

JANUARY 2012 CIVIL TRIAL TERM

**DENISE KRISTOPAITIS AND
LARRY KRISTOPAITIS**

V.

**SHANNON MAY
NO. 4116 OF 2008**

Cause of Action: Negligence—Motor Vehicle Accident

On March 22, 2007, Plaintiff Denise Kristopaitis was traveling southbound on Old State Route 119 in East Huntingdon Township, Westmoreland County. Defendant Shannon May was traveling north on Route 119 in her vehicle. As Plaintiff attempted a left-hand turn into the parking lot of Commonwealth Medical Plaza off of Route 119, her vehicle collided with Defendant's vehicle. The impact occurred in Defendant's northbound lane of travel with the front left portion of Defendant's vehicle colliding with the front right portion of Plaintiff's vehicle. As a result of injuries sustained in the accident, Plaintiff claimed damages for medical expenses, loss of enjoyment of life, disfigurement, impairment of earning capacity, and pain and suffering. Plaintiff's husband claimed loss of consortium.

Plaintiff maintained Defendant was operating her vehicle in an unsafe manner and at an excessive rate of speed. Defendant argued she was lawfully traveling in her lane of travel when Plaintiff made a left-hand turn directly in front of her, thereby causing the collision.

Plaintiffs' Counsel: Robin S. Wertkin, Ainsman Levine & Drexler, LLC, Pgh.

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

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendant and against Plaintiff.

JANUARY 2012 CIVIL TRIAL TERM

**GERALDINE HALL AND
ROBERT HALL, HER HUSBAND**

V.

**DAVID KENNEY, M.D., AND
SURGICAL ASSOCIATES, LTD.,
A PENNSYLVANIA
PROFESSIONAL CORPORATION
NO. 8616 OF 2007**

Cause of Action: Negligence—Medical Malpractice

Plaintiffs brought this medical malpractice action, alleging that Plaintiff Geraldine Hall began seeing Defendant Dr. Kenney in July 2006 for treatment of a non-healing ulcer on her left great toe. Defendant is a vascular surgeon. Plaintiffs allege that because of Defendant's failure to treat the wound appropriately and adequately, and by failing to perform proper procedures, Plaintiff had to have her left forefoot amputated.

Plaintiffs sought monetary damages, and reimbursement of certain medical expenses from Defendants. The Defendants denied the allegations and alleged that the doctor's care of the Plaintiff was within the required standard of care.

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

Defendants' Counsel: Alan S. Baum and R. Kent Hornbrook, Matis Baum O'Connor, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendants.

JANUARY 2012 CIVIL TRIAL TERM

JOHN LEONARD AND KATHY LEONARD**V.****GERALD J. MOSCHETTI, T/D/B/A
MOSCHETTI INSURANCE AGENCY
NO. 8356 OF 2006***Cause of Action: Negligence—Property Insurance*

This negligence action concerns Plaintiffs' request for personal property insurance coverage. At the time of the incident, Plaintiffs lived in Apollo, Westmoreland County, and operated a business called Fox Run Equine Center. Plaintiffs had previously obtained insurance from the Defendants for their business and commercial automobiles.

In January 2004, Plaintiffs requested an insurance policy and coverage for personal property. Plaintiffs allege that Defendants were negligent in failing to provide personal property insurance coverage at that time or during any previous time period. When a fire occurred in September 2004, Plaintiffs' various items of personal property, including, but not limited to, a coin collection, a gun collection, and jewelry, were destroyed with no insurance coverage in place to compensate them. Accordingly, Plaintiffs requested monetary damages from Defendants. Defendants denied the allegations and alleged that Plaintiffs were fully aware of the extent of their insurance coverage, and were negligent in failing to properly request or obtain adequate personal property insurance.

Plaintiffs' Counsel: David A. Neely, Pgh.

Defendants' Counsel: Sheila Burke, Burns White, LLC, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Unanimous verdict in favor of Defendants.

JANUARY 2012 CIVIL TRIAL TERM

CHARLES HELA AND MARTHA HELA, HIS WIFE**V.****EXCELA HEALTH, FRICK HOSPITAL,
AND EXCELA HEALTH FRICK HOSPITAL,
T/D/B/A FRICK HOSPITAL
NO. 399 OF 2010***Cause of Action: Negligence—Medical Malpractice*

In 2009, Plaintiff Charles Hela was 83 years old and had various medical conditions. His primary care physician scheduled a colonoscopy at Frick Hospital in Mt. Pleasant on May 13, 2009. After the procedure, Plaintiff was taken to a recovery room. After being discharged, but while still in the recovery room, Plaintiff stood up and attempted to dress, but then fell over, landing on his back and left ankle.

Plaintiff alleged that as a result of the fall, he was diagnosed with a non-displaced type 2 odontoid fracture. Plaintiff alleged that Defendant was negligent and that Defendant's conduct was outside the standard of care. Plaintiffs are seeking monetary damages in order to be compensated for the injuries.

Defendants Excela Health and Frick Hospital deny the allegations and allege that their conduct was appropriate and within the standard of professional care and that there was no negligence on the part of any employee of the Defendant Hospital which caused any harm to Plaintiff.

A summary jury trial was conducted.

Plaintiffs' Counsel: Kevin R. Lomupo, Gilardi, Oliver & Lomupo, P.A., Pgh.

Defendants' Counsel: Suzanne M. Oppman, Thomson, Rhodes & Cowie, P.C., Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Hung jury. The jury was deadlocked at 5-3.

MARCH 2012 CIVIL TRIAL TERM

**ROBERT HUNKER AND ANN HUNKER, HIS WIFE
V.
NICOLE KUFTIC
NO. 4537 OF 2006**

Cause of Action: Negligence—Motor Vehicle Accident

On June 6, 2004, Plaintiff Robert Hunker stopped his vehicle on Main Street in West Newton, Westmoreland County, waiting for oncoming traffic to pass in order to make a left turn onto Third Street. Defendant Nicole Kufitic was operating a pickup truck approaching behind Plaintiff. Defendant failed to stop and collided with the rear of Plaintiff's vehicle. As a result of alleged injuries to his neck and upper and lower back, Plaintiff claimed damages for unreimbursed medical bills and pain and suffering. Because Plaintiff did not miss work as a result of the subject accident, there was no claim for lost wages or impairment of earning capacity. Plaintiff's wife claimed loss of consortium.

Defendant conceded liability in causing the accident. Plaintiff maintained that the injuries for which he was treated, and for which he will require future treatment, were caused by the collision. Defendant argued that Plaintiff's injuries were minor. After conducting an independent medical examination of the Plaintiff, an orthopedic surgeon opined that Plaintiff sustained cervical and lumbar strains related to the accident, which were appropriately treated through December 10, 2004. However, he concluded that any treatment after December 10, 2004, was related to Plaintiff's pre-existing degenerative disk disease, which was symptomatic before the accident occurred.

Plaintiffs' Counsel: Dennis B. Rafferty, Quatrini Rafferty, P.C., Gbg.

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 Plaintiffs and against Defendant. No damages were awarded to Plaintiffs.

MARCH 2012 CIVIL TRIAL TERM

**LACIE McCABE, NOW KNOWN
BY MARRIAGE AS LACIE RIFFLE
V.
RYAN FRANCIS OHRT
NO. 387 OF 2006**

Cause of Action: Negligence—Motor Vehicle Accident

On January 27, 2005, Plaintiff Lacie McCabe, n/k/a Lacie Riffle, was traveling on State Route 217 in Derry Township, Westmoreland County, when the vehicle she was operating was struck in the rear by a vehicle driven by Defendant Ryan Francis Ohrt. As a result of the collision, Plaintiff alleged that she suffered injuries to her cervical spine, headaches, lumbar pain, right shoulder pain, sleep deprivation, impaired memory, depression, and two shoulder surgeries. In addition, she received physical therapy.

Plaintiff maintained that the injuries prevented her from returning to her employment as a bank teller, and from pursuing her intended career in the field of Corrections after obtaining her bachelor's degree in criminology. Plaintiff claimed damages for medical expenses, loss of enjoyment of life, loss of income and impairment of earning capacity, and pain and suffering.

The Defendant admitted his negligence, and admitted that the motor vehicle collision was the factual cause of the injuries to Plaintiff's neck. In addition, the Defendant conceded that the Plaintiff suffered economic damages for medical expenses related to her neck injuries in the amount of \$5,234.45. However, the Defendant denied that the collision caused her shoulder injuries, and maintained that her injuries did not constitute a serious impairment of a body function as that term is defined by the limited tort statute.

The jury found in favor of the Plaintiff and found that Plaintiff's injuries constituted a serious impairment of a body function.

Plaintiff's Counsel: Robert W. King, King & Guiddy, Gbg.

Defendant's Counsel: Donna Marie Flaherty, Law Offices of Twanda Turner-Hawkins, Pgh.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of Plaintiff as follows: Medical expenses, \$5,234.45 (related to neck), \$5,371.70 (related to shoulder); lost earnings, \$36,862; pain and suffering, \$10,000.

MAY 2012 CIVIL TRIAL TERM

ANDREA M. KROPP
V.
MURAT BANKACI, M.D.
NO. 9500 OF 2009

Cause of Action: Medical Malpractice—Negligence

In December 2007, Plaintiff was referred to Defendant because of sinus problems associated with a deviated nasal septum. On February 28, 2008, Defendant performed surgery at Frick Hospital in Mount Pleasant to repair Plaintiff's deviated septum.

Plaintiff alleges that the surgery caused a nasal collapse and a saddle nose deformity. Plaintiff subsequently consulted with a plastic surgeon who performed a follow-up corrective surgery on June 25, 2008. Following this surgery, Plaintiff alleged to continue having difficulties. Defendant contends that the original surgery that he performed on February 28, 2008, was done within the required medical standard of care and that proper surgical treatment of septal deviation does not always improve the nasal airway.

Plaintiff sought monetary damages, and reimbursement of certain medical expenses from Defendant.

Plaintiff's Counsel: Anthony DeBernardo, Gbg.

Defendant's Counsel: Eric Reif, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant.

MAY 2012 CIVIL TRIAL TERM

SAMANTHA PARISH
V.
RODNEY G. LEMLEY, INDIVIDUALLY AND
T/D/B/A LEMLEY REMODELING
NO. 4769 OF 2010

Cause of Action: Breach of Contract

On July 9, 2008, Plaintiff entered into an agreement with Defendant, Rodney G. Lemley, in which Defendant agreed to construct an addition on Plaintiff's home. Defendant constructed the addition with some modifications that were requested by Plaintiff. These modifications became necessary due to the structure and other building parameters.

Plaintiff was dissatisfied with the work and filed suit approximately two years after the addition was completed, seeking damages resulting from Defendant's alleged breach of the construction contract. Specifically, Plaintiff alleged Defendant failed to complete the construction in a workmanlike fashion and failed to comply with industry standards and building codes.

Defendant argued that he performed the work on the addition in a workmanlike fashion and that when the construction was completed, the addition had no material deficiencies of a nature that would prevent its intended use. Defendant argued that Plaintiff had demanded that he employ numerous cost-saving measures, which she later complained rendered the construction defective. Furthermore, Defendant argued that the delay in filing suit prevented Defendant from adequately determining whether any of the problems were created by other factors beyond the control of the Defendant.

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

Defendant's Counsel: Timothy C. Andrews, Gbg.

Trial Judge: The Hon. Gary P. Caruso, President Judge

Result: Verdict in favor of Defendant. Plaintiff has filed a Motion for Post-Trial Relief.

JULY 2012 CIVIL TRIAL TERM

**CARROLL PLUMBING
V.
CHRISTIAN FELLOWSHIP OF GREENSBURG,
ED DAY, AND LEWIS GAINFORT
NO. 2409 OF 2011**

Cause of Action: Breach of Contract

Plaintiff alleges that in December 2010, it entered into a contract with Defendants Christian Fellowship of Greensburg, through its agents, Gainfort and Day, to do plumbing work and remove a boiler at the Christian Fellowship of Greensburg facility. Plaintiff alleged that the work was completed, but Defendants failed to pay for costs of said work. Plaintiff requests judgment in the total amount of \$1,450.00, including costs and fees. Defendants deny the allegations and, for various reasons, allege they owe less than the amount demanded by Plaintiff.

After summary jury trial, the verdict was unanimous. A molded verdict was entered in favor of Plaintiff for \$1,450.00, and against Defendant Day, only.

Plaintiff's Counsel: Morrison F. Lewis, Jr., Gbg.

Defendants' Counsel: Pro se

Trial Judge: The Hon. Anthony G. Marsili

Result: Molded verdict in favor of Plaintiff and against Defendant Day, only, for \$1,450.00.

JULY 2012 CIVIL TRIAL TERM

**DONNA HUTCHINSON, PERSONAL REP. OF THE
ESTATE OF FLOYD HUTCHINSON, DECEASED
V.**

**LYNN & KAMINSKI MEDICAL ASSOCIATES
AND KENNETH BOSCHA, M.D.
NO. 5746 OF 2009**

*Cause of Action: Professional Negligence—
Medical Malpractice*

On September 18, 2007, decedent Floyd Hutchinson presented to the Frick Hospital emergency room with complaints of chest pain. A stress test was administered by Defendant Dr. Boscha. During the stress test, Mr. Hutchinson complained of chest pain, fatigue, and shortness of breath and the test was ended. Immediately following the stress test, Mr. Hutchinson developed chest tightness and an elevation in blood pressure. Dr. Boscha ordered the administration of medications and Mr. Hutchinson's vital signs normalized. On September 19, 2007, he was discharged from the hospital. On September 21, 2007, Mr. Hutchinson collapsed at home, could not be resuscitated, and died.

Mr. Hutchinson had a significant past medical history, including coronary artery disease, prior myocardial infarction with residual 90% blockage of the distal left anterior descending coronary artery, diabetes, hypertension, obesity, elevated cholesterol, and untreated sleep apnea, as well as being a chronic smoker. Plaintiff contends that Dr. Boscha failed to act appropriately in the face of lab results, failed to order another EKG to be performed when Mr. Hutchinson was experiencing chest pain after the stress test, and failed to perform a cardiac catheterization. Defendants presented expert medical testimony that the care and treatment provided to Mr. Hutchinson was at all times appropriate and skillfully rendered in accordance with the applicable standards of care in the medical community.

Plaintiff's Counsel: Victor H. Pribanic, Pribanic & Pribanic, LLC, White Oak

Defendants' Counsel: Steven J. Forry, Marshall, Dennehey, Warner, Coleman & Goggin, P.C., Pgh.

Trial Judge: The Hon. Gary P. Caruso

Result: Molded verdict in favor of Defendants and against Plaintiff.

JULY 2012 CIVIL TRIAL TERM

**IN RE: CONDEMNATION BY THE
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
OF RIGHT-OF-WAY FOR STATE ROUTE 0022, SEC-
TION BO2, IN THE MUNICIPALITY
OF MURRYSVILLE**

**EMOGENE F. JOHNSON, FLOYD JOHNSON,
BARRON JOHNSON AND DOUGLAS JOHNSON
V.**

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION
NO. 7426 OF 2009**

Cause of Action: Eminent Domain

On August 23, 2004, the Defendant/Condemnor filed a Declaration of Taking, condemning a 3.1244-acre portion of the Plaintiffs'/Condemnees' unimproved 8.5827-acre property located on State Route 22 at the intersection of Berlin Farm Road in Murrysville. Prior to the condemnation, the property consisted of approximately 800 feet of frontage on Route 22 and was accessible from both Berlin Farm Road and a private roadway known as Cemetery Lane. After the condemnation and resultant road construction, the grade along Route 22 changed, thereby affecting accessibility from both Route 22 and Berlin Farm Road. In addition, the distance to a sewer line was increased from 375 feet to over 700 feet away, thereby diminishing the ability to bring public sewage to the property. Although the property was zoned Residential on the date of condemnation, a comprehensive plan adopted in Murrysville changed the zoning to Commercial.

Plaintiffs' expert testified that loss of fair market value damages were \$270,000, and Defendant's expert, a real estate appraiser, testified that the loss of fair market value damages were \$46,800. Both experts agreed that the after-condemnation value of the property was approximately \$81,000.

During trial, the Court, the parties, and the jurors went on a view of the property.

Plaintiffs' Counsel: Robert P. Lightcap and Amber R. Leechalk, McDonald, Snyder & Lightcap, P.C., Latrobe

Defendant's Counsel: Ryan J. Kammerer, Assistant Counsel, PennDOT, Pgh.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict in favor of the Plaintiffs/Condemnees in the amount of \$77,360. Plaintiffs/Condemnees have filed a Motion for Post-Trial Relief.

SEPTEMBER 2012 CIVIL TRIAL TERM

**EDENFIELD TRANSIT, INC.
V.
JASON BRINK AND AMY SOLOMON
NO. 7639 OF 2008**

*Cause of Action: Personal Injury—Property Damage—
Auto Accident—Negligence*

On December 17, 2007, at 7:24 a.m., Defendant Solomon was operating a transit bus, which was stopped at a traffic light in the left turning lane on Route 56, waiting to turn onto Hyde Park Road in Allegheny Township. The bus was owned by the Plaintiff, Edenfield Transit. At that same time, Defendant Brink was travelling west on Route 56, in the opposite direction in a 1999 Ford Escort, when his vehicle collided with Solomon's bus as she turned left onto Hyde Park Road.

The left-turn lane that was occupied by Defendant Solomon was controlled by a green arrow, yellow arrow, and red traffic light. Believing that the light had turned green, Solomon proceeded to make the left turn from a stopped position. Believing that he had the green light, Defendant Brink proceeded to travel straight through the intersection. Because his view of the entire intersection was blocked by other buses in his left-turning lane, he was unable to swerve out of the way or stop in order to avoid impact upon seeing Solomon in his path. The front of Brink's vehicle struck the passenger's side of the bus, near the door.

The parties stipulated to damages and the only issue presented to the jury was one of negligence.

Plaintiff's Counsel: Paul S. Guarnieri, Wexford

Defendant Brink's Counsel: Scott Mears, Jr., Gbg.

Additional Defendant's Counsel: John Bryan, Pgh.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict for the Defendant Jason Brink.

SEPTEMBER 2012 CIVIL TRIAL TERM

**DOLORES J. DUDLEY, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
WILBUR DUDLEY, AND DOLORES DUDLEY,
IN HER OWN RIGHT
V.
RAMALINGAM RAVISHANKAR, M.D.
NO. 3730 OF 2006**

Cause of Action: Medical Malpractice—Negligence

Plaintiff's husband, Wilbur Dudley, went to the emergency room of Mercy Jeannette Hospital on August 15, 2004, with back pain and pain in his sacrum, after falling twice at his home earlier in August of 2004. Various X-rays and an MRI were performed. He was admitted on August 19, 2004, and the Defendant was one of the physicians providing health care to him. During his stay in the hospital, Plaintiff's husband developed a left foot drop. Subsequently, on October 22, 2004, he underwent back surgery. For reasons unrelated to this case, he died in March of 2011, at the age of 84.

Plaintiff has alleged that Defendant departed from the applicable standard of medical care in failing to diagnose and treat a transverse sacral fracture at S1 and S2. Plaintiff further alleges that Defendant failed to treat her husband, despite his changing neurological status and increasing pain during his stay at Mercy Jeannette rehabilitation. As a result, Plaintiff argued that he suffered from cauda equine syndrome and had permanent neurological injuries that continued through the rest of his life. Plaintiff was seeking monetary damages.

Defendant contends that he met the applicable standard of care at all times; and that Plaintiff's husband had a known history of back pain and lumbar issues of spondylolisthesis with a concomitant spinal stenosis at the L4-L5 level. Defendant further contends that his condition was chronic and long-standing and evaluations failed to identify any acute changes. Initial findings were most consistent with a sacral fracture, which, while painful, are generally clinically stable. Additionally, Defendant contended that the MRI of August 23, 2004, and X-rays of August 25, 2004, revealed stable fracture sites.

Plaintiff's Counsel: Victor H. Pribanic, White Oak

Defendant's Counsel: Ronald M. Puntil, Jr., Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: The case concluded after two days of testimony without the necessity for the jury to reach a verdict.

NOVEMBER 2012 CIVIL TRIAL TERM

**ROBERT CAMILLI AND MARCIA CAMILLI,
HUSBAND AND WIFE
V.
PRIVATE INDUSTRY COUNCIL OF
WESTMORELAND/FAYETTE, INC., A
CORPORATION OR OTHER SIMILAR BUSINESS
ENTITY, T/D/B/A HEAD START OF FAYETTE
COUNTY; DIANE FIGG, AS ADMINISTRATRIX
OF THE ESTATES OF DOM MONGELL,
A/K/A DOMINIC MONGELL, DECEASED,
AND SUSAN MONGELL, DECEASED
NO. 8998 OF 2007**

*Cause of Action: Negligence—Personal Injury—
Premises Liability*

On December 16, 2005, Plaintiff Husband slipped and fell on a patch of ice as he stepped from his delivery van onto the parking lot that was used by the Head Start Program (operated by the Defendant Private Industry Council), and owned by Defendants Mongell. He sustained an injury to his right shoulder, and required surgery. In addition, he lost earned income.

Plaintiffs presented the expert testimony of a meteorologist concerning the weather conditions on the day in question. They argued that Defendants, as owners and occupiers of land, breached their duty of care to the Plaintiff in the maintenance and use of the land and failed to protect him from foreseeable harm caused by the dangerous condition of an accumulation of ice.

At the conclusion of Plaintiffs' case, Defendants made a motion for a compulsory non-suit, arguing that Plaintiffs failed to prove that Defendants were negligent under the "hills and ridges" doctrine. See *Rinaldi v. Levine*, 176 A.2d 623 (Pa. 1962). The motion was granted.

Plaintiffs' Counsel: Joyce Novotny-Prettiman, QuatriniRafferty, P.C., Gbg.

Defendant PIC's Counsel: George N. Stewart, Zimmer Kunz, PLLC, Gbg.

Defendants Mongell's Counsel: Dennis J. Slyman, Gbg.

Trial Judge: The Hon. Richard E. McCormick, Jr.

Result: Verdict for the Defendants.