

JANUARY 2018 TRIAL TERM

Of the nineteen cases listed for the January 2018 Civil Jury Trial Term, six settled, and thirteen were continued. No jury trials were held. ■

MARCH 2018 TRIAL TERM

Of the twenty-one cases listed for the March 2018 Civil Jury Trial Term, two settled, fourteen were continued and five jury trials were held during the civil jury trial term.

**JUDITH S. WOLFF, INDIVIDUALLY
AND AS THE ADMINISTRATRIX
OF THE ESTATE OF MARIE H.
WALKO, DECEASED**
V.

**NASUN INC. AND HALLSWORTH
HOUSE, COLLECTIVELY D/B/A
HALLSWORTH HOUSE**
NO. 169 OF 2013

*Cause of Action: Wrongful Death
and Survival*

Judith S. Wolff, daughter of the Decedent, Marie H. Walko, and Administratrix of her Estate, filed a complaint against the Defendants Nasun Inc. and Hallsworth House alleging negligence. Plaintiff alleges that Ms. Walko had been a resident of the personal care home of the Defendants, referred to as Hallsworth House, located in Monessen, Westmoreland County. She alleged that the staff of Hallsworth House failed to monitor the progression or the regression of Ms. Walko's overall health condition, which ultimately led to her death on March 16, 2011.

Plaintiff requested monetary damages and a verdict in her favor and against Defendants.

Defendants denied any negligence by their staff and/or the personal care home and alleged that it did everything correctly in caring for Ms. Walko. Accordingly, Defendants requested a verdict in their favor and against the Plaintiff.

Trial Dates: March 12–15, 2018

Plaintiff's Counsel: Scott M. Simon and Mark D. Troyan, Robert Pierce & Associates, P.C., Pgh.

Defendants' Counsel: John M. O'Connell, Jr., O'Connell & Silvis, Gbg.

Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of the Defendants.

PAUL E. SOLES
V.
**MOHAMMAD MUNIR
ZAITOON, M.D.**
NO. 1257 OF 2016

*Cause of Action: Medical Malpractice—
Professional Negligence*

On March 18, 2014, Defendant performed a circumcision operative procedure on the adult Plaintiff. Plaintiff alleged that, during the procedure, Defendant negligently removed an excess amount of shaft skin from the Plaintiff's penis, creating reduced functional penile length.

Defendant denied that his performance of the circumcision fell below the relevant standard of care for the practice of urology, claiming that any reduced function alleged by the Plaintiff was not caused by the said surgery, but by unrelated medical and/or physical circumstances.

Trial Dates: March 5–8, 2018

Plaintiff's Counsel: Jon R. Perry, Rosen Louik & Perry, P.C., Pgh., and David J. Llewellyn, Johnson & Ward, Atlanta, Ga. (*pro hac vice*)

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

Trial Judge: The Hon. Harry F. Smail, Jr.

Result: Verdict in favor of the Defendant.

**SCOTT BREEGLE AND
DONNA BREEGLE, HIS WIFE**
V.
**STATE FARM FIRE AND
CASUALTY COMPANY**
NO. 1892 OF 2012

Cause of Action: Breach of Contract

On March 23, 2011, a severe storm occurred, causing damage to the roof of the home owned by Plaintiffs. Plaintiffs' home was insured by

the Defendant at that time, and the Plaintiffs subsequently filed a claim for the storm damage. Defendant paid an amount adequate to cover only the replacement of the front slope of the home's roof. Plaintiffs alleged that Defendant did not provide an adequate payment under their insurance policy, claiming damage to the roof's rear slope.

Defendant alleged that no damage was done to the rear slope of Plaintiffs' roof, and that therefore the amount of payment was proper as Plaintiffs' policy covered only replacement for damaged property.

Trial Dates: March 12–13, 2018

Plaintiffs' Counsel: Bruce H. Gelman, Pgh.

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

Trial Judge: The Hon. Harry F. Smail, Jr.

Result: Verdict in favor of the Defendant.

**CAROL HOSPODAR, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF GARY MICHAEL HOSPODAR**
V.

**NORTH HUNTINGDON PRIMARY
CARE-UPMC, UPMC COMMUNITY
MEDICINE, INC., UNIVERSITY OF
PITTSBURGH PHYSICIANS, UPMC
AND WITOLD JUREWICZ, M.D.**
NO. 4635 OF 2014

*Cause of Action: Wrongful Death and
Survival—Medical Malpractice*

On June 3, 2013, Carol Hospodar called North Huntingdon Primary Care to schedule an appointment for her husband, Gary Hospodar, who was suffering from shortness of breath. An appointment was scheduled for June 4, 2013, with Dr. Witold Jurewicz. At that time, Dr. Jurewicz diagnosed Mr. Hospodar with congestive heart failure and told him to go to the emergency room for further testing. According to Plaintiff, Mr. Hospodar asked if he could wait until the next day to go to the hospital, and Dr. Jurewicz advised him that it would be fine to wait. As a result, Plaintiff argued that Mr.

Hospodar was not made aware of the severity of his symptoms and chose to wait until the morning of June 5, 2013, to report to the hospital.

Upon reporting to the hospital, Mr. Hospodar became short of breath and died from a flash pulmonary edema.

Accordingly, Plaintiff argued that North Huntingdon Primary Care failed to meet the standard of care because the employee answering the phone on June 3 did not immediately refer Mr. Hospodar to the hospital or consult a doctor regarding his symptoms. Plaintiff further alleged that Dr. Jurewicz failed to meet the standard of care by indicating that Mr. Hospodar could wait until the next day to report to the hospital, rather than making it clear that his symptoms were serious and death could result from a delay.

Defendants argued that during the June 3 phone call, Plaintiff downplayed Mr. Hospodar's symptoms by attributing them to allergies and therefore did not present them in a manner that required more than a scheduled appointment. Dr. Jurewicz denied that his actions fell below the standard of care, as he properly diagnosed Mr. Hospodar, advised him that he probably had a prior heart attack and could have another, and told him that he could die as a result of his condition. Dr. Jurewicz testified that he strongly urged Mr. Hospodar to go to the hospital and asked both Mrs. Hospodar and their daughter to convince him to go. He denied telling Mr. Hospodar that he could wait until the next day to report to the hospital, and he did not believe there was anything more he could have done to stress the severity of Mr. Hospodar's symptoms.

Trial Dates: March 12–19, 2018

Plaintiff's Counsel: Ernest J.

Pribanic, Pribanic & Pribanic, Pgh.

Defendants' Counsel: M. Brian O'Connor and Michael K. Feeney, Matis Baum O'Connor, Pgh.

Trial Judge: The Hon. Chris Scherer

Result: Verdict in favor of the Defendants.

**GREGORY POLOGRUTO
V.
STATE FARM FIRE AND
CASUALTY COMPANY
NO. 1889 OF 2012**

Cause of Action: Breach of Contract

On March 23, 2011, a severe storm caused damage to the roof of Plaintiff's home. Said home was insured by Defendant, and the Plaintiff subsequently filed a claim for the storm damage. The Defendant paid an amount adequate to cover only damage caused to a portion of the home's roof, not including the roof covering the addition to the home. Plaintiff alleged that Defendant did not provide an adequate payment under his insurance policy, claiming damage to the roof located on the addition.

Defendant alleged that no damage was done to the roof located on the addition to Plaintiff's home, and so the amount of payment was proper as Plaintiff's policy covered only replacement for damaged property.

Trial Dates: March 14–15, 2018

Plaintiff's Counsel: Bruce H. Gelman, Pgh.

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

Trial Judge: The Hon. Harry F. Smail, Jr.

Result: Verdict in favor of the Defendant. ■

MAY 2018 TRIAL TERM

Of the fifteen cases listed for the May 2018 Civil Jury Trial Term, four settled, seven were continued and four jury trials were held during the civil jury trial term.

**LOIS LAROSA, AS EXECUTRIX OF
THE ESTATE OF PAUL LAROSA,
DECEASED
V.**

**MATTHEW C. BANKS, M.D., AND
RADIOLOGIC CONSULTANTS, LTD.
NO. 616 OF 2017**

*Cause of Action: Wrongful Death
and Survival*

Lois LaRosa, wife of the Decedent, Paul LaRosa, and Executrix of his Estate, filed a complaint against Defendants Matthew C. Banks, M.D., and Radiologic Consultants, Ltd., alleging negligence. Plaintiff alleges her husband presented to Frick Hospital's emergency department on October 21, 2014, with complaints of back pain, where a CT was performed of his abdomen/pelvis. Defendant Matthew Banks, M.D., interpreted LaRosa's CT, noting an "unremarkable" pancreas and no acute intraabdominal or pelvic findings. Mr. LaRosa was discharged home with a diagnosis of "back pain." Roughly 15 months later, Paul LaRosa was diagnosed with pancreatic cancer.

Plaintiff alleges that Defendant's negligent conduct in interpreting the CT scan resulted in the delay of diagnosis of her husband's pancreatic cancer. Due to the delay, Plaintiff argues that the cancer metastasized to Mr. LaRosa's liver and no additional treatment was available. Mr. LaRosa died on July 6, 2017. Accordingly, Plaintiff requested monetary damages and a verdict in her favor and against Defendants.

Defendants denied any negligence and denied that Dr. Banks' conduct resulted in the delay of diagnosis of pancreatic cancer. Defendants further denied that Dr. Banks' conduct resulted in the injuries and damages alleged by Plaintiff. Accordingly, Defendants requested a verdict in their favor and against the Plaintiff.

Trial Dates: April 30–May 4, 2018

Plaintiff's Counsel: Todd D. Bowlus, Harry S. Cohen & Associates, PC, Pgh.

Defendants' Counsel: David M. Chmiel, Matis Baum O'Connor, Pgh.
Trial Judge: The Hon. Anthony G. Marsili

Result: Verdict in favor of the Plaintiff. Jury awarded \$150,000 for the wrongful death action and \$150,000 for the survival action.

**VICKIE MCKAY
V.
SHAUN MARKOVICH
NO. 2822 OF 2013**

Cause of Action: Negligence

Plaintiff Vickie McKay filed a negligence action against Defendant Shaun Markovich seeking damages for pain and suffering as a result of a lower back injury she suffered when Defendant's vehicle rear-ended her vehicle on January 9, 2012. Defendant admitted fault, but denied that the accident was the factual cause of Plaintiff's injury.

According to Plaintiff, Defendant was accelerating to proceed through a stop sign, mistakenly believing that Plaintiff's vehicle had already left the intersection, when he hit her vehicle from behind. As a result of the impact, Plaintiff testified that she suffered severe lower back pain that eventually required back surgery. Although Plaintiff admitted that she suffered lower back pain from a prior car accident in 2009, she argued that the accident with Defendant aggravated that pre-existing condition, raised her pain level, and resulted in the need for surgery. Plaintiff's expert testified that back surgery was not contemplated before the accident at issue.

Defendant argued that he could not have been going more than five miles per hour at the time of impact, and the slight hit that resulted could not have caused the injuries alleged. Also, Defendant's expert testified that medical documents established the existence of a protruding disc in Plaintiff's lower back prior to the accident at issue and that there were no changes to the area of the lower back after the accident. According to said expert, Plaintiff would have eventually needed back surgery irrespective of the accident.

Trial Dates: May 7–9, 2018

Plaintiff's Counsel: Ned Nakles, Jr., Nakles & Nakles, Latrobe

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.

**THOMAS A. BOWLEN
V.
VITTORE EYE SURGICAL
ASSOCIATIONS AND
MICHAEL VITTORE, M.D.
NO. 1173 OF 2014**

Cause of Action: Medical Malpractice

Plaintiff Thomas A. Bowlen filed an action against Dr. Michael Vittore and his practice alleging that Dr. Vittore was negligent in performing cataract eye surgery. According to Plaintiff's expert, Dr. Vittore failed to stitch an old surgery wound during the cataract eye surgery, which caused that wound to leak. As a result of that leak, which Defendant failed to diagnose during two post-operation exams, Plaintiff suffered a rupture of the old surgery wound, was diagnosed with endophthalmitis (interior eye infection), and ultimately lost all vision in his right eye.

Defendant argued that there was no evidence of a wound leak during the cataract eye surgery, and all tests conducted during the post-operation exams were negative for any leaks. Defendant's expert testified that there was no evidence of a wound leak at the time of the surgery or at the post-operation exams, that an infection can occur even when all necessary precautions are taken, and that the pressure from the eye infection is what caused the surgery wound to burst, rather than the negligence of Defendant.

Trial Dates: April 30–May 4, 2018

Plaintiff's Counsel: Charles Frankovic, Pribanic & Pribanic, Pgh.

Defendant's Counsel: Paula Koczan, Weber Gallagher, Pgh.

Trial Judge: The Hon. Chris Scherer
Result: Verdict in favor of the Defendants.

**KARL SHANDOR, INDIVIDUALLY
AND AS PARENT AND NATURAL
GUARDIAN OF BRANDON N.
SHANDOR, A MINOR, AND AS
PARENT AND NATURAL
GUARDIAN OF JOHN SHANDOR,
A MINOR, AND MICHELE
SHANDOR, HIS WIFE
V.
JEFFREY S. PETERS AND
REBECCA E. PETERS
NO. 1392 OF 2016**

Cause of Action: Motor Vehicle

On June 1, 2014, Plaintiff Karl Shandor was operating a motor vehicle with Plaintiffs Brandon Shandor and John Shandor as rear-seat passengers. While at a stop sign and subsequently proceeding through the intersection, a motor vehicle operated by Defendant Rebecca E. Peters struck Plaintiffs' vehicle in the rear.

The sole issue at a binding summary jury trial was a determination of Defendant Rebecca E. Peters' liability for Plaintiff Karl Shandor's injuries, which consisted in large part of back and spine injuries, and included possible aggravation of pre-existing conditions.

Trial Date: April 30, 2018

Plaintiffs' Counsel: James A. Villanova and Connor A. Battin, Villanova Law Offices, P.C., Pgh.

Defendants' Counsel: Dwayne E. Ross, Reeves & Ross, P.C., Latrobe

Trial Judge: The Hon. Harry F. Smail, Jr.

Result: Verdict in favor of the Defendant. ■