S. Jackson, Odermatt & Jackson, Pgh.

Counsel for Defendant Cockerham: Marian Schleppy, Gaca Matis Baum & Rizza, Pgh.

Counsel for Defendant Riggs: Daniel T. Moskal, Law Office of Joseph Weimer, Pgh.

Counsel for Defendants Phillips and Sightline: M.J. Tindall and Deborah A. Kane, Weber Gallagher Simpson Stapleton Fires & Newby, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants.

JANUARY 2008 CIVIL TRIAL TERM

PRIME, INC. V. NANCY ANDRUS V. RAMONE MATOS NO. 3428 OF 2005

Cause of Action: Negligence—Motor Vehicle Accident

On October 11, 2003, Ramone Matos (Additional Defendant) was driving a tractor-trailer truck owned by Prime, Inc. (Plaintiff) on Route 70, in Hempfield Township. Nancy Andrus (Defendant), who was driving her vehicle in the same direction on Route 70, approached and then attempted to pass Plaintiff's truck. When Defendant entered the left lane, she struck a deer, lost control of her vehicle and collided with the Plaintiff's tractor-trailer. Plaintiff's vehicle sustained damage and was out of service for a period of time. Plaintiff's complaint against Defendant averred that, as a result of the accident, it sustained property damage to the truck in the amount of $8,515.01. Defendant subsequently filed a Complaint against Additional Defendant, alleging that he was negligent and liable for the accident.

Plaintiff presented evidence at trial that Defendant was speeding and/or traveling too fast for conditions at the time of the collision. Plaintiff also introduced evidence to show that a deer crossing sign was posted in the area where the accident occurred. Defendant, on the other hand, testified that the deer abruptly appeared in the left lane and she was unable to avoid striking it. She argued that she was faced with a sudden and unexpected emergency. Defendant did not pursue her claim against Additional Defendant.

Counsel for Plaintiff and Additional Defendant: Rebecca Sember and Nigel Greene, Rawle & Henderson, LLP, Pittsburgh and Philadelphia

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

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

JANUARY 2008 CIVIL TRIAL TERM

SANDRA MUSCENTI V. LOSS PREVENTION, INC. AND SUPERVALU T/D/B/A SHOP-N-SAVE NO. 2262 OF 2005

Cause of Action: Defamation—Invasion of Privacy—False Imprisonment—Negligence

Plaintiff was accused of retail theft of a pack of cigarettes by Defendant Loss Prevention, Inc. Plaintiff has not been criminally charged in this matter. Her employment at a Shop-n-Save store was subsequently terminated by Defendant Supervalu. A security guard employee of Loss Prevention, Inc., a third-party contractor retained by Supervalu to provide asset protection in its stores, testified that prior to his apprehension of Plaintiff, he was approached by Defendant Supervalu's store manager and was told he had reason to believe that Plaintiff was not paying for cigarettes she was taking from the store. As a result of the allegations, Plaintiff maintained that her good name was injured, she was brought into disgrace and disrespect among her former employer and coworkers, she suffered great humiliation and embarrassment, and that her restraint of freedom from movement while being interrogated in the store constituted a detention of Plaintiff against her will and was unlawful. Plaintiff claimed she suffered, and will continue to suffer, a loss of income and benefits as a consequence of her discharge, and sought punitive damages resulting from Defendants' willful, wanton, and reckless conduct.

At trial, Defendant Supervalu argued that the statements made by the store manager were not defamatory in that they were made only to the Loss Prevention employee in his capacity as a security guard and, thus, the audience was limited and the statement did not harm Plaintiff's reputation in the community. Supervalu also argued that Plaintiff had executed a release of Loss Prevention from liability and that a release of a third-party contractor agent released the principal, Supervalu, as well.

Plaintiff's Counsel: Susan N. Williams, Gbg.

Defendants' Counsel: Thomas P. Birris, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants. The jury found defamation on behalf of Loss Prevention, but that Loss Prevention had been released from liability. The jury found no defamation on behalf of Supervalu.

JANUARY 2008 CIVIL TRIAL TERM

ROBERT W. LLOYD AND KIMBERLY L. LLOYD, HIS WIFE V. GARRETT BELE AND CORY NEDLEY NO. 4528 OF 2004

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

Plaintiff Robert W. Lloyd was employed as a truck driver. On July 3, 2002, Plaintiff was making a delivery in Manor Borough, Westmoreland County, when he stopped his truck on the berm of the Harrison City Manor Road to unload his trailer. While Plaintiff was standing beside his truck, Defendant Garrett Bele drove his vehicle onto the Harrison City Manor Road from a nearby driveway. Defendant then struck and injured Plaintiff. Plaintiff's complaint against Defendant and his employer, Cory Nedley, contained counts of negligence, agency and negligent entrustment.

At trial, Plaintiff presented evidence that he sustained an injury to his right knee as a direct result of the accident and that the injury caused permanent damage. Plaintiff also indicated that he was forced to stop working as a truck driver and now is employed in less strenuous positions. Defendant argued that Plaintiff, prior to the accident, placed himself in a crouched position along the roadway, which obstructed Defendant's view of Plaintiff.

Plaintiffs' Counsel: Bruce J. Phillips, Wetzel, Caverly, Shea, Phillips & Rodgers, Wilkes-Barre

Defendants' Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

MARCH 2008 CIVIL TRIAL TERM

LINDSAY PROCTOR V. LOIS J. MORRIS NO. 194 OF 2006

Cause of Action: Negligence—Motor Vehicle Accident

On December 31, 2004, Plaintiff was driving her vehicle on Route 136 in Hempfield Township, when she encountered another vehicle that had struck a deer. Plaintiff slowed and stopped her vehicle; however, shortly thereafter, a vehicle driven by Defendant collided with the rear of Plaintiff's vehicle. Plaintiff's complaint in negligence against Defendant alleged that she sustained, among other things, injuries to her head, neck, and back, and that the accident may cause her to lose a soccer scholarship.

At trial, Plaintiff presented evidence that she had been awarded an athletic scholarship by Geneva College to play soccer and that, based on her athletic achievement at high school, she was expected to succeed at college sports but the accident prevented her from playing at the level required by college athletics. In addition, Plaintiff presented evidence regarding Defendant's driving behavior and the sight distance available to her prior to the accident.

Defendant presented evidence on the issue of liability, arguing that she used reasonable care prior to the accident and that she had a limited sight distance. Moreover, Defendant argued that Plaintiff received her scholarship and was able to engage in some athletic activity at Geneva College.

Plaintiff's Counsel: Jon M. Lewis, Gbg.

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

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Plaintiff in the amount of $23,980.02.

MARCH 2008 CIVIL TRIAL TERM

CYNTHIA YUTZY AND MATTHEW YUTZY, ADMINISTRATORS OF THE ESTATE OF AUTUMN ROSEMARY YUTZY, DECEASED, AND CYNTHIA YUTZY, AN INDIVIDUAL V. LATROBE AREA HOSPITAL, A CORPORATION NO. 4647 OF 2003

Cause of Action: Negligence—Medical Malpractice

Cynthia Yutzy became pregnant in the spring of 2001. During the morning of January 5, 2002, Ms. Yutzy went into labor and reported to the Latrobe Area Hospital emergency room. After sitting in the emergency room for a period of time, Ms. Yutzy was taken to the Hospital's obstetrics ward. At approximately 11:00 a.m., Ms. Yutzy reported to Hospital staff that she had something protruding from her body. The Hospital discovered that Ms. Yutzy had a prolapsed umbilical cord and performed an emergency caesarean section. However, the child, Autumn Rosemary Yutzy, suffered from neonatal asphyxiation due to the prolapsed umbilical cord and died several days later. Ms. Yutzy and her husband, Matthew Yutzy, filed this professional negligence action against the Hospital for the death of their daughter.

At trial, Plaintiffs contended that the Hospital breached the standard of care by delaying medical treatment. The Yutzys presented evidence to show that Ms. Yutzy was not examined when she arrived at the hospital and that she was allowed to sit in the emergency room for an unreasonable period of time before she was taken to the obstetrics ward. This breach, in the Yutzys' view, increased the risk that their baby would die from the prolapsed umbilical cord.

The Hospital argued that Ms. Yutzy did not mention the prolapsed cord when she arrived at the hospital and that Ms. Yutzy's recollection of the events of January 5, 2002, was inaccurate. Its evidence indicated that the Hospital took immediate action once Ms. Yutzy mentioned the prolapsed cord, and that it played no role in the death of the Yutzys' child.

Plaintiffs' Counsel: Anthony W. DeBernardo, Jr., DeBernardo, Antoniono, McCabe, Davis & DeDiana, Gbg., and E. David Harr, Gbg.

Defendant's Counsel: Thomas B. Anderson, Thomson, Rhodes & Cowie, P.C., Pgh.

Trial Judge: The Hon. William J. Ober

Result: Prior to the jury reaching a verdict, the parties entered into a confidential high-low settlement agreement. The jury returned a verdict in favor of Defendant, and the Yutzys received an amount consistent with the settlement agreement.

MARCH 2008 CIVIL TRIAL TERM

DANIEL P. BUCHKO, ADMINISTRATOR OF THE ESTATE OF ELIZABETH A. BUCHKO, A/D ELIZABETH ANN BUCHKO, DECEASED V. SCOTT E. STRUBLE AND GAIL STRUBLE NO. 1359 OF 2000

Cause of Action: Negligence—Motor Vehicle Accident—Wrongful Death and Survival

Elizabeth A. Buchko was killed in an intersection collision on February 28, 1999, at 2:50 a.m. in Derry Township where Route 30 is intersected by Route 217 at Kingston. Mrs. Buchko was traveling westbound on Route 30 when her car was struck in the intersection by a car driven on Route 217 by the Defendant, Scott E. Struble. The intersection was controlled by a traffic signal.

At trial, the jury had to make a determination as to which driver had the green light. The Defendant and his passenger testified that they had the green light. The Plaintiff attempted to show, through the testimony of an engineer, that the Defendant and his passenger, the only surviving witnesses, were not telling the truth. The Defendants countered with testimony from their engineer in support of the surviving witnesses' testimony.

Plaintiff's claim against the driver's mother, Defendant Gail Struble, for negligent entrustment of the vehicle was bifurcated.

Plaintiff's Counsel: John M. Leonard and Kevin P. Leonard, Leonard & Leonard, Latrobe

Defendants' Counsel: Scott O. Mears and Richard F. Boyle, Jr., Mears, Smith, Houser & Boyle, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict in favor of Defendant. The negligent entrustment claim need not be tried since the jury found no negligence on behalf of the driver.

MAY 2008 CIVIL TRIAL TERM

ALOISE J. PENSKA V. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY NO. 2862 OF 2004

Cause of Action: Breach of Contract—Denial of Insurance Coverage

Aloise J. Penska owned a 1993 Pontiac Firebird, which was insured by State Farm Mutual Automobile Insurance Company. On May 30, 2002, Penska drove his vehicle to work and parked it behind his place of employment. Later that day, Penska discovered that his vehicle was missing from the parking lot. On May 31, 2002, the police discovered the Firebird burned and abandoned in a small depression of water. Penska submitted a claim to State Farm for the loss of his vehicle.

State Farm subsequently interviewed Penska and concluded that he had misrepresented or concealed material information. Moreover, State Farm conducted a forensic examination of the vehicle, which revealed that anti-theft features had not been breached or defeated and that the vehicle could only have been operated with a properly coded key. There were signs of serious engine wear and no easily removable components had been taken from the vehicle. Based on the foregoing, State Farm denied coverage on the ground that the destruction of the vehicle was not a direct and accidental loss.

During trial, Penska testified with regard to the facts and circumstances of the loss of his vehicle, and he addressed the concerns raised by State Farm's interview and forensic investigation. State Farm presented evidence, including expert testimony, to show that its decision to deny the claim was reasonable and consistent with the insurance contract.

Plaintiff's Counsel: Brian P. Bronson, Richard H. Galloway, Quatrini Rafferty Galloway, P.C., Gbg.

Defendant's Counsel: Daniel L. Rivetti, Robb Leonard Mulvihill LLP, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

MAY 2008 CIVIL TRIAL TERM

DENNIS HOOPER, INDIVIDUALLY; HOOPER ROOFING, INC.; DEBORAH L. PERRY, D/B/A QUALITY ASSISTED LIVING, INC.; MATTHEW G. HUET AND LINDA R. HUET, HUSBAND AND WIFE V. HARFORD MUTUAL INSURANCE CO. AND FIRST LINE NATIONAL INSURANCE COMPANY NO. 6307 OF 2002

Cause of Action: Declaratory Judgment—Insurance Coverage—Advisory Jury

Deborah Perry hired Hooper Roofing, Inc., to repair the roof of a personal care home. On June 13, 2001, an employee of Hooper Roofing accidentally started a fire by igniting the roof of the personal care home with a torch. The resulting fire destroyed the personal care home. Dennis Hooper, the sole shareholder of Hooper Roofing, had purchased a Commercial General Liability policy from Harford Mutual Insurance, which was in effect on the date of the fire.

Dennis Hooper and Hooper Roofing, Inc., filed a Declaratory Judgment action, asking the Court to declare that Harford had the duty to provide a defense and indemnify any loss up to the limits of the policy. Following a non-jury trial, judgment was entered in favor of Harford. However, the Superior Court reversed the Court's order and remanded the case for further proceedings. The Superior Court found that Dennis Hooper, as an individual, was covered by the policy and directed the trial court, on remand, to determine whether Harford had any obligations to Hooper Roofing, Inc., within the context of their duty to defend and indemnify Dennis Hooper.

On May 6, 2008, the matter went to trial and an advisory jury was impaneled. The parties litigated the issues of whether the parties intended the insurance contract to provide General Commercial Liability coverage to Hooper Roofing, Inc., and whether Hooper Roofing, Inc., was a sham corporation and functioned as the alter ego of Dennis Hooper.

Plaintiffs' Counsel: Louis M. Tarasi, Elizabeth M. Tarasi, Tarasi & Tarasi, P.C., Pgh.

Defendants' Counsel: Arthur Bloom, Arthur Bloom & Associates, Pgh.

Trial Judge: The Hon. William J. Ober

Result: The advisory jury, responding to specific interrogatories, determined that the parties did not intend to insure Hooper Roofing, Inc., and that Hooper Roofing was not the alter ego of Dennis Hooper. The Court adopted the verdict of the jury. The Court declared that Harford had no duty to defend or indemnify Hooper Roofing, Inc., but declared that Harford did have an obligation to defend and indemnify Dennis Hooper as an individual.

MAY 2008 CIVIL TRIAL TERM

NANCY GUMM AND EDWARD GUMM, HER HUSBAND V. CHARLES HOOK D/B/A HOOK'S CHUCK WAGON NO. 4016 OF 2005

Cause of Action: Negligence—Strict Liability—Breach of Warranty

On June 24, 2003, the Plaintiff, Nancy Gumm, purchased and was served a tuna fish sandwich by Defendant at his restaurant, Hook's Chuck Wagon, located in West Newton, Westmoreland County. On or about June 26, 2003, Mrs. Gumm began to experience abdominal pain, nausea, diarrhea, vomiting, and fever. In the course of one week, she lost between 10 and 15 pounds. During the second week following her consumption of the tuna fish sandwich, she developed herpes zoster (shingles) around her left eye. Plaintiff alleged that Defendant, by and through its agents, servants, and/or employees, was negligent in serving Mrs. Gumm food that was contaminated by harmful bacteria, thereby causing Mrs. Gumm to contract salmonella. As a result of such negligence, Mrs. Gumm claimed injuries including numerous medical procedures, pain and suffering, and a weakened immune system that necessitated expending sums of money for medical attention, hospital care, and treatment.

Defendant claimed that Plaintiff's injuries and/or damages were the result of intervening and/or superseding causes over which the Defendant had no control. Defendant's medical expert testified that there was no conceivable clinical basis to associate Mrs. Gumm's gastrointestinal illness with the viral infection of her eye.

Plaintiffs' Counsel: Kenneth B. Burkley, Gbg.

Defendant's Counsel: Paul E. Pongrace, Redman & Pongrace, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Plaintiff in the amount of $1,000.

MAY 2008 CIVIL TRIAL TERM

REBECCA MUSGROVE AND DUANE MUSGROVE, HER HUSBAND V. JOSEPH A. SLEZAK, M.D. NO. 7825 OF 2002

Cause of Action: Negligence—Medical Malpractice

On October 12, 2001, laparoscopic surgery was performed by Defendant, Joseph A. Slezak, M.D., on Plaintiff, Rebecca Musgrove, to treat Plaintiff's constant lower abdominal pain due to recurring abdominal and pelvic adhesions. During the surgery, Plaintiff's bowel was perforated. After the surgery, Plaintiff continued to suffer from abdominal pain. On October 14, 2001, Dr. Slezak performed a second laparoscopic surgical procedure in which he removed four inches of Plaintiff's bowel. Plaintiff alleged that Defendant was negligent in performing the initial surgery, and that he failed to obtain the necessary informed consent of Plaintiff for the second surgery. As a result of Defendant's negligence, Plaintiff alleged that she suffered and will continue to suffer from permanent damage to the bowel, which will develop further adhesions and cause further abdominal pain. Plaintiff also alleged that she suffered from chronic diarrhea and depression.

Defendant argued that the care and treatment he provided met the applicable standard of medical care that was owed to the Plaintiff and that, prior to the second surgery, he obtained Plaintiff's informed consent.

Plaintiffs' Counsel: Dennis J. Slyman, Gbg.

Defendant's Counsel: Tyler J. Smith, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants. The jury answered, in special interrogatories, that Dr. Slezak was not negligent, i.e., he did not violate the standard of care expected of him as a physician under the circumstances.

MAY 2008 CIVIL TRIAL TERM

JAMIE STEYER V. LOUISE M. KILGORE NO. 2260 OF 2001

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

The Defendant, Ms. Kilgore, appealed a $15,000 arbitration award in favor of the Plaintiff, Ms. Steyer, arising out of an automobile collision near Bovard Elementary School at a Route 119 intersection on April 13, 1999. As Steyer stopped at the stop sign controlling the intersection, Kilgore collided with the rear end of Steyer's vehicle. The police were not called to the scene. Both vehicles were drivable and neither driver received medical attention at the time of the accident. Plaintiff contended that Defendant was negligent in the operation of her vehicle and claimed injuries that included severe pain and trauma to the neck and both shoulders, numbness in the right arm and hand, constant headache, pressure at the base of the head, psychological and neurological injuries, medical expenses, impairment of earning capacity, and loss of earnings.

Defendant argued that Plaintiff's claims were barred by the statute of limitations and asserted the affirmative defense that Plaintiff was bound by the limited tort option of automobile insurance, which precluded her from maintaining any action according to the provisions of the Pennsylvania Motor Vehicle Financial Responsibility Law.

Plaintiff's Counsel: James N. Falcon, Youngwood

Defendant's Counsel: Stephen J. Magley, O'Malley & Magley, L.L.P., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant. Finding that the Defendant was not negligent, the jury did not determine whether Plaintiff suffered a serious impairment of a bodily function.

MAY 2008 CIVIL TRIAL TERM

GARY LEE HONICK, SR. V. MARTA K. MATTA, IN HER INDIVIDUAL CAPACITY AND REAL ESTATE CHAMPIONS, INC., A PENNSYLVANIA CORPORATION, T/D/B/A MATTA & MATTA REAL ESTATE NO. 5590 OF 2005

Cause of Action: Negligence—Real Estate Seller Disclosure Law

In this action, Gary Lee Honick, Sr., the purchaser of a home in Hempfield Township, Westmoreland County, brought suit against the seller, Marta K. Matta and Real Estate Champions, Inc., seeking damages sustained from a water and sewage problem in the basement that the seller allegedly failed to disclose. The trial was limited to issues of liability and damages pursuant to the Real Estate Seller Disclosure Law.

The house was sold in June 2004 and the basement was damaged by water from Hurricane Ivan in September 2004. Plaintiff presented evidence that, prior to the sale, a neighbor had complained to both Defendant and the township that sewage water from Plaintiff's residence was coming onto his property. Buyer had a home inspection done prior to the sale and the inspection report raised no issue. Buyer presented testimony that subsequent excavation revealed water leakage from the septic tank. Seller, who resided in the home for four years, said there was one instance of puddling around the basement drain. She called in a plumber and had no further problems. The plumber opined that the loss complained of could not have been foreseen.

Plaintiff's Counsel: Andrew M. Gross, Law Office of Andrew M. Gross, Pgh.

Defendants' Counsel: Teresa O. Sirianni, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: In special findings, the jury found that Mrs. Matta had knowledge about defects in the house regarding water and sewage, which she failed to disclose to Mr. Honick. The jury found that the amount of damages sustained by Mr. Honick as a result of the failure to disclose these defects was $3,000.

A non-jury trial was scheduled on the remaining claims under the Unfair Trade Practices and Consumer Protection Law for treble damages and attorney's fees.

MAY 2008 CIVIL TRIAL TERM

IN THE MATTER OF CONDEMNATION OF FEE SIMPLE INTERESTS IN PROPERTY SITUATE IN THE CITY OF JEANNETTE, WESTMORELAND COUNTY, PENNSYLVANIA: THE CITY OF JEANNETTE REDEVELOPMENT AUTHORITY FOR THE CENTRAL JEANNETTE REDEVELOPMENT PROJECT

NAME OF OWNER OF CONDEMNED PROPERTY JON P. BRADY, PETITIONER/ CONDEMNEE/PLAINTIFF

CITY OF JEANNETTE REDEVELOPMENT AUTHORITY CONDEMNOR/DEFENDANT

NO. 5545 OF 2006 AND NO. 5546 OF 2006

Cause of Action: Eminent Domain—Damages

These condemnation cases involved two properties owned by Mr. Brady and taken by the City of Jeannette Redevelopment Authority for the Central Jeannette Redevelopment Project.

Both parties' experts agreed that the highest and best use for these properties was commercial and that, since the buildings were going to be demolished pursuant to the project, the fair market value of the property after the taking would be zero. Therefore, the sole damages issue tried involved a determination of the fair market value of the two properties prior to the declaration of taking that was filed on February 9, 2006.

Both experts used the comparable sales method of determining the fair market value of the properties before the take. As for 714 Clay Avenue, Jeannette, Westmoreland County (No. 5545 of 2006), plaintiff's expert testified that the fair market value was $54,000, while defendant's expert opined that it was $35,000.

With respect to 708 Clay Avenue, Jeannette (No. 5546 of 2006), plaintiff's expert testified to a fair market value of $45,000, and defendant's expert contended that it was $32,000. The jury viewed the property prior to reaching its verdict.

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

Defendant's Counsel: Gary A. Falatovich, Gbg.

Trial Judge: The Hon. Daniel J. Ackerman

Result: In special findings, the jury found that the fair market value and just compensation for the taking of No. 714 Clay Avenue was $41,000 and that the fair market value and just compensation for the taking of No. 708 Clay Avenue was $40,700.

The remaining issues were scheduled for a non-jury trial.

JULY 2008 CIVIL TRIAL TERM

SUZANNE DIEHL STEWART V. ELIZABETH L. CARARINI, A/K/A ELIZABETH L. CARRARINI NO. 1925 OF 2006

Cause of Action: Negligence—Motor Vehicle Accident

On April 3, 2004, Plaintiff Suzanne Diehl Stewart was a restrained passenger in the right front seat of an automobile operated by her husband, Gary Stewart. Mr. Stewart was heading in a southerly direction on State Route 66, in the area of that road's intersection with old Route 66 at Hempfield Park in Westmoreland County. Mr. Stewart stopped and activated his left turn signal before yielding to oncoming traffic and making a left-hand turn across Route 66. As he was making the turn, Defendant Elizabeth Carrarini, operating her vehicle in the same direction on State Route 66 behind the Stewart vehicle, collided with the rear end of Stewart's vehicle.

In this negligence action, Plaintiff claimed soft tissue injuries to her cervical, thoracic and lumbosacral areas. Plaintiff maintained that these injuries caused her to suffer neck pain and stiffness, hand and forearm numbness and weakness, lower back and right-sided upper back pain, carpal tunnel syndrome, fatigue, headaches, loss of concentration, insomnia, anxiety, depression, and aggravation of a pre-existing esophageal condition. The limited tort provisions of the Motor Vehicle Financial Responsibility Law did not apply in this case.

Defendant argued that Plaintiff's soft tissue injuries were not severe. Additionally, two experts testified that Plaintiff's pre-existing esophageal condition did not relate to the accident since the condition lay latent for two years after the accident. Plaintiff's treating physician testified that Plaintiff's injuries were causally connected to the accident.

Plaintiff's Counsel: Mary Ann DiIanni, Cohen & Grigsby, P.C., Pgh.

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

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of the Plaintiff in the amount of $250,000.00.

JULY 2008 CIVIL TRIAL TERM

CITY OF MONESSEN V. DANIEL L. NICOLAUS AND DAWN R. NICOLAUS, HIS WIFE, AND DEL SUPPO, INC., A PENNSYLVANIA CORPORATION — DANIEL L. NICOLAUS AND DAWN R. NICOLAUS, HIS WIFE V. CITY OF MONESSEN AND MACCABEE INDUSTRIAL, INC., A PENNSYLVANIA CORPORATION NO. 3482 OF 2005 NO. 8434 OF 2005

Cause of Action: Negligence and Strict Liability

Daniel and Dawn Nicolaus (the Nicolauses) own real estate, which is situated below a public street known as Helen Avenue, in the City of Monessen (the City). The Nicolauses hired Del Suppo, Inc., to install an in-ground swimming pool on their property. The swimming pool was placed at the foot of a steep hillside, at the top of which is Helen Avenue. Del Suppo excavated the toe of the hillside to facilitate the installation of the pool. Construction was completed in the summer of 2003.

In 2004, a series of landslides took place on the hillside above the swimming pool. During a landslide in March 2004, the ground below Helen Avenue gave way, causing a section of the roadway to break free. The City closed Helen Avenue and hired Maccabee Industrial, Inc., to construct a retaining wall. The landslides were compounded by a defect in a catch basin beneath Helen Avenue that allowed water to flow toward the Nicolauses' property. Moreover, during the construction of the retaining wall, Maccabee damaged a sewer line, which caused sewage to run onto the Nicolauses' property and into the swimming pool.

The City filed a complaint against the Nicolauses and Del Suppo, alleging causes of action in negligence and strict liability for the withdrawal of lateral support for Helen Avenue. Furthermore, the Nicolauses filed a complaint against the City and Maccabee alleging causes of action in negligence and nuisance. Prior to trial, the Nicolauses settled their claim against Maccabee.

At trial, the City's claim that the Nicolauses and Del Suppo were strictly liable for failure to provide lateral support to Helen Avenue was dismissed. The evidence presented by the parties focused on the allegations of negligence against the Nicolauses, Del Suppo, and the City. The jury was charged on comparative negligence.

Monessen's Counsel: Mark Shire, Shire Law Firm, Monessen

Nicolauses' Counsel: Kelly A. Morrone, DiBella, Geer, McAllister & Best, P.C., Pgh.

Del Suppo's Counsel: Kim Ross Houser, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. William J. Ober

Result: The parties' negligence was apportioned as follows: the City, 54%; Del Suppo, 46%; and the Nicolauses, 0%. Although the jury found that the City had sustained damages in the amount of $155,877.18, the City was precluded from recovery by virtue of its negligence in excess of 50%.

JULY 2008 CIVIL TRIAL TERM

BERNICE J. MATONIC AND KENNETH MATONIC, WIFE AND HUSBAND V. ROMAN CATHOLIC DIOCESE OF PITTSBURGH; THE MOST REVEREND PAUL J. BRADLEY, BISHOP AND SUCCESSOR TRUSTEE OF THE ROMAN CATHOLIC DIOCESE OF PITTSBURGH; THE CATHOLIC DIOCESE OF GREENSBURG; THE MOST REVEREND LAWRENCE E. BRANDT, BISHOP AND SUCCESSOR TRUSTEE OF THE CATHOLIC DIOCESE OF GREENSBURG, OUR LADY QUEEN OF PEACE PARISH; A/K/A THE ROMAN CATHOLIC CONGREGATION OF THE OUR LADY QUEEN OF PEACE PARISH, F/K/A THE ROMAN CATHOLIC CONGREGATION OF HOLY TRINITY SLOVAK CATHOLIC CHURCH OF BOROUGH OF EAST VANDERGRIFT, PENNSYLVANIA; AND THE MOST REVEREND LAWRENCE E. BRANDT, SUCCESSOR TRUSTEE OF OUR LADY QUEEN OF PEACE PARISH, A/K/A THE ROMAN CATHOLIC CONGREGATION OF THE OUR LADY QUEEN OF PEACE PARISH, F/K/A THE ROMAN CATHOLIC CONGREGATION OF HOLY TRINITY SLOVAK CATHOLIC CHURCH OF THE BOROUGH OF EAST VANDERGRIFT, PENNSYLVANIA

NO. 438 OF 2007

Cause of Action: Negligence—Slip and Fall

On February 25, 2005, a day with snowy weather, Bernice Matonic (Plaintiff) parked her vehicle in a lot owned by the Roman Catholic Church, Our Lady Queen of Peace Parish (Defendant). Plaintiff was using the parking lot to attend an event at the Lithuanian Club, which is located near the Defendant's property. When she exited her vehicle, Plaintiff proceeded to walk on a sidewalk that was adjacent to the Defendant's social hall. Plaintiff slipped and fell on the sidewalk and sustained a displaced fracture of her hip. She subsequently underwent partial and total hip replacement surgeries. Plaintiff filed a complaint against Defendant, alleging that she fell on an accumulation of snow and ice on the sidewalk and was injured. Plaintiff's husband, Kenneth Matonic, sought damages for loss of consortium.

At trial, the issues were whether Plaintiff had express or implied permission to use Defendant's parking lot and whether Defendant had negligently allowed ice and snow to accumulate on its sidewalk. Plaintiff theorized that Defendant was negligent because an employee of Defendant shoveled snow in the vicinity of the sidewalk, which melted during the day, flowed onto the sidewalk, and then froze in the evening.

Plaintiffs' Counsel: Richard Rosenthal and Jason M. Lichtenstein, Edgar Snyder & Associates, LLC, Pgh.

Defendants' Counsel: Bernard P. Matthews, Jr., Meyer, Darragh, Buckler, Bebenek & Eck, PLLC, Gbg.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of the Defendant.

JULY 2008 CIVIL TRIAL TERM

RAYMOND SLEASMAN V. EILEEN WILLEY, EXECUTRIX OF THE ESTATE OF JONATHAN WILLEY, DECEASED NO. 10081 OF 2005

Cause of Action: Negligence—Motor Vehicle Accident

Raymond Sleasman instituted this personal injury action after the motorcycle that he was operating collided with a pick-up truck operated by Jonathan Willey on June 12, 2004. Moments before the collision, Mr. Willey had backed out of his driveway onto Vernon Road in Rostraver Township, Westmoreland County. Mr. Sleasman sustained a broken leg that required three orthopedic surgeries, a separated shoulder, broken ribs, and abrasions. He was hospitalized for two weeks.

Mr. Sleasman was the only witness for the Plaintiff. Jonathan Willey passed away from natural causes two years after the accident occurred and, therefore, his version of the accident could not be presented. His Estate, however, presented two witnesses. One witness was a neighbor who was in her side yard and saw the vehicles prior to the collision. She indicated that the Plaintiff-motorcycle operator had his head turned and was looking at her prior to the accident. The Estate also presented the testimony of an accident reconstruction expert who offered the opinion that Plaintiff's version of the accident—that the decedent's vehicle immediately pulled out in front of him—was not supported by the measurements or physical facts at the scene.

The jury found that Mr. Willey was 50% causally negligent in failing to see the Plaintiff's motorcycle as he was backing out of the driveway, and that Plaintiff was negligent in violating the assured clear distance rule. The jury found Mr. Sleasman's damages to total $49,588.83 ($10,000.00—noneconomic loss, $31,268.83—medical expenses, $8,320.00—past lost wages), which was reduced by 50% in a molded verdict.

Plaintiff's Counsel: Jan Ira Medoff, Pgh.

Defendant's Counsel: Stephen J. Magley, O'Malley & Magley, L.L.P., Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict in favor of Plaintiff in the amount of $24,794.15.

SEPTEMBER 2008 CIVIL TRIAL TERM

STEVEN STOLITCA AND MARYANN STOLITCA, HIS WIFE V. DARLA BAKER NO. 8244 OF 2006

Cause of Action: Negligence—Motor Vehicle Accident—Loss of Consortium

Plaintiffs instituted the within negligence action as a result of a motor vehicle collision that occurred on September 21, 2004. Plaintiff Steven Stolitca was operating his automobile in a generally northerly direction on Slope Hill Road in Mt. Pleasant Township. At the same time and place, Defendant Darla Baker was operating her vehicle in a generally southerly direction when she crossed the center line and collided with Plaintiff head on. Plaintiff claimed injuries to his cervical spine, lumbar spine, the soft tissue and permanent scarring of his left hand, shock and attendant nervous disorder, and numbness in his leg from nerve damage. Plaintiff claimed these injuries resulted in wage losses and impairment of his earning capacity. Plaintiff's wife claimed the loss of consortium of her husband.

Defendant conceded liability but argued that Plaintiff's soft tissue injuries were minimal. Defendant argued that Plaintiff's alleged injuries were the result of independent, intervening, or superseding causes over which the Defendant had no control.

Plaintiffs' Counsel: Richard H. Galloway, Quatrini-RaffertyGalloway, Gbg.

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

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Plaintiff in the amount of $90,000 ($85,000 to Plaintiff and $5,000 to Plaintiff's wife for loss of consortium).

SEPTEMBER 2008 CIVIL TRIAL TERM

MARGUERITE CAVALIER, AS EXECUTRIX OF THE ESTATE OF JAMES F. CAVALIER, DECEASED V. INTEGRATED HEALTH GROUP, L.P., D/B/A INTEGRATED HEALTH SERVICES OF GREATER PITTSBURGH NO. 6327 OF 2005

Cause of Action: Wrongful Death and Survival—Nursing Home Negligence

James Cavalier (Decedent) was admitted to a nursing home operated by Integrated Heath Services (I.H.S.) on November 19, 2004, for post-surgical rehabilitation. Decedent's admission was to be for a short period of time only, and he intended to return to his home following rehabilitation. Decedent was treated at I.H.S. from November 19, 2004, to December 15, 2004. During this time period, Decedent developed a large perirectal wound or pressure ulcer, and his health rapidly deteriorated. On December 15, 2004, Decedent was admitted to Westmoreland Hospital, where he was diagnosed with a perirectal wound, dehydration, and anorexia. Due to the wound and malnutrition, Decedent was required to undergo surgery to perform a colostomy and to insert a feeding tube. Decedent died on January 16, 2005.

The Executrix of the Decedent's Estate filed a wrongful death and survival action against I.H.S., averring that Decedent's injuries and death were caused by, inter alia, I.H.S.'s negligent failure to provide Decedent with adequate nutrition and hydration, failure to prevent the development of pressure ulcers, and failure to prevent pressure ulcers from progressing.

At trial, the Executrix produced evidence to show that I.H.S. breached the standard of care and thereby caused Decedent to develop and ultimately die from pressure ulcers, malnutrition, and dehydration. I.H.S. presented evidence to show that Decedent did not develop a pressure ulcer, but rather suffered from an abscess that could not have been prevented by its staff. I.H.S. offered expert testimony to prove that it acted within the standard of care and that Decedent's death was not the result of the care it received at its facility.

Plaintiff's Counsel: Robert F. Daley and Chad P. Shannon, Robert Pierce & Associates, P.C., Pgh.

Defendant's Counsel: Ronald M. Puntil, Jr., and Michele V. Primis, Marshall, Dennehey, Warner, Coleman & Goggin, Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

SEPTEMBER 2008 CIVIL TRIAL TERM

MARK GIACCHINO V. BRIAN WILLIAMS NO. 687 OF 2007

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

On March 23, 2006, at approximately 6:00 p.m., the Plaintiff was traveling eastbound on Route 130 in Irwin Borough. Plaintiff was stopped at an intersection when he was struck from the rear by Defendant's vehicle. Plaintiff claimed various soft tissue injuries as a result of the collision.

The Defendant conceded negligence. Plaintiff was awarded $20,000 at arbitration, and Defendant appealed from the award. At trial, the sole issues were whether the injuries claimed by the Plaintiff were caused by the accident and, if so, the amount of damages to be awarded.

Three witnesses testified at trial. Each of the parties testified, as well as Plaintiff's treating physician. Of interest, the Plaintiff had some prior physical problems that were discussed during the doctor's deposition, but the doctor concluded that those prior problems were not related to the accident. The Defendant had retained a doctor, but chose not to call him. The trial judge granted Plaintiff's motion in limine to exclude all references to a prior medical condition of Plaintiff from the doctor's video deposition. Notwithstanding the exclusion of this testimony, the jury found that there was no causation and did not reach the issue of damages.

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

Defendant's Counsel: Laura R. Signorelli, Law Offices of Twanda Turner-Hawkins, Pgh.

Trial Judge: The Hon. Daniel J. Ackerman

Result: Molded verdict in favor of Defendant. The jury found that the Defendant's negligence was not a factual cause in bringing about harm to the Plaintiff.

SEPTEMBER 2008 CIVIL TRIAL TERM

CHARLOTTE MAY
V.
HEIDI VANDERHILL
NO. 5085 OF 2005

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

The Defendant, Heidi Vanderhill, appealed a $7,068 arbitration award in favor of Plaintiff, Charlotte May, arising out of a motor vehicle collision that occurred on August 13, 2003, on Harvey Avenue in Greensburg. Plaintiff was stopped on Harvey Avenue, waiting for traffic to clear before making a left turn into a doctor's parking lot, when she was rear-ended by Defendant's vehicle. Plaintiff claimed exacerbation of a left ankle sprain, and injuries to her lumbar, thoracic, and cervical spine, which caused her to suffer pain, persistent headaches, parasthesias in the left arm, wrist, and hand, as well as bilateral shoulder pain. Plaintiff argued that these injuries were serious impairments of the function of her head, neck, and spine, and caused extensive loss of earnings and earning capacity. In addition to wage losses, Plaintiff sought to recover unreimbursed medical expenses.

Defendant characterized the collision as a minor motor vehicle accident. Defendant argued that an independent medical examination revealed that Plaintiff's soft tissue injuries were not severe. Defendant further asserted that the injuries claimed by Plaintiff were not causally connected to the accident.

Plaintiff's Counsel: Melissa A. Guiddy, King & Guiddy, Gbg.

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

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant.

NOVEMBER 2008 CIVIL TRIAL TERM

THOMAS J. WALLACE
V.
RODGER SEARFOSS, M.D.
NO. 7450 OF 2006

Cause of Action: Professional Negligence—Medical Malpractice

Plaintiff sustained a right elbow injury in the nature of an avulsion fracture and a possible tear of the right triceps tendon. Defendant-physician treated Plaintiff by immobilizing his elbow with a long arm cast. During the course of treatment, Plaintiff complained to Defendant that the cast was too tight. Following removal of the cast, Plaintiff experienced ongoing complaints of pain, and was subsequently diagnosed as suffering from ulnar nerve neuropathy and treated with surgery.

Plaintiff alleged Defendant's negligence in that the long arm cast was applied so tightly it caused Plaintiff to suffer from ulnar nerve neuropathy. At trial, both parties presented evidence including expert medical testimony.

Plaintiff's Counsel: Brendan B. Lupetin, Portnoy & Quinn, LLC, Pgh.

Defendant's Counsel: Daniel P. Carroll, Davies, McFarland & Carroll, P.C., Pgh.

Trial Judge: The Hon. William J. Ober

Result: Verdict in favor of Defendant.

NOVEMBER 2008 CIVIL TRIAL TERM

JOHN BASISTA V. DALE FRANCIS NO. 1341 OF 2006

Cause of Action: Negligence—Motor Vehicle Accident

Plaintiff was operating a farm tractor on Cool Springs Road in Sewickley Township when Defendant's vehicle impacted with the rear of the tractor, ejecting Plaintiff. Plaintiff claimed he suffered soft tissue injuries, which resulted in loss of earnings and impairment of his earning capacity.

Defendant argued that Plaintiff was negligent per se as the tractor was in violation of state law requiring a farm tractor to have two rotating yellow beacons and four-way flashers operating at all times. Defendant further disputed the nature and extent of Plaintiff's injuries.

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

Defendant's Counsel: Patrick M. Connelly, Summers, McDonnell, Hudock, Guthrie & Skeel, LLP, Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant. (The jury assigned 55% contributory negligence to Plaintiff.)

NOVEMBER 2008 CIVIL TRIAL TERM

ALBERT PAPUGA AND MARY JANE PAPUGA, HIS WIFE V. DANA RUPERT NO. 3606 OF 2004

Cause of Action: Negligence—Motor Vehicle Accident

Plaintiffs were operating their vehicle near the Route 30 entrance to Westmoreland Mall when Defendant's vehicle rear-ended Plaintiffs' vehicle. Plaintiff Albert Papuga claimed injuries to his neck and upper back as well as numbness in his shoulder and left arm. Plaintiff Mary Jane Papuga asserted a claim for loss of consortium.

Defendant argued that Plaintiffs did not sustain serious injuries as defined in the Pennsylvania Motor Vehicle Financial Responsibility Law, disputing the nature and extent of the injuries. Also, Defendant maintained that Plaintiff's injuries and damages resulted from superseding, intervening, and/or independent causes.

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

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

Trial Judge: The Hon. Gary P. Caruso

Result: Verdict in favor of Defendant.