JANUARY 2016 TRIAL TERM

Of sixteen cases listed for the January 2016 Civil Jury Trial Term, five settled, nine were continued and two resulted in a jury trial.

LEONA SHANNON AND RONALD SHANNON, HER HUSBAND V. JOHN A. MACPHAIL, AND GREENGATE ORTHOPAEDIC GROUP, P.C. NO. 4184 OF 2012

Cause of Action: Negligence—Medical Malpractice

On June 15, 2007, the Doctor-Defendant performed a total left knee replacement on the Plaintiff-Wife. During the surgery, Defendant fractured Plaintiff's femur, but was unaware that he'd done so until a post-operative X-ray taken on June 15, 2007, and reviewed by a medical expert sometime later, revealed it. Plaintiff's medical expert witness, Raymond M. Vance, M.D., an orthopedic surgeon, opined that the fracture occurred because the Doctor removed too much of the anterior distal femur during surgery, thereby deviating from the standard of care.

Plaintiff had been employed at the time of the surgery and planned to return to work following three to four months of physical therapy and rehabilitation. As a result of the fracture and subsequent corrective surgeries that were required, she never returned to gainful employment. Her vocational expert, Joseph F. Maola, Ph.D., estimated that she had lost wages of $126,650. In addition, she maintained that her ability to contribute to the household chores and cooking was significantly impaired as a result of the surgery. Plaintiff-Husband claimed loss of consortium.

Although Defendant admitted that he caused the fracture and was unaware of it until a later date, he denied that he deviated from the standard of care required under the circumstances. Defendant's expert, Jon B. Tucker, M.D., an orthopedic surgeon, testified that a femoral notch and a peri-prosthetic fracture are recognized risks of total knee replacement surgery, and consequently, the Doctor did not violate the standard of care.

Trial Dates: January 4–6, 2016

Plaintiffs' Counsel: Christopher Lepore, Cooper & Lepore, Carnegie

Defendants' Counsel: Paul K. Vey, Pietragallo Gordon Alfano Bosick & Raspanti, LLP, Pgh.

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

Result: Verdict in favor of Defendant.

DAVID A. LUTHER AND LYNDA A. LUTHER V. THE ESTATE OF FLORENCE E. BAIRD; SHEILA E. SOWERS; RANDY K. BAIRD; PAMELA G. LICHTENFELS; AND CYNTHIA L. BAIRD NO. 4431 OF 2014

Cause of Action: Negligence

On January 10, 2013, Plaintiff David A. Luther was delivering Meals on Wheels to the residence of Florence E. Baird. After exiting his vehicle, he slipped and fell on a patch of ice in the driveway of the residence. Plaintiff alleged that the ice was covered by a dusting of snow. Plaintiff landed on his left side and hit his head on the bumper of his vehicle. According to Plaintiff, he reported the incident to Florence Baird at the time of the delivery and to his employer upon returning to the office. After experiencing numbness in his left leg, Plaintiff decided to seek medical treatment five days after the incident.

Prior to his fall, Plaintiff already had four back surgeries. He alleged that the slip and fall at the Baird residence aggravated a pre-existing condition and resulted in another back surgery. Despite the surgery, Plaintiff was unable to return to work or regular daily activities. He indicated that he suffered from headaches and back pain. Consequently, he sought monetary damages.

At the time of the incident, the residence was jointly owned by Sheila E. Sowers, Randy K. Baird, Pamela G. Lichtenfels, and Cynthia L. Baird; Florence E. Baird held an interest as a life tenant. Plaintiff sought monetary damages against the Defendants as owners of the property. Florence E. Baird passed away prior to the trial.

Defendants denied the allegations and claimed that Plaintiff was negligent in choosing to continue to deliver the meals despite the icy conditions.

Trial Dates: January 11–13, 2016

Plaintiffs' Counsel: Robert B. Woomer, Woomer & Hall, LLP, Pgh.

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

Trial Judge: The Hon. Chris Scherer

Result: Verdict in favor of Defendants.

MARCH 2016 TRIAL TERM

Of 17 cases listed for the March 2016 Civil Jury Trial Term, two settled, eleven were continued, one was discontinued, one was tried in a non-jury trial, and two resulted in a jury trial.

STEVEN LIVELY, JR. V. JOHN DONALDSON AND TR TRUCKING & EXCAVATING, INC. NO. 5850 OF 2011

Cause of Action: Negligence—Personal Injury

On September 21, 2009, at approximately 7 a.m., Plaintiff was driving his truck on New Salem Road in Uniontown when he was struck in the rear by a truck being driven by Defendant John Donaldson, an employee of Defendant TR Trucking & Excavating, Inc. As a result of the collision, Plaintiff alleged he suffered various injuries, including an annular tear with disk herniation at T7-T8 and chronic pain syndrome. Plaintiff alleged Defendants were liable for the accident and requested monetary damages as compensation for his injuries, including loss of income since 2009 of over $1 million, as he claimed to be permanently unable to perform his previous job as a pipeline welder.

Defendants alleged the collision was minor and Plaintiff's injuries were not serious, but merely a cervical strain

and sprain. Defendants further argued that Plaintiff's complaints were totally subjective with no objective findings by medical tests.

Trial Dates: March 14–16, 2016

Plaintiff's Counsel: David M. Landay, Pgh.

Defendants' Counsel: Sharon L. Bliss, Wexford

Trial Judge: The Hon. Anthony G. Marsili

Result: After a three-day trial, a 10-2 verdict was entered in favor of the Defendant and against the Plaintiff.

VINCENT J. BREZOVIC V. ERIE INSURANCE EXCHANGE NO. 3869 OF 2006

Cause of Action: Breach of Contract

On May 15, 2005, Plaintiff's residence at 446 Westland Drive in Greensburg was destroyed by fire. The property was insured for loss by Defendant. Pennsylvania State Trooper Andolina, the investigating fire marshal, testified that because gasoline was spilled at the foot of the basement stairs and in two separate locations in the master bedroom, the fire was ruled arson.

Plaintiff made a claim under the homeowner's insurance policy for the loss. Defendant refused to pay, accusing Plaintiff of igniting the fire and citing an exception in the contract that did not require coverage for a loss intentionally caused by the insured. Plaintiff argued because he was never criminally charged with arson, Defendant breached the insurance contract by failing to pay on the claim.

Trooper Andolina testified there was insufficient evidence to seek criminal charges against Plaintiff.

Defendant counterclaimed for breach of contract alleging Plaintiff violated the contract through fraud and misrepresentation. Despite the absence of criminal charges, Defendant argued there was sufficient evidence that Plaintiff had motive and opportunity to set the fire.

Shortly before the fire, Plaintiff's wife requested a divorce and obtained exclusive possession of the residence. She testified on behalf of Defendant, stating Plaintiff had threatened that she could not live in the house if he could not live in the house. Also, Defendant argued Plaintiff, who normally traveled between Greensburg and North Carolina for business, was in town during the weekend of the fire despite a lack of business in the area at the time. Defendant also knew Wife would not be in town the weekend of the fire.

In addition, the person who set the fire left objects sentimental to Wife on the master bed, right below a gasoline can that still contained gasoline. Defendant argued the only people who were aware of the sentimental value of those objects were Wife and Plaintiff.

Since Wife had an alibi for the weekend in question, argued Defendant, Plaintiff had to have been the one to set the fire for revenge against his estranged Wife. Under Defendant's theory, the only reason why Plaintiff was never criminally charged was because he refused to submit to the investigator's interrogation or a polygraph test, after initially agreeing to do so.

Plaintiff testified there was no motive for him to set the fire, because at the time he still believed he and Wife would reconcile. Also, he spent the entire night of the fire at his brother's residence in Oakland. Plaintiff's brother testified he would have known if Plaintiff had left the residence during the night because an alarm would have sounded when any exterior door or window was opened. Plaintiff argued the condition of the master bedroom and the items taken from the residence indicated the fire was set to cover up a burglary.

The parties stipulated to damages, agreeing Defendant would pay Plaintiff $102,487.34 in the event the verdict was in Plaintiff's favor; and Plaintiff would pay Defendant $123,612.81, the amount paid out to Wife for her share of the insurance proceeds plus expenses, in the event the verdict was in Defendant's favor.

Trial Dates: March 14–16, 2016

Plaintiff's Counsel: Bruce H. Gelman, Law Offices of Bruce H. Gelman, Pgh.; and Thomas A. Will. Thomas A. Will & Associates, Pgh.

Defendant's Counsel: Arthur J. Leonard, Robb Leonard Mulvihill, Pgh.

Trial Judge: The Hon. Christian F. Scherer

Result: Verdict in favor of Defendant in the amount of $123,612.81. The jury found that Plaintiff caused the fire at his residence.

MAY 2016 TRIAL TERM

Of 15 cases listed for the May 2016 Civil Jury Trial Term, five settled, eight were continued, one was transferred to arbitration, and one resulted in a jury trial.

PORT VUE PLUMBING, INC. V. MOUNT PLEASANT TWP. MUNICIPAL AUTHORITY NO. 1289 OF 2013

Cause of Action: Breach of Contract

Plaintiff entered into a contract with Defendant on or about November 2010, to upgrade and expand its sanitary sewer system. Said upgrade included a wastewater treatment facility and three pump stations.

Plaintiff alleges that, while the contract was to be completed by November 2011, occurrences not caused by the Plaintiff delayed the completion until approximately September or October of 2012. Plaintiff alleges that the Defendant did not provide it with full payment of its final bill and therefore Defendant breached the contract. Plaintiff claimed said breach caused monetary damages in the amount of approximately $510,000 and requested a verdict in its favor.

Defendant alleges it was Plaintiff that caused some of the delays regarding the completion of the

contract and therefore it was Plaintiff who breached the contract. Defendant therefore claims that it was permitted under the terms of the contract to reduce the final payment to Plaintiff, and accordingly requested a verdict in its favor.

Trial Dates: May 9–11, 2016

Plaintiff's Counsel: David Raves, Pgh.

Defendant's Counsel: Chad I. Michaelson, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: After a three-day trial, a 10-2 verdict was entered in favor of the Defendant and against the Plaintiff.

JULY 2016 TRIAL TERM

Of nine cases listed for the July 2016 Civil Jury Trial Term, five settled and four were continued, with no jury trials being held during the Civil Jury Trial Term. The following jury trial was held during a specially set session in June 2016.

MICHAEL COLUCCI; REBECCA L. COLUCCI; AND DYLAN COLUCCI, INDIVIDUALLY; AND REBECCA COLUCCI AS ADMINISTRATRIX FOR THE ESTATE OF ZACHARY COLUCCI, DECEASED
V.
TY LYDIC
NO. 4743 OF 2012

Cause of Action: Wrongful Death—Survival—Negligent Infliction of Emotional Distress

This action arises from a fatal vehicle accident involving a pedestrian, Zachary Colucci, and a vehicle driven by Defendant, Ty Lydic, which occurred on September 17, 2011, on White School Road in Unity Township, Westmoreland County. On the evening in question, Zachary Colucci, 14 years old at the time, was participating with his brother, Dylan Colucci, 17 years old at the time, and three friends in a traditional Halloween game called "corning," which involves throwing dried corn kernels at homes in an attempt to rouse the residents, and then fleeing to evade capture. On that evening, shortly before 11:00 p.m., Defendant was driving home along White School Road when his vehicle collided with Zachary Colucci, who was fleeing from a recently "corned" residence across the road. The collision resulted in the death of Zachary Colucci. Accordingly, Zachary's father, mother, and brother filed the above-captioned lawsuit against Defendant, alleging wrongful death and negligent infliction of emotional distress.

Plaintiffs alleged that the impact and resultant death of Zachary Colucci would not have occurred but for the Defendant speeding. Defendant argued comparative negligence on the part of Zachary Colucci, alleging that the impact would not have occurred but for Zachary Colucci darting in front of Defendant's vehicle and wearing dark clothing, which negatively impacted his visibility.

Trial Dates: June 20–23, 2016

Plaintiffs' Counsel: Michael W. Calder, Rosen Louik & Perry, P.C., Pgh.

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

Trial Judge: The Hon. Chris Scherer

Result: Verdict in favor of the Defendant.

SEPTEMBER 2016 TRIAL TERM

No cases were listed for the September 2016 Civil Jury Trial Term.

NOVEMBER 2016 TRIAL TERM

Of the eleven cases listed for the November 2016 Civil Jury Trial Term, four were settled and seven were continued, with no jury trials being held during the Civil Jury Trial Term.