

JANUARY 2017 TRIAL TERM

Of the nine cases listed for the January 2017 Civil Jury Trial Term, three were settled and five were continued. One jury trial was held during the Civil Jury Trial Term.

**ROBERT TROILO, EXECUTOR OF
THE ESTATE OF SANDRA TROILO
V.
WESTMORELAND COUNTY
HOUSING AUTHORITY
NO. 3073 OF 2013**

*Cause of Action:
Wrongful Death and Survival*

Robert Troilo, executor of the Estate of Sandra Troilo, filed a complaint against the Westmoreland County Housing Authority alleging negligence. On February 4, 2013, Sandra Troilo, the 77-year-old mother of Robert Troilo, was found unresponsive due to carbon monoxide asphyxiation in her Eastgate Manor apartment, which was owned by Defendant. Ms. Troilo was found by her grandson, at which time he observed an open oven door, an oven knob turned to the “on” position, and an undergarment hanging from the knob. It was presumed that Ms. Troilo was using the stove to dry her clothing.

Plaintiff argued that the lack of adequate ventilation in the efficiency apartment caused Ms. Troilo’s death by depleting the oxygen in the room and creating carbon monoxide. Plaintiff further argued that Defendant was negligent because Defendant had a duty under the lease to ensure adequate ventilation in accordance with HUD regulations.

Defendant counter-claimed that Ms. Troilo was comparatively negligent in operating the oven with the door open. Defendant argued that the ventilation system was adequate, and the incident would not have occurred but for Ms. Troilo operating the oven in a non-standard manner.

Plaintiff presented testimony that the ventilation system in the apartment did not provide any access to fresh air. The heating and cooling system utilized recycled air from the inside,

the bathroom did not have a window or a vent that vented air to the outside, the stove was not vented to the outside, the windows were energy efficient and installed for the purpose of preventing air flow, and the front door was practically sealed on all sides and the bottom. Plaintiff’s expert testified that the continued operation of the oven caused a depletion of the oxygen in the room. Since there was no adequate air flow, the oxygen was not replenished in any manner, and as a result, the carbon monoxide level increased and resulted in Ms. Troilo’s death. Although Defendant’s expert argued that the incident would not have occurred if the oven door was in the closed position, the testing he performed still demonstrated a depletion of oxygen to a level deemed unsafe by OSHA.

Trial Dates: January 3–5, 2017

Plaintiff’s Counsel: Alan T. Silko, Bridgeville

Defendant’s Counsel: Paul S. Mazeski, Pgh.

Trial Judge: The Hon. Chris Scherer

Result: Verdict in favor of the Plaintiff. The jury found that both Defendant and Sandra Troilo were negligent; however, only Defendant’s negligence was a factual cause of Ms. Troilo’s death. The jury awarded Plaintiff damages in the amount of \$868,430.25, which included stipulated damages for funeral costs and lost earning capacity, plus an award of \$750,000 in pain and suffering.

Prior to the verdict, Judge Scherer ruled that Defendant qualified as a commonwealth agency. As a result, sovereign immunity applied and limited the verdict to \$250,000.

MARCH 2017 TRIAL TERM

Of the thirteen cases listed for the March 2017 Civil Jury Trial Term, two settled, eight were continued, one was resolved as a Non-Jury Trial, and one was transferred to arbitration, with one jury trial being held during the Civil Jury Trial Term.

**STEPHEN H. SENSENICH AND
DEBBIE SENSENICH, HIS WIFE
V.**

**EHAB F. MORCOS, M.D.;
WESTMORELAND COUNTY
CARDIOLOGY, INC.;
WESTMORELAND REGIONAL
HOSPITAL; EXCELA HEALTH
NO. 736 OF 2013**

*Cause of Action: Medical Malpractice—
Informed Consent—Battery—Corporate
Negligence and Civil Conspiracy*

Plaintiff Stephen H. Sensenich became aware of allegations that surfaced in early 2011 that various patients at Westmoreland Regional Hospital, Excelsa Health, who were seen by Defendant Dr. Morcos through Defendant Westmoreland County Cardiology, Inc., may have received medically unnecessary cardiac stents.

As a result of this case and other similar cases filed in Westmoreland County, this litigation became known as the “Cardiac Stent Litigation.”

Plaintiff alleged that out of the seven cardiac stents he received in 2008, the last five cardiac stents were not medically necessary. Accordingly, Plaintiff and his wife sought monetary damages from Defendants and requested a verdict in their favor.

Defendants denied that any medically unnecessary stent procedures were performed and that the seven stents the Plaintiff received were medically necessary. Therefore, all Defendants requested a verdict in their favor and against Plaintiffs.

Trial Dates: March 6–17, 2017

Plaintiff’s Counsel: Victor H. Pribanic, Pribanic & Pribanic, Pgh.

Defendants’ Counsel: Daniel Carroll, Davies, McFarland & Carroll (for

Dr. Morcos); Lynn E. Bell, Davies McFarland & Carroll (for WCC); David R. Johnson, Thomson, Rhodes & Cowie, P.C. (for Westmoreland Regional Hospital, Excelsa Health), Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: After a ten-day jury trial, the jury returned a unanimous verdict in favor of all of Defendants and against Plaintiff.

MAY 2017 TRIAL TERM

Of the fourteen cases listed for the May 2017 Civil Jury Trial Term, four were settled, eight were continued, one was resolved as a non-jury trial, and one was tried by jury.

**JACOB J. BIEDINGER, SR.,
AND CONSTANCE
BIEDINGER, HIS WIFE
V.
FRANCES M. HAMILTON,
AN INDIVIDUAL
NO. 2730 OF 2015**

*Cause of Action: Negligence—
Loss of Consortium*

On June 21, 2013, Plaintiff Jacob J. Biedinger, Sr., went to help his son, who was renting a portion of the building owned by Defendant at 3356 Route 130, Harrison City, Penn Township. When leaving the premises, Plaintiff alleges that he fell over a large piece of asphalt in the grass on Defendant's property. Plaintiff also alleges various injuries that required chiropractic treatment.

Defendant maintains that she was not legally liable for Plaintiff's fall, and that no one knew where the piece of asphalt came from or how long it had been there. Defendant further alleges that Plaintiff's injuries are not related to the fall.

Trial Dates: May 9–10, 2017

Plaintiffs' Counsel: E. David Harr, Gbg.

Defendant's Counsel: Katherine P. Berquist, Weinheimer Haber & Coco, P.C., Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: The jury returned a unanimous verdict in favor of the Defendant.

JULY 2017 TRIAL TERM

Of the twenty-one cases listed for the July Civil Trial Term, twelve were continued, two were withdrawn, four were settled and three went to trial.

**MARK AND DENISE MERRILL,
INDIVIDUALLY AND AS
HUSBAND AND WIFE
V.
STATE FARM FIRE AND
CASUALTY COMPANY
NO. 1890 OF 2012**

Cause of Action: Breach of Contract

Mark and Denise Merrill filed a complaint against State Farm Fire and Casualty Company alleging breach of contract. The parties stipulated that the Plaintiffs held a home insurance policy with Defendant. Plaintiffs made a claim under said policy for hail damage sustained to their roof during a storm on March 21, 2011. Defendants denied payment on the claim, and Plaintiffs alleged that said denial breached the insurance policy. Plaintiffs sought damages based on the cost they expended in replacing the roof.

The parties disagreed on the existence of hail damage to the roof, and both had public adjusters testify on their behalf. Defendant also presented testimony of an expert roofer that failed to find hail damage upon inspection of the roof.

The jury found that Plaintiffs failed to prove by a preponderance of the evidence that their roof required replacement as a result of the March 21, 2011, hail storm. A molded verdict was entered finding in favor of Defendant, State Farm, and against Plaintiffs.

Trial Dates: July 10–11, 2017

Plaintiffs' Counsel: Bruce Gelman, Law Offices of Bruce H. Gelman, LLC, Pgh.

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

Trial Judge: The Hon. Chris Scherer

Result: Verdict in favor of the Defendant.

**ROBERT RAGLIN
V.
MAXINE ZAVATCHAN
NO. 3693 OF 2015**

Cause of Action: Negligence

Plaintiff filed a Complaint against Defendant alleging negligence. The lawsuit was based on a fall that occurred on August 23, 2013, at Defendant's residence. Plaintiff was helping Defendant move furniture and hook up cable. These actions required access to Defendant's basement through a trapdoor in the living room floor. The trapdoor was left open, and Defendant backed up and fell through the trapdoor and into the basement. As a result, Plaintiff suffered injuries to his shoulder and sought damages for medical bills, lost wages, and pain and suffering.

Plaintiff relied on the testimony of Defendant in setting forth the facts that occurred on the day of his fall. According to Defendant, Plaintiff was assessing whether a television was straight when he backed up and fell into the open trapdoor. She indicated that Plaintiff visited her home in the past, was aware of the trapdoor, and had repeatedly accessed the basement through the trapdoor. Defendant also testified that she shouted at Plaintiff to stop backing up, but he did not hear her before he fell.

Plaintiff chose not to testify on his own behalf. Defendant then made a motion for a compulsory non-suit, as the evidence presented in Plaintiff's case in chief failed to establish that Defendant breached a duty of care owed to Plaintiff or that Plaintiff's fall was caused by any actions of Defendant. The Court granted Defendant's motion. As a result, the matter was not submitted to the jury and Plaintiff's claim was dismissed.

Trial Date: July 12, 2017

Plaintiff's Counsel: Pro Se

Defendant's Counsel: Thomas W. Smith, Mears, Smith, Houser & Boyle, P.C., Gbg.

Trial Judge: The Hon. Chris Scherer

Result: Grant of Defendant's Motion for Compulsory Non-Suit.

**KAREN REECE
V.
LAWRENCE KLEIN
V.
ARNOLD L. FARKAS
NO. 143 OF 2014**

Cause of Action: Negligence

On September 2, 2013, Plaintiff Karen Reece was a passenger on a motorcycle owned and being operated by Original Defendant Lawrence Klein. As they were riding on S.R. 217 in Black Lick Township, Indiana County, Plaintiff alleges that the motorcycle was speeding out of control and collided with a Ford pickup truck being driven by Additional Defendant Arnold L. Farkas, which was making a left-hand turn. Plaintiff suffered numerous injuries, including a burst fracture of her first lumbar vertebra and transverse process fractures of several thoracic vertebrae. Plaintiff further alleges that she is unable to work since the accident and therefore lost her income of \$38,000 per year. Accordingly, she was seeking monetary damages for outstanding medical expenses, past and future lost wages, and pain and suffering.

Original Defendant alleged that he was not speeding, that Additional Defendant caused the accident, and that Plaintiff's injuries were not disabling. Additional Defendant alleged that Original Defendant's speeding was the cause of the accident.

Trial Dates: July 17–19, 2017

Plaintiff's Counsel: Jason M. Schiffman, Schiffman Firm, LLC, Pgh.

Original Defendant's Counsel: Warren D. Ferry, Champion, Pa.

Additional Defendant's Counsel: Diane Blackburn, GEICO, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: The jury found Original Defendant 100% liable and awarded Plaintiff \$17,583.55 for unpaid medical expenses and \$20,000 for pain and suffering.

SEPTEMBER 2017 TRIAL TERM

Of the nineteen cases listed for the September Civil Trial Term, two settled, thirteen were continued, one proceeded to a non-jury trial, one was submitted to binding arbitration, one proceeded as a summary jury trial, and one was tried.

**RHEAGAN C. SMITH, A MINOR, BY
AND THROUGH HER PARENT AND
NATURAL GUARDIAN, JEANEAN
SMITH, INDIVIDUALLY**

V.

**WAL-MART REAL ESTATE
BUSINESS TRUST, A DELAWARE
STATUTORY TRUST, T/D/B/A
WAL-MART SUPERCENTER,
AND WAL-MART STORES
EAST, LP, T/D/B/A WAL-MART
SUPERCENTER
NO. 1123 OF 2016**

Cause of Action: Premises Liability

On August 20, 2015, the minor child, Rheagan, who was 12 years old at that time, was visiting Defendants' store, the Wal-Mart located in Unity Township. When she was leaving, Rheagan was standing on a shopping cart being pushed by Ron Alborn, a family friend. As they approached Mr. Alborn's vehicle, Plaintiffs alleged that the shopping cart hit a pothole/crevice in the parking lot that caused Rheagan to fall off the shopping cart. Plaintiffs alleged that as a result she suffered injuries and resulting medical expenses. Plaintiffs sought monetary damages.

Defendants denied any liability as to the cause of the fall and further alleged that Plaintiff Rheagan's injuries were caused partially by her own negligence of improper use of the shopping cart. Defendants requested a verdict in their favor.

Trial Date: September 12, 2017

Plaintiff's Counsel: Timothy J. Scelsi, Reeves & Ross, Latrobe

Defendants' Counsel: Jeffrey T. Criswell, Thomas, Thomas, & Hafer, LLP, Pgh.

Trial Judge: The Hon. Anthony G. Marsili

Result: The jury found in favor of Defendants.

NOVEMBER 2017 TRIAL TERM

Of the sixteen cases listed for the November 2017 Civil Jury Trial Term, three settled, ten were continued, one was transferred to arbitration, there was one summary jury trial, and one jury trial was held.

**ABIGAIL MORTENSON, A MINOR,
BY AND THROUGH HER PARENTS
AND NATURAL GUARDIANS,
ROBERT MORTENSON AND
MELISSA HOLMES, INDIVIDUALLY**

V.

**HARRY DOUGHERTY
AND LYNNE GROFF
NO. 3032 OF 2014**

Cause of Action: Negligence

On July 31, 2013, Plaintiff Abigail Mortenson was walking between the residences of Defendant Lynne Groff and Christina Falcone. While doing so, Plaintiff was bitten by a pit bull dog owned by Defendant Groff, who was renting the property from its owner, Defendant Harry Dougherty. Plaintiff was 8 years old at the time of the incident.

Accordingly, Plaintiff, by and through her parents, Robert Mortenson and Melissa Holmes, filed this lawsuit against Defendants alleging negligence and requesting monetary damages for the injuries sustained by the minor Plaintiff. The injuries complained of were permanent scarring and psychological and emotional damage.

Defendant Dougherty alleged that he was not responsible for the incident as he did not own the dog, and therefore denied liability. He also alleged that the Plaintiff was negligent in her own actions and that Defendant Groff was negligent as the dog was in her control.

Defendant Groff was present at trial and unrepresented by an attorney. She did not file any responsive pleadings or offer a defense during trial.

The jury returned a unanimous verdict in favor of Plaintiff, finding that she was not negligent in her actions. The jury found Defendant Groff 60% at fault and Defendant Dougherty

40% at fault for Plaintiff's injuries. Plaintiff was awarded \$24,760.86 for Economic Damages and \$14,500 for Non-Economic Damages.

Trial Dates: November 14-16, 2017

Plaintiffs' Counsel: James C. Heneghan, Edgar Snyder & Associates, Pgh.

Defendant's Counsel: Dwayne E. Ross, Reeves and Ross, Latrobe

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of the Plaintiff.