

JANUARY 2015 TRIAL TERM

Of twenty-one cases listed for the January 2015 Civil Jury Trial Term, five settled, twelve were continued, and four resulted in a jury trial.

JOHN A. FRANK
V.
PENNSYLVANIA TURNPIKE
COMMISSION
NO. 2541 OF 2012

Cause of Action:
Employment Discrimination

Plaintiff was employed by Defendant Pennsylvania Turnpike Commission from October of 1987 through November of 2008, at which time his position as Relocation Officer was eliminated. Plaintiff filed an application with Defendant for the position of Right-of-Way Acquisition Specialist in December 2010. Plaintiff alleges that he was qualified for such a position based on his prior experience working for Defendant.

Plaintiff received a rejection letter from Defendant in January 2011 and was 60 years old at this time. Plaintiff contends that Defendant hired a significantly younger individual with less experience to fill the position. Plaintiff alleges that Defendant violated the Pennsylvania Human Relations Act and seeks damages for lost back-pay and front-pay wages. Defendant denies that Plaintiff was discriminated against because of his age, and that it had a legitimate non-discriminatory reason not to hire Plaintiff.

Trial Date(s): January 12–14, 2015

Plaintiff's Counsel: Colleen Ramage Johnston and Nikki Velisaris Lykos, Pgh.

Defendant's Counsel: Michael A. Farnan, Camp Hill

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant.

LORRAINE A. ROSSI
V.
PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION
NO. 269 OF 2011

Cause of Action: Negligence—
Automobile Collision

On February 2, 2009, Plaintiff Lorraine Rossi was parked on North Main Street in Greensburg. As she was preparing to exit the driver's seat of her vehicle, she looked over her left shoulder to check for oncoming traffic, placing her left arm on the headrest. While in this position, a Pennsylvania Department of Transportation ("PennDOT") snow plow struck Plaintiff's side view mirror, breaking the mirror's glass and causing it to rotate forward. Plaintiff claimed that the impact caused her body to be driven into her steering wheel, while her left arm remained stuck on the headrest. Plaintiff claimed that she suffered a torn left rotator cuff, along with neck and back injuries, as a result of the incident.

Defendant denied that its snow plow struck Plaintiff's vehicle. Defendant further denied that any supposed contact could have caused the injuries sustained by Plaintiff, as the contact would have been minimal.

Both parties presented the testimony of an expert witness. Orthopedic surgeon Gregory Hung, M.D., testified on behalf of Plaintiff. Defendant presented the testimony of Richard A. Bragg, Ph.D., P.E., a civil engineer and accident reconstructionist. Dr. Bragg testified that Plaintiff's vehicle, a GMC Yukon XL Denali, would not have moved as a result of the contact between the snow plow and the side view mirror.

Trial Date(s): January 7-8, 2015

Plaintiff's Counsel: Paul G. Mayer, Jr., Pgh.

Defendant's Counsel: Henry J. Salvi, Attorney General's Office, Pgh.

Trial Judge: The Hon. David A. Regoli

Result: Verdict in favor of Plaintiff in the amount of \$0.00. The jury found

that Defendant was negligent, but determined that Defendant's negligence was not the cause of Plaintiff's injuries. Thus, the jury did not award Plaintiff any damages for pain and suffering.

ROBERT ROY MARTIN AND
MARJORIE SUE MARTIN
V.
D.M. BRENTZEL BUILDERS, INC.
NO. 5621 OF 2008

Cause of Action: Breach of Contract —
Unfair Trade Practices and Consumer
Protection Law

Plaintiffs alleged that Defendant breached a June 1, 1995, contract and violated Pennsylvania's Unfair Trade Practices and Consumer Protection Law ("UTPCPL") stemming from the construction and land grading of a home purchased by Plaintiffs from Defendant. Plaintiffs claimed that as a result of the construction by Defendant, a landslide occurred in the rear of Plaintiffs' property that damaged a deck attached to their residence. Plaintiffs alleged that Defendant breached the contract and violated the UTPCPL by failing to provide a residence free from a landslide. Plaintiffs thus sought recovery of the money they had to expend to remediate the damage caused by the landslide. Defendant denied that its construction contributed to the landslide, which occurred on February 1, 2005, over nine years after Plaintiffs took possession of the residence.

Trial Date(s): January 12, 2015

Plaintiffs' Counsel: William P. Bresnahan II, Pgh.

Defendant's Counsel: Mark Ulven, Pgh.

Trial Judge: The Hon. David A. Regoli

Result: After Plaintiffs presented their case-in-chief, Defendant moved for a compulsory non-suit, which the Court granted as to Plaintiffs' UTPCPL claim. After Defendant presented its evidence as to the remaining breach of contract claim, jury returned a verdict in favor of Defendant.

**DARREN PELLMAN AND
LORI PELLMAN
V.
DECESARE CORPORATION
AND TED M. DECESARE
NO. 2419 OF 2012**

Cause of Action: Breach of Contract

In March 2007, Plaintiffs entered into a written contract with Defendants to build them a house in Penn Township. Construction commenced, and some time in June 2008, Plaintiffs moved into their home. Plaintiffs alleged that Defendants' workmanship and construction of their personal residence was defective and deficient, including the following aspects of construction: roof, basement foundation, hot water tank, and electrical and plumbing systems. Despite Plaintiffs' requests for repair and/or a credit or set-off, Defendants failed to correct the alleged deficiencies to the Plaintiffs' satisfaction.

Plaintiffs filed suit asserting: (1) breach of contract; (2) breach of warranty; (3) negligence; and (4) piercing the corporate veil. At trial, in addition to the testimony of the parties, both parties presented expert testimony from witnesses who were experienced in the construction industry.

Before deliberations, the Court granted a non-suit on both the breach of implied warranty of habitability claim and the negligence claim. The jury considered only whether Defendants breached their contract with Plaintiffs for the construction of their home in a proper and workmanlike manner.

Trial Date(s): January 5–9, 2015

Plaintiffs' Counsel: Joseph J. Bosick and Bradley A. Matta, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, Pgh.

Defendants' Counsel: Bernard P. Matthews, Jr., Gbg.

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

Result: Verdict in favor of the Defendants.

MARCH 2015 TRIAL TERM

Of eighteen cases listed for the March 2015 Civil Jury Trial Term, five settled, eleven were continued, one was discontinued, and one resulted in a jury trial.

**JEFFREY T. MAYO
V.**

**ANDREW STARANKO D/B/A
STARANKO AUTO BODY
& CLASSIC CARS
NO. 3575 OF 2013**

*Cause of Action: Breach of Contract—
Unjust Enrichment*

Plaintiff Jeffrey T. Mayo alleged that Defendant Andrew Staranko, d/b/a Staranko Auto Body & Classic Cars, breached an agreement between the parties for the restoration of Plaintiff's 1957 Pontiac ("the vehicle"). Per the agreement, Plaintiff made a one-time payment of \$16,000 to Defendant for the restoration work, which was to be completed within six to nine months. However, after eighteen months, Defendant failed to complete the restoration pursuant to the terms of the agreement. Plaintiff then obtained possession of the vehicle and contracted with another shop to have the restoration work completed at the additional expense of \$18,148.02. It was these expenses which Plaintiff sought to recover from Defendant through his breach of contract action.

Defendant made a counterclaim for expenses incurred on additional work and parts that Plaintiff allegedly requested to be done after the agreement was made. According to Defendant, the additional work greatly increased the restoration's time and expense beyond the scope of the initial agreement. As such, Defendant made a counterclaim against Plaintiff for unjust enrichment based on his performance of this additional work.

Trial Date(s): March 4-6, 2015

Plaintiff's Counsel: Brian P. Cavanaugh, Gbg.

Defendant's Counsel: Wm. Jon McCormick, Bentleyville

Trial Judge: The Hon. David A. Regoli

Result: Verdict in favor of Plaintiff. Jury found that Defendant breached the agreement and awarded Plaintiff \$10,973.88 in damages. Further, the jury concluded that Plaintiff was not liable to Defendant on Defendant's counterclaim.

MAY 2015 TRIAL TERM

Of thirteen cases listed for the May 2015 Civil Jury Trial Term, three settled, eight were continued, one was discontinued, and one resulted in a jury trial.

**ELIZABETH GARSTECKI,
AS ADMINISTRATRIX OF
THE ESTATE OF RHODA
BALDWIN, DECEASED,
V.**

**ASTER ASSEFA, M.D.; ASTER
ASSEFA, M.D., P.C.; AND MEDICAL
LABORATORY SERVICE, INC.,
D/B/A DIAMOND PHARMACY
NO. 4251 OF 2012**

Causes of Action:

Wrongful Death—Survival

This professional liability case for medical malpractice was brought by Elizabeth Garstecki on behalf of her deceased sister, Rhoda Baldwin, alleging professional medical negligence in the care and treatment provided to the decedent, in particular, as to the prescribing and the administration of Coumadin for anticoagulation therapy. The medication was prescribed by the Defendant Doctor Aster Assefa, and the prescriptions were filled by the Defendant Medical Laboratory Service, Inc., d/b/a Diamond Pharmacy.

Plaintiff alleges that the negligent conduct of Defendants resulted in an excessive amount of Coumadin being taken by the decedent, Rhoda Baldwin, resulting in her death on September 1, 2010. Defendants denied that they were negligent or careless in the administration and monitoring of the medication to the decedent, claiming that her death was undetermined and resulted from her failure to follow instructions.

A request for a directed verdict in favor of Defendant Medical Laboratory Service, Inc., d/b/a Diamond Pharmacy, was granted as a result of no evidence

being presented against the pharmacy pursuant to the terms of a Joint Tortfeasor Release and Settlement Agreement. Accordingly, a four-day jury trial was conducted in this matter, with a verdict being entered 11-1 in favor of Defendant Doctor Aster Assefa and against the Plaintiff.

Trial Date(s): May 11-14, 2015

Plaintiff's Counsel: Alan H. Perer, Pgh.

Defendant's Counsel: David M. Chmiel, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant.

JULY 2015 TRIAL TERM

Of thirteen cases listed for the July 2015 Civil Jury Trial Term, four settled, four were continued, two were discontinued and three resulted in a jury trial.

ROBERT C. TINSLEY AND MARA TINSLEY, HIS WIFE V.

RUSSELL H. MOORE, JR. NO. 1345 OF 2012

Cause of Action: Intentional Tort

On August 5, 2011, Plaintiff Robert C. Tinsley was at the property of his deceased father, Charles Tinsley, located in New Stanton. At that time, Plaintiff alleges that he was removing various items of his father's and wanted to proceed to see if any items were left in the shed on the property. Plaintiff then alleges that the Defendant, Russell H. Moore, Jr., Plaintiff's brother-in-law, was also there and that Defendant tried to prevent Plaintiff from entering the shed by physically attacking Plaintiff.

Plaintiff alleges he suffered injuries and damages, including, but not limited to, a shoulder injury that required surgery on October 25, 2011. Accordingly, Plaintiff sought monetary damages from Defendant.

Defendant countered that Plaintiff Robert C. Tinsley was the aggressor and initiated the altercation. Defendant further alleged he was merely defending

himself and his wife by trying to subdue Plaintiff. Also, Defendant denied Plaintiff was seriously injured or had any substantial damages as a result of the incident.

Trial Date(s): July 8-9, 2015

Plaintiff's Counsel: James N. Falcon, Youngwood

Defendant's Counsel: Michael E. DeMatt, Turin & DeMatt, P.C., Gbg.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant.

ELIZABETH THEODORAN

V.

BAHUBALI HOSPITALITY, LLC, D/B/A HOWARD JOHNSON INN NO. 6011 OF 2013

*Cause of Action: Negligence—
Personal Injury*

On December 8, 2012, Plaintiff stayed overnight in a hotel room at the Howard Johnson Inn in New Stanton, now known as The Garden Inn. A few hours after she returned home, she noticed multiple red welts that were painful and itched, all over her body. A doctor who examined her two days later opined that she suffered from bedbug bites. Because Plaintiff is allergic to insect bites, it took almost six months for her to fully recover.

Plaintiff's boyfriend, with whom she resided, testified that they never had any problems with bedbugs at their home.

Both the owner and a hotel housekeeper testified that although they have eradicated bedbugs in other rooms at the hotel, they never had any bedbugs in the room in which Plaintiff spent the night. Furthermore, Plaintiff did not see any bedbugs in the hotel during her stay; she did not feel herself being bitten while at the hotel; she did not notice any marks on her body when she left the hotel in the morning; and she did not find any bedbugs in her luggage.

Trial Date(s): July 13-14, 2015

Plaintiff's Counsel: Richard T. Haft, Rewis & Yoder, P.C., Pgh.

Defendant's Counsel: David A. Young, Dell, Moser, Lane & Loughney, LLC, Pgh.

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

Result: Verdict in favor of Defendant.

IN RE: CONDEMNATION OF RICHARD H. KING'S PROPERTY NO. 6065 OF 1998

Cause of Action: Eminent Domain

In this condemnation proceeding, the Condemnor, West Penn Power, filed an application with the Pennsylvania Utility Commission on or about April 1, 1996, to acquire a right-of-way through Richard H. King's airport property (now known as the Greensburg-Jeannette Regional Airport) for an electric transmission line. The electric line towers were installed on Mr. King's property at the southern end of the airport's sole runway, which runs in a north-south direction. At the time of the taking in February of 1999, the airport was operated as a regional class airport.

At trial, Mr. King presented testimony in the form of expert witnesses that the highest and best use of his airport property at the time of the taking was as a business class airport. Mr. King presented evidence that he intended to accomplish this by extending the current north-south runway, but that the towers rendered this plan untenable due to their location at the end of the runway. As a consequence, Mr. King estimated the diminution of the value of his property taken by West Penn Power to be between \$750,000.00 and \$1,000,000.00.

West Penn Power disputed Mr. King's contention by offering expert testimony that Mr. King's plan to extend the north-south runway was neither physically nor financially feasible. Furthermore, West Penn Power contested the testimony presented by Mr. King that he intended to turn the airport into a business class airport by extending the current north-south runway. In doing

so, West Penn Power introduced evidence that Mr. King's initial plan when the taking occurred was to install an east-west runway, not to extend his current north-south runway. West Penn Power used residential land values to estimate Mr. King's damages at \$5,000.00.

Trial Date(s): July 14-17, 2015

Condemnee's Counsel: Michael J. Colarusso, Albert G. Feczko, Jr., Pgh.

Condemnor's Counsel: Bernard P. Matthews, Jr., Gbg.

Trial Judge: The Hon. David A. Regoli

Result: Jury awarded Mr. King compensatory damages in the amount of \$50,000.00.

SEPTEMBER 2015 TRIAL TERM

Of fifteen cases listed for the September 2015 Civil Jury Trial Term, five settled, seven were continued, one was dismissed, and two resulted in jury trials.

**KATHLEEN VANDERWEELE,
F/K/A KATHLEEN JERVIS
V.**

**MICHAEL J. BONK,
T/D/B/A BONK'S PLUMBING
AND HEATING COMPANY
NO. 4060 OF 2010**

*Cause of Action: Trespass—
Negligent Misrepresentation*

In 1998, Plaintiff purchased a home at 136 Rodgers Drive, Lower Burrell. She alleged that at the time of purchase, Defendant negligently and fraudulently misrepresented his verification that the house was properly connected to Lower Burrell's public sewage disposal system. Plaintiff avers that in 2009 she attempted to sell the property; however, another inspector informed her at that time that the house was not connected to the public sewage system. As a result, she had to spend \$12,599.00 to have the house connected to the public sewage system. Consequently, she sought monetary damages from Defendant.

Defendant denied the allegations and claimed that he performed all the required tests properly, maintaining

that in 1998 the house was connected to the public sewage disposal system.

Trial Dates: September 8-9, 2015

Plaintiff's Counsel: David A. Colecchia, Gbg.

Defendant's Counsel: Paul D. Zavarella, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of Defendant.

IREP INDUSTRIAL INC.

V.

**SATISH B. KANAKAMEDALA AND
USHA KANAKAMEDALA, HIS WIFE
NO. 7569 OF 2012**

Cause of Action: Breach of Contract

Plaintiff was hired by Defendants to supply and install custom-made cabinetry in their 17,000-plus square foot residence in Murrysville. Plaintiff delivered all of the cabinets to the worksite where the home was under construction, but refused to complete installation after Defendants refused to assure Plaintiff that payment would be made. Although Defendants' construction manager approved all the work and informed both parties that payment should be made, as of the date of trial, only \$88,000 had been paid on the account balance of \$130,000.

Defendants responded that all materials set forth in the contract were not delivered and that all contracted work was either not completed or done in a substandard manner. In addition, Defendants filed a counterclaim alleging breach of contract, breach of express and implied warranties, fraudulent misrepresentations, and violations of the Unfair Trade Practices and Consumer Protection Law.

Although represented by counsel, Defendants did not personally appear at trial. At the close of the Defendants' case, the Court granted Plaintiff's motion for a compulsory non-suit on the counterclaim.

Trial Dates: August 31-September 1, 2015

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

Defendants' Counsel: Gerald R. O'Brien, Jr., Irwin

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

Result: Verdict in favor of Plaintiff in the amount of \$46,204.34.

NOVEMBER 2015 TRIAL TERM

Of eight cases listed for the November 2015 Civil Jury Trial Term, two settled and six were continued. There were no jury trials.