

# CIVIL JURY TRIALS

## FRANKLIN COUNTY COMMON PLEAS COURT

By Belinda S. Barnes and Monica L. Waller

**Verdict: \$196,500. Medical Malpractice.** Plaintiff Lori Dimitroff, age 42, suffered a common bile duct injury during a laproscopic cholecystectomy performed in January 2006 by Bryan Grischow, M.D. Plaintiff alleged that Dr. Grischow failed to properly identify Plaintiff's cystic duct but instead clipped and removed a portion of Plaintiff's common bile duct. Plaintiff subsequently underwent a Roux-en-Y procedure to repair the injury and suffered several strictures and an incisional hernia. Defendant claimed that a common bile duct injury is a known risk and complication of a laproscopic cholecystectomy. Medical Bills: \$70,000. Lost Wages: None. Plaintiff's Experts: Paul Priebe, M.D. and Willard Stawski, M.D. Defendant's Experts: Jeffrey Peters, M.D. and Lawrence Way, M.D. Last Settlement Demand: \$95,000. Last Offer: None. Length of Trial: 9 days. Plaintiff's Counsel: Michael J. Rourke and Timothy M. Mahler. Defendant's Counsel: Gerald J. Todaro and Patrick F. Smith. Judge Beatty. Case Caption: *Lori Dimitroff v. Bryan Grischow, D.O., et al.* Case No. 07 CV 103 (2010).

**Verdict: \$35,000. Fraudulent Concealment in a Home Purchase.** Plaintiffs Vincent and Anna Vitullo purchased a home from Defendants Rocco and Lisa Faiello. Plaintiffs alleged that the sellers and the real estate agents for the sellers were aware of a water intrusion problem in a crawl space underneath a home addition built by the seller and failed to disclose the problem. The buyers were not aware the crawl space even existed until a neighbor told them. The jury found the seller liable and awarded the buyers \$35,000. The jury found in favor of the real estate agents on the claims asserted against them. Plaintiff's Expert: J & D Basement Defendant's Expert: None. Last Settlement Demand: \$95,000. Last Settlement Offer: \$10,000. Length of Trial: 5 days. Plaintiff's Counsel: Brian Garvine. Defendants' Counsel: Steven Rowe and Erica Probst (for the sellers) and Michael Valentine (for the real estate agents). Judge Reece. Case Caption: *Vincent Vitullo, et al. v. Rocco Faiello, et al.* Case No. 05 CV 14209 (2007).

**Verdict: \$16,000 (Reduced to \$3,500 for Set-Off). Auto Accident.** On October 25, 2005, Plaintiff Paula Archambeau was headed northbound on I-270 and was rear-ended by Michelle Scott when she stopped for traffic. She claimed injuries to her low back, neck and shoulders. Plaintiff was insured by Encompass Insurance with UM/UIM limits of \$500,000. She sued Ms. Scott's estate for negligence and Encompass for UM/UIM coverage. Plaintiff entered into a settlement with Ms. Scott's estate for \$12,500 and proceeded to trial against Encompass. Defendant's position was that only \$2,643 in medical bills were related to the accident and that Plaintiff was fully compensated by the settlement with the co-Defendant. Medical Bills: \$31,179.50 (reduced to \$12,927.33). Lost Wages: \$100. Plaintiff's Expert: H. Thomas Reynolds, M.D.

(physical medicine and rehabilitation). Defendant's Expert: Gerald Steiman, M.D (neurology); Last Settlement Demand: None. Last Settlement Offer: None. Length of Trial: 2 days. Plaintiff's Counsel: Stanley Dritz and D. Chadd McKittrick. Defendant's Counsel: Edwin Hollern (Encompass). Magistrate Judge Petrucci. Case Caption: *Paula Archambeau v. Michelle Scott, et al.*, Case No. 07 CVC 14167 (2009).

**Verdict: \$7,700.00 Auto Accident.** On June 1, 2004, Plaintiff Susan Oakes was driving eastbound on West Henderson Road stopped at the intersection with North High Street when she was rear-ended by a vehicle driven by Defendant Derrick Dorsey. Plaintiff claimed injuries to her neck, mid-back and low back. She sued Mr. Dorsey and her insurance carrier, State Farm, on a UM/UIM claim. Defendants claimed that Plaintiff had pre-existing conditions of cervical disk degeneration and thoracic and lumbar sprains and failed to mitigate her damages. Medical Bills: Approximately \$24,000. Lost Wages: None. Plaintiff's Experts: Kenneth Osborn, D.C. and William Fitz, M.D. Defendant's Expert: Gerald Steiman, M.D; Last Settlement Demand: \$46,000. Last Settlement Offer: \$6,511. Length of Trial: 3 days. Plaintiff's Counsel: Jay Hurlbert. Defendant's Counsel: Michael Kelley (Dorsey) and Jason Founds (State Farm). Magistrate Judge Lippe. Case Caption: *Susan Oakes v. Derrick Dorsey, et al.* Case No. 06 CVC 7003 (2009).

**Verdict: \$130.00 (Reduced to \$65.00 by Plaintiff's Comparative Negligence). Auto Accident.** On May 5, 2004 Defendant Tyler Griffin was attempting to turn left onto Livingston Avenue from the parking lot of Monroe Muffler Brake Shop. He claimed that the traffic stopped to let him out due to a red light. As Mr. Griffin crossed the center turn lane, the left front of his vehicle was struck by a vehicle driven by 19-year-old Plaintiff Jeremy Barger. Mr. Barger claimed that Mr. Griffin pulled out in front of him. Mr. Griffin claimed that Mr. Barger had just changed lanes and was speeding. Plaintiff did not claim injuries at the scene of the accident but was taken to Grant Medical Center later that day. He complained of right thigh and low back pain but left the hospital without treatment. He returned two days later and was diagnosed with a right knee contusion and low back pain. Plaintiff received chiropractic treatment and was ultimately referred to Edwin H. Season, III, M.D. Plaintiff claimed that he could not work as a result of his injuries. The jury found that Plaintiff was 50% responsible for the accident. Medical Bills: \$2,160.20. Lost Wages: Not Itemized. Plaintiff's Expert: Edwin H. Season, III, M.D. Defendant's Expert: Walter Hauser, M.D; Last Settlement Demand: \$35,000. Last Settlement Offer: \$2,500. Length of Trial: 2 days. Plaintiff's Counsel: Emmanuel Olawale. Defendant's Counsel: Belinda Barnes. Judge Bessey (Travis). Case Caption:

*Jeremy M. Barger v. Tyler M. Griffin, et al.* Case No. 08 CVC 6651 (2009).

**Verdict: Defense Verdict. Medical Malpractice.** On May 12, 2006, Kelly Peterson (then 34-years-old), was brought to the emergency room at Grant Hospital following an automobile accident. She was diagnosed with a right ankle fracture which was surgically repaired the same day. She remained at Grant for further observation after surgery. On May 15, 2006 Ms. Peterson fainted on her way to the bathroom and a code was called. After several additional codes the same day, Ms. Peterson died at approximately 2:30 p.m. An autopsy revealed evidence of pulmonary embolism and multiple liver lacerations. Plaintiff contended the liver lacerations were caused by the motor vehicle accident and Mrs. Peterson bled to death and that Grant Hospital and the attending physicians were negligent in failing to follow hospital protocols that required an abdominal ultrasound to be repeated within six to eight hours of the initial test if the initial ultrasound was negative. Plaintiff also contended that Ms. Peterson's attending physicians (Drs. Suh and Hockenberry) failed to properly diagnose the liver lacerations prior to the code. The defense position was that the liver lacerations were caused by the four rounds of CPR which brought her back three times and that she died as a result of the pulmonary embolism from which she could not be resuscitated a fourth time. Plaintiff reached a confidential settlement with Grant Hospital prior to trial. Medical Bills: Negligible. Lost Wages: Approximately \$1,000,000 at present-day value. Plaintiff's Experts: Wendy Marshall, M.D. (trauma); Andrew Rosenthal, M.D. (trauma); Michael Kaufman, M.D. (pathology); John Burke, Ph.D. (economist). Defendant's Experts: Matthew C. Exline, M.D. (pulmonology, critical care and sleep medicine); Fred A. Luchette, M.D. (surgery); Mark Wurster, M.D. (hematology), Gregory Davis, D.O. (internal medicine); and Catherine Graham, M.D. (surgery and emergency medicine). Last Settlement Demand: \$1,000,000. Last Settlement Offer: none. Length of Trial: 9 days. Plaintiff's Counsel: Thomas Mester and Jonathan Mester (Cleveland). Defendant's Counsel: Gary W. Hammond (for Defendant Hockenberry); Gerald J. Todaro (for Defendant Suh). Judge Reece; Case Caption: *Brian Peterson v. Jason Loudermilk, et al.* Case No. 06 CV 12-16506 (2009)

**Verdict: Defense Verdict. Medical Malpractice.** A forty-two year old female who was four months pregnant went to see Defendant for a prenatal examination. At the examination, she specifically pointed out an abnormality in the lateral quadrant of her left breast and requested that the physician evaluate it. The Defendant felt it to be a swollen milk duct, secondary to pregnancy and indicated that he would assess it in the first postpartum visit. The Plaintiff made no further reference to the issue, and she did not return for her postpartum visit. Three and a half months after delivery, she was diagnosed with invasive, lobular carcinoma. The Plaintiff subsequently underwent a radical mastectomy on the left side and an elective mastectomy on the right side. She subsequently experienced failed reconstructive surgery and subsequently was compelled to undergo a hysterectomy. Medical Bills: \$300,000. Lost Wages: Various reported. Plaintiff's Experts: Raymond Weiss, M.D. and Gilad Gross, M.D. Defendant's Experts: Robert Cody, M.D. and Christopher L. Marlowe, M.D. Defense counsel reported that the last settlement demand was \$900,000 before trial and \$500,000 during trial and that there was no settlement offer. Plaintiff's counsel disputes this report of the settlement negotiations. Length of Trial: 6 days. Plaintiff's Counsel: Walter Wolske and Sarah Wolske. Defendant's Counsel: Thomas A. Dillon. Judge Pfeiffer. Case Caption: *Teresa*

*Beemer vs. Gerald Girardi, M.D.* Case No. 07CVA-05-6375 (2009).

**Verdict: Defense Verdict. Premises Liability.** In February 2003, Plaintiff Charles Freiburger fell approximately 17 feet from an elevated driving deck at the driving range of Four Seasons Golf Center. Plaintiff claimed a closed head injury and soft tissue injuries to his neck and back requiring treatment. Plaintiff sued Four Seasons Golf Center and the City of Whitehall. Whitehall owned the land used by the golf course. Plaintiff alleged that Defendant Four Seasons created a hazard and provided insufficient safety mechanisms. Plaintiff further alleged that defendants failed to warn of the risk of falling from the deck and failed to provide proper instructions on use of the deck. Both defendants filed motions for summary judgment which the trial court granted. Plaintiff appealed the summary decisions and the Court of Appeals reversed and remanded the case back for trial. At trial Defendant Whitehall was dismissed and the jury returned a unanimous verdict in favor of Defendant Four Seasons. Medical Bills: \$ 18,368.00 . Lost Wages: \$ 50,000-\$100,000. Plaintiff's Expert: Robert A. Bornstein, Ph.D.; George L. Smith, Ph.D., P.E. Defendant's Expert: Richard A. Nockowitz, M.D.; Last Settlement Demand: \$ 300,000. Last Settlement Offer: \$ 5,000. Length of Trial: 3 days. Plaintiff's Counsel: Alfred J. Weisbrod of Dayton. Defendant's Counsel: Kevin P. Foley and Mary L. Pisciotta. Judge Reece; Case Caption: *Charles Dan Freiburger v. Four Seasons Golf Center, LLC, et al.* Case No. 05 CV 001302 (2008).

**Verdict: Defense Verdict. Auto Accident.** On February 28, 2004, 41-year-old Plaintiff Angela Greenlee-Phillips was rear-ended by a vehicle driven by Defendant Lindsey Henson. She claimed injuries to her neck, back and right shoulder. She sued Ms. Henson for negligence and Geico, her insurer, on a claim for uninsured/underinsured motorist coverage. The claim against Geico was dismissed before trial. Medical Bills: \$24,379.00. Lost Wages: Unknown. Plaintiff's Expert: James Sides, M.D. Defendant's Expert: Martin Gottesman, M.D; Last Settlement Demand: \$100,000. Last Settlement Offer: \$7,200. Length of Trial: 2 days. Plaintiff's Counsel: Peter B. Rodocker and Nicholas English. Defendant's Counsel: Timothy Ryan (Lindsey Henson) and William L. Peters (Geico). Judge Brown. Case Caption: *Angela Greenlee-Phillips v. Lindsey Henson, et al.*, Case No. 06 CVC 2585 (2008).



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