

JANUARY 2013 CIVIL TRIAL TERM

**CAROL ALLEN**  
**V.**  
**MADALYN CAPERELL**  
**NO. 7993 OF 2010**

*Cause of Action: Negligence—Personal Injury—  
 Automobile Collision*

On September 1, 2010, at approximately 9:00 p.m., Plaintiff, while operating her vehicle, approached the four-way intersection of Buttermilk Hollow Road and Center Highway in North Huntingdon. She claimed that she stopped at the stop sign, and then proceeded through the intersection when her vehicle was struck in the right rear by the Defendant's vehicle.

Defendant claimed that she was operating her vehicle on Center Highway when she came to a complete stop at the intersection, proceeded through the intersection, and then struck the Plaintiff's vehicle, which had failed to stop and sped in front of her.

As a result of the collision, Plaintiff claimed to have sustained a cervical strain, concussion, full thickness rotator cuff tear, right shoulder and right biceps tendinopathy, lacerations, and contusions. In addition, she was unable to drive for about six months due to anxiety related to the accident.

*Plaintiff's Counsel:* Daniel S. Schiffman, Schiffman & Wojdowski, Pgh.

*Defendant's Counsel:* Kenneth Ficerai, Gbg.

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

*Result:* Verdict for the Plaintiff in the amount of \$4,371.53 in economic damages; zero awarded for non-economic damages.

JANUARY 2013 CIVIL TRIAL TERM

**WALTECH SERVICES, INC.**  
**V.**  
**VSI, INC., FRANK C. YESH AND PHYLLIS M. YESH**  
**NO. 3772 OF 2005**

*Cause of Action: Contract—  
 Breach of Contract for Services*

Walter Matenkosky, principal and President of Plaintiff Corporation, agreed to perform services as an independent contractor for the Defendants, Frank and Phyllis Yesh, who are the principals of Defendant Corporation. Defendants are in the business of providing security system services. Plaintiff and Defendants agreed that Plaintiff would be paid \$45 per hour for his services and that his expenses would be reimbursed. Plaintiff periodically provided timesheets and invoices to Defendants, detailing the hours he worked and the expenses he incurred. Although Plaintiff was paid for some of his time, Plaintiff claimed that a balance remained due and owing.

Defendants denied that Plaintiff was owed anything. They contended that Plaintiff was paid in full and that he could not substantiate his claim with valid or credible records.

In an earlier proceeding, the Court determined that Mr. and Mrs. Yesh are personally liable for all of VSI, Inc.'s obligations.

*Plaintiff's Counsel:* Daniel C. Hudock, McDonald, Snyder & Lightcap, Latrobe

*Defendants' Counsel:* David Colecchia, LAW CARE', Gbg.

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

*Result:* Verdict for the Plaintiff in the amount of \$78,541.70.

## MARCH 2013 CIVIL TRIAL TERM

**RED STAR BREWING COMPANY, INC.,  
A PENNSYLVANIA CORPORATION, ET AL.  
V.  
THE WESTMORELAND CULTURAL TRUST,  
A/K/A THE WESTMORELAND TRUST  
NO. 6211 OF 2010**

*Cause of Action: Breach of Contract—Commercial Lease Agreement—Promissory Estoppel—Counterclaim*

This case involves a landlord/tenant dispute arising from a commercial lease agreement, entered into on August 7, 1997, between Plaintiffs/ Tenant Red Star Brewing, and Defendant/Landlord Westmoreland Cultural Trust. The location of the leased property is the Old Train Station in the City of Greensburg. Plaintiffs allege that in 2009 and early 2010, because of various statements made by the Defendant and actions relied upon by the Plaintiffs, Plaintiffs believed that the lease agreement would be renewed for an additional five-year period of time, rather than terminating in March 2010. When the lease was not renewed, Plaintiffs alleged that they were entitled to monetary damages as a result of being forced to vacate by March 31, 2010.

Defendant denied those allegations, maintaining that no such statements were made or actions engaged in that would extend the lease agreement beyond March 2010. Further, Defendant asserted a counterclaim against Plaintiffs for breach of contract, seeking monetary damages for costs associated with repairs that were caused by the Plaintiffs and discovered after they vacated the premises, as well as reimbursement for other outstanding bills and attorneys' fees.

*Plaintiff's Counsel:* Bernard P. Matthews, Jr., Gbg.

*Defendant's Counsel:* Patricia A. Monahan, Pgh., Michael E. DeMatt, Gbg.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict (10-2) in favor of Plaintiff in the amount of \$180,000.00; and in favor of Defendant on the Counterclaim in the amount of \$2,986.02.

## MARCH 2013 CIVIL TRIAL TERM

**EVELYN BARKER  
V.  
RANDY EATON  
NO. 5699 OF 2011**

*Cause of Action: Breach of Contract*

The Plaintiff and Defendant entered into a contract during the summer of 2009 for the construction of multiple retaining walls on Plaintiff's property, which is located in Leechburg, for a total construction contract price of \$34,975.00. Construction was completed in September 2009, and Plaintiff paid Defendant in full at that time.

Sometime thereafter, Plaintiff claimed that the construction of the walls was not in accord with the terms of the contract and that there were numerous problems with faulty workmanship. Plaintiff is seeking monetary damages for the cost of repairs.

Defendant denies all of the allegations, maintaining that he constructed the retaining walls in a workmanlike manner and in keeping with proper installation and construction standards.

*Plaintiff's Counsel:* Bradley King, Gbg.

*Defendant's Counsel:* Bernard P. Matthews, Jr., Gbg.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Defendant.

MAY 2013 CIVIL TRIAL TERM

**MARSHA ESTES**  
**V.**  
**CBL/WESTMORELAND, L.P., A PENNSYLVANIA**  
**LIMITED PARTNERSHIP, ET AL.**  
**NO. 10724 OF 2007**

*Cause of Action: Negligence—Personal Injury*

On May 10, 2006, Plaintiff was shopping at Westmoreland Mall in Greensburg. While Plaintiff was in the Ritz Camera store, a young child in the common area of the Mall dropped a glass bottle that broke. Both a customer service coordinator and a security guard for the Mall were nearby and heard the glass break. The customer service coordinator called mall maintenance to clean up the glass shards. The security guard also called mall maintenance, and began to walk to the site of the broken glass. At about the same time, or within approximately one minute, Plaintiff exited the Ritz Camera store and stepped on the broken glass; she injured herself and required surgery.

Plaintiff alleges that Westmoreland Mall and the security company were negligent in failing to properly fulfill their duties and obligations to ensure customer safety. Plaintiff is seeking monetary damages.

Defendants deny that they were negligent and allege that they properly and fully discharged their duties and obligations to customers on the premises.

*Plaintiff's Counsel:* Mark A. Rowan, Connellsville

*Defendants' Counsel:* John F. Deasy, Pgh.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Defendants.

MAY 2013 CIVIL TRIAL TERM

**PAUL W. DAVIES**  
**V.**  
**ERIC MICHAEL SINGER**  
**NO. 6092 OF 2005**

*Cause of Action: Negligence—Personal Injury—  
 Automobile Accident*

On August 18, 2003, Plaintiff was operating his vehicle on the Pennsylvania turnpike, approaching the New Stanton exit in Westmoreland County. The Defendant was operating his vehicle directly behind the Plaintiff.

As Plaintiff began slowing down due to traffic conditions, Defendant's vehicle struck the rear end of Plaintiff's vehicle. Accordingly, Plaintiff alleges that he suffered various injuries and is seeking monetary damages as compensation, including lost wages of \$628,000 and medical expenses of \$7,636.

Defendant alleges that he was operating his vehicle in a lawful manner and was not negligent in causing the accident. The Defendant also contested damages as claimed by the Plaintiff.

A summary jury trial was conducted. (A jury in a summary jury trial consists of eight individuals; agreement by at least six of the eight jurors constitutes a verdict.)

*Plaintiff's Counsel:* Matthew W. Loughren, Pgh.

*Defendant's Counsel:* John A. Robb, Jr., Pgh.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Plaintiff for \$77,040 in lost wages and \$7,636 in medical expenses.

## MAY 2013 CIVIL TRIAL TERM

**ROBERT GREECE**  
**V.**  
**H.M. DEMPSEY AND R.C. DEMPSEY**  
**NO. 1595 OF 2007**

*Cause of Action: Negligence—Personal Injury*  
*(on the issue of liability only)*

On July 27, 2006, Plaintiff was an employee of a window cleaning company. On that date, he had completed a job of cleaning the windows at the Defendants' home. As he left the yard area, Plaintiff tripped over a wooden obstacle on the ground and sustained injuries. He claimed that Defendants' negligence caused his injuries.

Defendants maintained that there were no material alterations to the property and denied the existence of a dangerous or defective condition that in any way contributed to the alleged occurrence.

*Plaintiff's Counsel:* Anthony W. DeBernardo, Jr., Gbg.

*Defendants' Counsel:* Marianne C. Mnich, Pgh.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Defendants.

## MAY 2013 CIVIL TRIAL TERM

**TAMIE STEYER, AS GUARDIAN**  
**OF ALLYSSA WILSON**  
**V.**  
**JACQUELINE BARNHOUSE**  
**NO. 8106 OF 2006**

*Cause of Action: Negligence—Motor Vehicle Accident*

On November 16, 2004, a vehicle operated by Defendant collided with a vehicle operated by Plaintiff. The collision occurred when Plaintiff's vehicle made a right hand turn onto Berger Road in Hempfield Township and Defendant's vehicle crossed the center line colliding with Plaintiff's vehicle. Minor Allyssa Wilson was a passenger in Plaintiff's car. As a result of the collision, Allyssa struck her head inside the vehicle. Plaintiff alleged that Allyssa sustained injuries to her ribs, neck, left shoulder, and the left side of her head. Plaintiff also claimed that Allyssa had headaches, that she suffered from dizziness, blurred vision, and loss of mental capacity, and that she experienced other cognitive problems as a result of the accident. Plaintiff sought damages for pain and suffering for Allyssa's injuries.

Defendant contended that Allyssa Wilson sustained only minor soft tissue injuries to her neck and back and that all of the conditions caused by this accident resolved when she was released from treatment by a chiropractor approximately six weeks after the collision occurred.

*Plaintiff's Counsel:* Joseph Massaro, 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 Plaintiff and against Defendant, but no damages were awarded.

JULY 2013 CIVIL TRIAL TERM

**ROBERT D. SHEPLER AND JUANITA L. SHEPLER**  
**V.**  
**BEVERLY L. SEYBOLD AND COMMONWEALTH**  
**OF PENNSYLVANIA, DEPARTMENT OF**  
**TRANSPORTATION**  
**NO. 5106 OF 2010**

*Cause of Action: Negligence—Personal Injury—  
 Automobile Accident*

A two-vehicle automobile accident occurred on October 11, 2008, at the intersection of State Route 982 and State Route 2027, known as Charles Houck Road, in Unity Township.

Plaintiff Robert Shepler was the driver, and his wife, Plaintiff Juanita Shepler, his passenger, in a 2002 Ford Explorer. Defendant Beverly Seybold was operating a 2007 Chevy Tahoe. Plaintiffs alleged that Defendant Seybold was operating her vehicle at a high rate of speed. Plaintiffs further alleged that the intersection did not have the proper site distance requirements and therefore, PennDOT was negligent in its failure to improve the safety of the intersection. Plaintiffs requested monetary damages for their serious and debilitating injuries.

Defendants' cross-claim alleged that Plaintiff/driver was negligent by failing to observe Defendant Seybold's vehicle when he entered the intersection from a stop sign.

*Plaintiff Robert Shepler's Counsel:* Thomas E. Crenney, Thomas E. Crenney & Assoc., LLC, Pgh.

*Plaintiff Juanita Shepler's Counsel:* Alicia R. Nocera, Thomas E. Crenney & Assoc., LLC, Pgh.

*Defendant Seybold's Counsel:* Dwayne Ross, Latrobe

*Defendant PennDOT's Counsel:* Brian Baxter, Senior Deputy Atty. General, Pgh.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* On Plaintiffs' claim, verdict in favor of Plaintiff/Wife in the amount of \$900,000.00, plus \$100,000.00 for loss of consortium. On Defendants' cross-claim against the Plaintiff/Husband, verdict was solely against Plaintiff/Husband.

JULY 2013 CIVIL TRIAL TERM

**JOSEPH J. YURIGAN, JR.**  
**V.**  
**ANTHONY DISAIA**  
**NO. 9290 OF 2010**

*Cause of Action: Negligence—  
 Personal Injury—Automobile Accident*

A two-vehicle accident occurred on December 31, 2008, at 7:00 p.m. Plaintiff was operating his 2007 Chevrolet truck easterly on Route 30 toward Georges Station Road in Hempfield Township. Defendant Anthony Disaia was operating his 1993 Bonneville vehicle in the same direction, immediately behind Plaintiff's truck. Plaintiff alleges that his truck was at a complete stop when the Defendant's vehicle struck him from behind.

Plaintiff seeks monetary damages for his injuries, which led to cervical herniated disc surgery approximately two years after the date of the accident. Defendant admitted liability, but contested the causal connection between the surgery and the collision.

A summary jury trial was conducted. (A jury in a summary jury trial consists of eight individuals; agreement by at least six of the eight jurors constitutes a verdict.)

*Plaintiff's Counsel:* Carl Schiffman, Pgh.

*Defendant's Counsel:* Laura Signorelli, Pgh.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Defendant.

JULY 2013 CIVIL TRIAL TERM

**DISCOVER BANK**  
**V.**  
**MARGARET L. PAULONE**  
**NO. 3116 OF 2009**

*Cause of Action: Breach of Contract—  
 Unjust Enrichment—Credit Card Debt*

Plaintiff filed a Complaint alleging that it entered into a contract with the Defendant for the issuance of a Discover Bank credit card in January 2005. Defendant used the credit card to purchase goods, services, and merchandise, and to take cash advances. Defendant made periodic monthly payments on the account, until sometime after October 9, 2008, at which time no further payments were made. Defendant sought payment of the balance due of \$16,155.00, plus interest at the rate of 6% per annum and attorney's fees of \$1,500.00. In addition, Plaintiff proceeded against the Defendant on the alternative theory of unjust enrichment.

Defendant cited many instances in which she believed to have been unfairly or unjustly charged for services, and contended that Plaintiff acted unconscionably in dealing with those disputes. She also claimed to have paid the balance due, but was unable to present evidence to support that claim.

*Plaintiff's Counsel:* Ashley L. Sweeney, Weltman, Weinberg & Reis Co., L.P.A., Pgh.

*Defendant's Counsel:* Defendant was unrepresented.

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

*Result:* Verdict in favor of Plaintiff in the amount of \$14,300.00.

JULY 2013 CIVIL TRIAL TERM

**NANCY P. STEWART**  
**V.**  
**ADAMS MEMORIAL LIBRARY AND**  
**J.J. HAUSER AND SONS, INC.**  
**NO. 7865 OF 2008**

*Cause of Action: Negligence—Personal Injury—  
 Slip and Fall*

On August 10, 2006, Defendant Hauser was engaged in construction work at the Adams Memorial Library in Latrobe. As Plaintiff was exiting the library, she claims that she tripped over an extension cord that was being used by Defendant Hauser, and fell face down onto a concrete stoop at the entryway. As a result of the fall, she suffered a right orbital floor fracture with slight muscle imbalance in the right globe, which required surgery.

Plaintiff sought damages against both Defendants, however, prior to trial, Defendant Library entered into a Joint Tortfeasors Release with Plaintiff and did not appear at trial. Defendant Hauser denied that the extension cord was a factor in causing the Plaintiff to fall. Accordingly, the focus of the trial was on liability rather than damages.

*Plaintiff's Counsel:* Kenneth R. Behrend and Kevin Miller, Pgh.

*Defendant's Counsel:* Dennis J. Slyman, Gbg.

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

*Result:* Verdict in favor of Defendant Hauser.

## JULY 2013 CIVIL TRIAL TERM

**ROBERT J. HUDSON, JR.****V.****CHARLES EVERLY****NO. 6473 OF 2009***Cause of Action: Negligence—Personal Injury—  
Motor Vehicle Accident*

On October 30, 2007, Plaintiff, a dentist, was operating his motor vehicle in the right lane of travel on Route 30 East in Latrobe, at or near the intersection of Mt. Laurel Plaza. Defendant attempted to enter Route 30 East from a Sunoco A Plus gas service station adjacent to Route 30, by crossing the closed right eastbound lane of travel. As he entered the second eastbound lane of travel, his vehicle collided with Plaintiff's vehicle. Plaintiff alleged that Defendant negligently operated his vehicle by failing to yield the right of way to eastbound traffic on Route 30 and striking Plaintiff's vehicle.

Due to the collision, Plaintiff claimed he sustained a C5-6 disc herniation with numbness and tingling down his right arm to the elbow. He underwent an anterior cervical discectomy and fusion with plating at the C5-6 level of the cervical spine. After returning to work, Plaintiff allegedly continued to experience numbness, tingling, and itching down his right arm to the elbow. This condition compromised his ability to perform dental procedures that he could perform prior to the accident. As a result, he claimed he sustained a substantial loss of income.

Defendant argued that Plaintiff's negligence caused the accident. Defendant maintained Plaintiff passed his vehicle and then made an improper right lane change with the passenger's side of Plaintiff's vehicle striking the driver's side front corner of Defendant's vehicle. Defendant asserted the accident was very minor and that both vehicles were drivable after the accident. Defendant argued Plaintiff had a long and significant medical history consisting of pre-accident problems with his feet, lower back, hips, hands, rib, elbows, neck, and chest. As a result of the accident, Defendant maintained Plaintiff suffered nothing more than a mechanical lateral rotation stretch injury and that he did not suffer any net economic damages.

*Plaintiff's Counsel:* Raymond J. Seals, Pgh.*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.

## SEPTEMBER 2013 CIVIL TRIAL TERM

**MARIO SHANNON****V.****JENESSA MCELFRISH****NO. 7643 OF 2010***Cause of Action: Negligence—Personal Injury—  
Automobile Accident*

On December 30, 2008, Plaintiff was traveling southbound on Route 356 in Allegheny Township when Defendant pulled out of her driveway directly into the path of Plaintiff's oncoming vehicle. Although Plaintiff had the right-of-way, he applied his brakes and blew his horn; nonetheless, he collided with Defendant's vehicle. Plaintiff's car was damaged beyond repair; he sustained injuries to his neck and back as a result of the collision.

Defendant admitted that she "made a mistake" when she pulled out of her driveway into oncoming traffic. However, she argued at trial that Plaintiff was comparatively negligent by driving at an excessive speed, which prevented him from avoiding the collision.

Defendant further argued that Plaintiff's present medical complaints related to a pre-existing condition and were not entirely caused by the accident. Accordingly, at the request of the defense, Plaintiff underwent an independent medical examination by Howard J. Senter, M.D., a neurosurgeon, who opined that Plaintiff suffered only a lumbar sprain and strain that may have caused symptoms for up to six or seven months. He concluded that Plaintiff's ongoing symptoms related to the osteoarthritis that he developed prior to the motor vehicle accident.

*Plaintiff's Counsel:* Robert Bracken, Archinaco/Bracken LLC, Pgh.*Defendant's Counsel:* Kenneth Ficerai, Mears, Smith, Houser & Boyle, P.C., Gbg.*Trial Judge:* The Hon. Richard E. McCormick, Jr.*Result:* The jury found that Defendant's negligence was the factual cause of the accident, and that the Plaintiff was not negligent. The jury entered a verdict in favor of Plaintiff in the amount of \$2,500.00.



NOVEMBER 2013 CIVIL TRIAL TERM

**TONYA L. WRIGHT**  
**V.**  
**RINKU M. DUTT, M.D.; DUTT VISION & EYE**  
**CENTER; AND LUNA EYE CENTERS**  
**NO. 3017 OF 2008**

*Cause of Action: Negligence—  
Medical Professional Liability*

On October 11, 2006, Plaintiff consulted with Defendant Dr. Dutt to see whether she was a candidate for laser eye surgery. Plaintiff was thirty-seven years old at the time and had been wearing eyeglasses since she was five years old. Defendant determined that Plaintiff required a procedure called “modified monovision,” a procedure whereby the vision in the dominant eye is corrected to plano and the non-dominant eye is made to be very nearsighted.

Defendant performed surgery on October 1, 2006, and told Plaintiff that her vision would be clear within a couple of days. However, Plaintiff continued to experience difficulties with blurred vision and her eyes adjusting to monovision. When Defendant was unable ameliorate her difficulties, Plaintiff sought a second opinion from an ophthalmologist.

Plaintiff’s expert opined that Plaintiff was not a candidate for monovision because she was not presbyopic prior to the surgery; that Defendant failed to determine Plaintiff’s ocular dominance; that Defendant failed to perform cycloplegic refraction to reveal the presence of latent hyperopia; and that Defendant failed to perform a contact lens trial to simulate “monovision” prior to the surgery.

As a result of the surgery, Plaintiff suffered depression and anxiety, her work has suffered, and she continues to experience dry eye, eye pain, and a pulling sensation in her eyes.

The Defendant’s expert opined that Defendant’s treatment was within the standard of care. Furthermore, the expert believed that Defendant provided the Plaintiff with informed consent and that the post-operative symptom of dry eyes is a recognized side effect of laser eye surgery, about which Plaintiff was informed. Finally, Plaintiff underwent an independent psychiatric evaluation, which led the examiner to suspect that Plaintiff was embellishing her complaints for secondary gain.

*Plaintiff’s Counsel:* Elizabeth L. Jenkins, Rosen Louik & Perry, P.C., Pgh.

*Defendants’ Counsel:* David M. Chmiel, Matis Baum O’Connor, Pgh.

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

*Result:* Verdict in favor of the Defendant. The jury found that Defendant’s conduct did not fall below the applicable standard of medical care and that the Defendant obtained the Plaintiff’s informed consent before performing surgery on her.



## NOVEMBER 2013 CIVIL TRIAL TERM

**MARY BETH MAIOLO**  
**V.**  
**RAYMOND S. MATTUCCI**  
**NO. 4079 OF 2011**

*Cause of Action: Breach of Contract*

In 2008, Plaintiff and Defendant entered into an oral contract for the Defendant to perform certain work at Plaintiff's residence located on Altman Road in Jeannette. Among other things, Defendant agreed to construct two retaining walls and grade the ground near the walls.

Plaintiff alleged that, due to Defendant's delay and improper construction, the upper wall collapsed in March 2010 and the lower wall is deteriorating. Accordingly, Plaintiff requested monetary damages for the \$10,000.00 already paid and an additional \$14,000.00 to remove the two retaining walls and to properly finish the grading.

Defendant denied that the work he completed on the two retaining walls, a driveway, and steps was not done in a proper and workmanlike manner.

In addition, Defendant alleged in his Counterclaim that the Plaintiff fired him, and therefore, he was unable to complete construction. Furthermore, he admitted that he was paid the \$10,000.00, but alleges that he completed more work for which he is entitled to be paid in the amount of approximately \$30,000.00. Plaintiff denied these allegations.

A summary jury trial was conducted. (A jury in a summary jury trial consists of eight individuals; agreement by at least six of the eight jurors constitutes a verdict.)

*Plaintiff's Counsel:* Michael Nestico, Gbg.

*Defendant's Counsel:* Chris Nichols, Gbg.

*Trial Judge:* The Hon. Anthony G. Marsili

*Result:* Verdict in favor of Mattucci on the Complaint; verdict in favor of Maiolo on the Counterclaim. The jury awarded no damages to either party.

## NOVEMBER 2013 CIVIL TRIAL TERM

**DONALD L. TEMSICK**  
**V.**  
**MICHAEL TEDESCO AND MATTHEW D. WALTON**  
**NO. 438 OF 2010**

*Cause of Action: Intentional Assault—Negligence—  
Personal Injury*

On February 1, 2008, Plaintiff was employed at Defendant Tedesco's residence as a plasterer, when he got into an argument with Defendant Walton, who was also working on the job at Tedesco's home. Plaintiff alleged that both Defendants physically assaulted him, causing him to dislocate his left elbow and suffer abrasions on his head. Plaintiff sought reimbursement of medical expenses related to his injuries, as well as damages for pain and suffering.

Defendants claimed that Plaintiff was the aggressor and that any injuries sustained by Plaintiff were as a result a physical altercation that was provoked and initiated by him. In addition, Defendants claimed that Plaintiff had a pre-existing left elbow fracture that contributed to his continuing complaints of physical problems with his elbow.

At trial, Defendants presented evidence in support of their claim that Plaintiff changed his story about what happened several times since the incident occurred over five years ago.

At the conclusion of Plaintiff's case, Defendants' motion for non-suit was granted on the special damages claims for medical expenses and wage loss. Consequently, the jury was asked only to consider whether the Plaintiff was entitled to non-economic damages.

*Plaintiff's Counsel:* Matthew D. Gailey, Pgh.

*Defendant Tedesco's Counsel:* Sean P. Hannon, Dell, Moser, Lane & Loughney, LLC, Pgh.

*Defendant Walton's Counsel:* Kerri Shimborske-Abel, Zimmer Kunz, Gbg.

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

*Result:* Verdict in favor of Defendants. The jury found that each one of the three parties was one-third responsible for Plaintiff's injuries and awarded no damages to Plaintiff.

NOVEMBER 2013 CIVIL TRIAL TERM

**JONATHAN BOSCAN**  
**V.**  
**E. DANIEL MATTY, JAMES ADDIS,**  
**AND JOHN DOE**  
**V.**  
**LEANNE BOSCAN**  
**NO. 4684 OF 2011**

*Cause of Action: Negligence—Motor Vehicle Accident*

On July 25, 2003, Defendant James Addis was operating his motor vehicle on State Route 51 in Rostraver Township, at or near the intersection of McKenery Drive. Addis abruptly stopped in the left travel lane to make a left turn into the C. Harper Chevrolet car dealership. Addis realized the area where he thought he was supposed to turn was not actually the legal turning point, so he continued on Route 51.

At this point, a driver, John Doe, slowed in the right lane and yelled at Addis. This caused several cars behind the vehicles—including the car that Plaintiff was riding in, which was driven by his mother, Additional Defendant Leanne Boscan—to slam on their brakes. Boscan came to a stop without hitting the vehicle in front of her. Defendant E. Daniel Matty, who was driving behind Plaintiff, plowed into Plaintiff's car, pushing it into the car in front of it. The air bag deployed, striking Plaintiff in his right eye, injuring his eye, and causing burns and cuts to his face. Plaintiff maintained that Defendants negligently operated their vehicles and caused the chain-reaction collision.

Due to the collision, Plaintiff claimed he sustained an injury to his right eye. The injury was diagnosed as a hyphema, which resulted in Plaintiff developing permanent, significant floaters in the field of vision in his eye. Plaintiff's expert witness opined that Plaintiff has an increased risk of developing glaucoma as a result of the accident. Plaintiff's medical bills were covered by his first-party benefits. There was no claim for lost wages. Plaintiff claimed damages for pain and suffering, emotional distress, inconvenience, and loss of enjoyment of life.

Defendant Addis asserted a cross-claim against Defendant Matty and Defendant John Doe arguing that the negligence of Matty in failing to assure a clear distance ahead, and the negligence of John Doe in slowing in his travel lane to yell at Addis, were the causes of the collision. Accordingly, Defendant Addis argued Defendant Matty and/or Defendant John Doe were liable to Plaintiff for any damages.

*Plaintiff's Counsel:* Noah Geary, Washington, Pa.

*Counsel for Defendant James Addis:* Karen L. Mascio, Pgh.

*Trial Judge:* The Hon. Gary P. Caruso

*Result:* Molded verdict in favor of Plaintiff and against Defendant James Addis in the amount of \$1,500.00.

NOVEMBER 2013 CIVIL TRIAL TERM

**TIANI, L.P.**  
**V.**  
**COMMONWEALTH OF PENNSYLVANIA,**  
**DEPARTMENT OF TRANSPORTATION**  
**NO. 9048 OF 2004**

*Cause of Action: Condemnation—Highway Right-of-Way*

Defendant PennDOT condemned a portion of Plaintiff/Condemnee's land for the purpose of widening a Route 22 right-of-way corridor in Murrysville. The condemnation resulted in Plaintiff's automobile dealership, Watson Chevrolet, losing the property on which was parked its entire front row of cars. Plaintiff sought damages for the reduction in fair market value of the property as a result of the taking.

At trial, Plaintiff called two experts: Francis R. Chiapetta, MAI, testified that the difference in the fair market value of the property before the taking and after the taking was \$1,180,000.00; and Anthony C. Barna, MAI, testified that the difference in the fair market value of the property before the taking and after the taking was \$1,231,000.00. Pat Tiani, a principal of Tiani, L.P., testified that Plaintiff suffered damages in the amount of \$2,000,000.00.

The Commonwealth, Department of Transportation, presented the testimony of a real estate expert, Paul Griffith, who opined that damages were in the amount of \$659,815.00.

*Counsel for Plaintiff/Condemnee:* William P. Bresnahan, Hollinshead, Mendelson, Bresnahan & Nixon, P.C., Pgh.

*Counsel for Defendant/Condemnors:* Walter F. Cameron, Jr., Office of Chief Counsel, PennDOT, Pgh.

*Trial Judge:* The Hon. Eugene Fike, Somerset County

*Result:* Verdict in favor of Plaintiff/Condemnee in the amount of \$1,450,000.00.