

# Civil Jury Trials

## FRANKLIN COUNTY COMMON PLEAS COURT

By *Monica L. Waller*

**Verdict: \$11,600,000.00. Complex Litigation.** Plaintiff Inland Products, Inc. operates an animal rendering business at 599 Frank Road in Columbus. From December of 2004 through January of 2005 sanitary wastewater from the City of Columbus sanitary and storm sewer lines backed up into the lateral lines on Inland's property and up through manhole covers both inside and outside Inland's animal rendering plant. Inland's witnesses testified that the wastewater flooded the ground floor of the facility in one instance to a depth of 18 inches and in another instance to a depth of 24 inches. Inland claimed that the flooding was a result of the City's negligence in operating a series of isolation gates and sludge pumps at the City's wastewater treatment plants at Jackson Pike and Whittier Street in response to a heavy inflow of groundwater and stormwater during this time period. The City argued it was not liable for the flooding of Inland's property which it contended was the result of an act of God. The City also argued that it was entitled to political subdivision immunity. The trial court denied the City's motion for summary judgment on the issue of immunity and the City appealed. The Court of Appeals affirmed in part and reversed in part, concluding that some of the allegations of negligence related to the City's governmental functions and therefore the City was entitled to immunity on those claims. The case was remanded to the trial court for further proceedings on the remaining negligence claims. At trial, Plaintiff's experts testified that Inland's \$11.6M damage figure represented lost revenue and loss in the value of the business which was sold a year later. The City argued that Plaintiff's damages were \$287,000. The jury found in favor of Plaintiff and answered interrogatories rejecting the City's argument that Inland failed to mitigate its damages. The City filed a post-trial motion for a new trial arguing that the verdict was against the manifest weight of the evidence citing weaknesses in Plaintiff's expert's testimony. The motion was later withdrawn. Plaintiff's Experts: Warren S. Burkholder, Jr. (appraiser) and Daniel Budney, PhD (engineer). Defendant's Expert: Dax Blake, P.E. (engineer). The parties did not have meaningful settlement negotiations. Length of Trial: 10 days. Counsel for Plaintiff: Michael Canter, Gerald Ferguson and Martha Brewer Motley. Counsel for Defendant: Susan Ashbrook, Westley Phillips and Stephen Dunbar. Judge Patrick McGrath. Case Caption: *Inland Products, Inc. v. City of Columbus, Ohio*. Case No. 06 CV 15231 (2012).

**Verdict: \$34,166.79. (\$1,666.79 Economic; \$32,500.00 Non-Economic) Dog Bite.** On December 28, 2007, Plaintiffs Sally Tait-Meyers, her husband Ron Meyers and their four-year-old son Evan Meyers were celebrating the holidays at the home of their relatives Defendants Thomas and Kathleen

Alexander. As Evan was opening a gift, the Alexander's Australian shepherd bit Evan on the face. Evan was taken to urgent care where he received stitches for four bite wounds. Plaintiffs alleged that Evan sustained permanent scarring which would ultimately require surgical revision. The sued for strict liability, loss of consortium and negligent infliction of emotional distress. Plaintiffs were granted summary judgment on their strict liability claim. Defendants were granted summary judgment on the claim of negligent infliction of emotional distress. The parties stipulated that the scars were permanent. However, Defendants argued that the scarring was minimal. Medical Specials: \$1,666.79. Experts: None. Last Settlement Offer: \$21,000.00. Last Settlement Demand: \$125,000.00. Length of Trial: 2 days. Counsel for Plaintiffs: Adam P. Richards. Counsel for Defendants: Heather R. Zilka. Judge David Cain. Case Caption: *Sally Truit Meyers, et al. v. Thomas Alexander, et al.* Case No. 10 CV 12259 (2012).

**Verdict: \$8,513.13. Automobile Accident.** On April 11, 2010, Defendant Rebecca Kemper struck a 1997 Ford truck that was parked on Perry Street near West Second Avenue. The truck was owned by Plaintiff Tracey Lemmon and used in his business Lemmon, LLC. In his Complaint, Mr. Lemmon claimed that the damage to the truck exceeded \$20,000. He also claimed that he lost the use of the truck and estimated that, as a result he lost in excess of \$100,000 in business. He also claimed that he incurred storage fees of \$5,500. At trial, evidence was presented that Mr. Lemmon purchased the truck two years before the accident for \$5,550 and put \$2,000 in work into the truck to modify it for his business. Plaintiff sought \$15,000 for loss of use at the time of trial. However, Defendant argued that Mr. Lemmon had only one job bid at the time of the accident and was able to get 100% of his pay. Last Settlement Demand: \$18,000. Last Settlement Offer: \$7,250. Length of Trial: 1 day. Plaintiff's Counsel: John Gonzales. Defendant's Counsel: Joseph Butauski. Magistrate Mark Petrucci. Case Caption: *Tracey Lemmon, et al. v. Rebecca Kemper*. Case No. 10CVH-15074 (2011).

**Verdict: \$5,623.00. (\$2,623.00 in economic; \$3,000 in non-economic) Automobile Accident.** On February 21, 2004, Plaintiff Danny Boling was rear-ended on Parsons Avenue by Defendant Jeremiah Crow. Plaintiff alleged that the accident caused an aggravation of a C5-6 herniated disc and radiculopathy. At the time of the accident, Plaintiff was employed by The E-Z Go Golf Cart Company based in Thailand. Immediately after the accident, he received treatment in the ER but then returned to Thailand where he received additional treatment. In 2007 Plaintiff claimed

he suffered a flare-up of his symptoms while traveling for his deposition. He claimed ongoing symptoms related to the accident through the date of trial. He also alleged that he was unable to meet his sales goals in 2007 resulting in \$50,000 in lost wages. Defendant admitted liability but argued that Plaintiff's ongoing treatment was unrelated to the subject accident. Medical Specials: \$10,900. Lost Wages: \$50,000. Plaintiff's Expert: Bradford Mullin, M.D. Defendant's Expert: Gerald Steiman, M.D. Last Settlement Demand: \$50,000. Last Settlement Offer: \$10,000. Length of Trial: 3 days. Counsel for Plaintiff: Jonathan Tyack. Counsel for Defendant: Stephen Findley. Magistrate Mark Petrucci. Case Caption: *Danny Boling v. Jeremiah J. Crowe, et al.* Case No. 10CVC 1312 (2011).

**Verdict: \$4,279.60. Automobile Accident.** Plaintiff Richard Hale, a 47-year-old employee of the City of Columbus was a passenger in a city-owned maintenance vehicle headed westbound on West Nationwide Blvd. As the maintenance vehicle was crossing the intersection of Nationwide Blvd. and Neil Ave, it was struck by a vehicle driven by Defendant Suzanne Whisler that was headed southbound on Neil Ave. Ms. Whisler entered the intersection against a red light. She admitted liability. Plaintiff claimed soft tissue injuries to his back, a herniated disc and L4 radiculopathy for which he claimed he needed fusion surgery. Plaintiff also claimed that he was unable to return to work after his surgery because he was incapable of anything but sedentary work. Defendant argued that Plaintiff's herniation and radiculopathy were not related to the accident but were pre-existing conditions. Plaintiff's lost wage claim was also disputed because Plaintiff was laid off due to budget cuts while he was recuperating from surgery. At trial, Plaintiff's expert testified that Plaintiff's herniation and radiculopathy were caused by the accident. Upon cross-examination, Plaintiff's expert was confronted with pre-accident medical records that reflected symptoms of herniation and L4 radiculopathy for several years before the accident. The expert acknowledged that Plaintiff had not disclosed this medical history and conceded that his causation opinion was probably not valid. Medical Specials: \$122,400.00. Lost Wages: Not Itemized. Plaintiff's Expert: Charles May, D.O. Defendant's Expert: None. Last Settlement Offer: \$25,000.00. Last Settlement Demand: \$300,000.00. Length of Trial: 2 days. Counsel for Plaintiff: Peter Rodocker. Counsel for Defendant: W. Charles Curley. Magistrate Mark Petrucci. Case Caption: *Ronald Hale v. Suzanne Whisler.* Case No. 11 CV 1182 (2012).

**Defense Verdict. CPA Malpractice/Financial Fraud.** Plaintiff Ken Hester alleged Tom Brankamp, CPA, made negligent misrepresentations regarding compiled financial statements Brankamp prepared, upon which Hester allegedly relied to invest \$1.3M in Superior Kraft Homes, LLC. Hester also alleged Brankamp was part of a financial fraud regarding Superior Kraft. Defendant denied Hester's allegations, and asserted Hester did not justifiably rely on the compiled financial statements. Plaintiff dismissed his negligent misrepresentation claim immediately prior to trial and proceeded only on a fraud claim. Plaintiff requested the jury award compensatory damages of \$1.3M, punitive damages of \$1.3M, and attorneys' fees. The jury verdict was in favor of Defendant. The jurors answered the first two interrogatories unanimously in favor of Plaintiff, finding that Plaintiff had proven Defendant knowingly made a

false representation that was material to the transaction. However, a 6-juror majority found in favor of Defendant on the third interrogatory concluding that Plaintiff did not prove that Defendant Brankamp made a representation with the intent of misleading Plaintiff into relying upon it. Plaintiff filed a motion for a new trial based in part upon the Court's response to a jury question seeking to clarify interrogatory #3 and the definition of the term "representation." Plaintiff argued that the Court failed to correct the jury's confusion. The Court denied the motion. Plaintiff's Expert: Alan Duvall, CPA. Defendant's Expert: Heinz Ickert, CPA. Settlement negotiation information withheld by counsel. Length of trial: 8 days. Counsel for Plaintiff: Richard Talda and Dan Gentry. Counsel for Defendant: Robert Nichols and Josh Rockwell. Judge Charles Schneider. Case Caption: *Kenneth T. Hester v. Thomas W. Brankamp.* Case No. 09 CVA-08-12145 (2012).

**Defense Verdict. Employment Discrimination.** In November of 2008, Plaintiff Natasha McKnight was terminated from her employment as an aide by Defendant OhioHealth Corporation. Ms. McKnight alleged that she was discriminated against because of her pregnancy. According to Ms. McKnight, after she advised her supervisor of the pregnancy, the supervisor singled Ms. McKnight out to make a case for terminating her under OhioHealth's attendance policy. Ms. McKnight produced a witness who testified that she and other peers were instructed by the supervisor to watch Ms. McKnight for absences so she could have an excuse to fire her. The witness also claimed that the supervisor commented that Ms. McKnight would be better off terminated because she could go on welfare. Subsequently Ms. McKnight's obstetrician placed her on restrictions that prevented her from working. Ms. McKnight applied for a medical leave of absence which was approved. Ms. McKnight claimed that she was instructed not to work her last scheduled shift. However, when she failed to appear for that shift, she was fired. OhioHealth presented evidence that its attendance policy mandates termination of an employee who has had eight attendance occurrences. Ms. McKnight reached the eight occurrences during her pregnancy before the final absence. Her supervisor chose not to fire Ms. McKnight at that time and gave her a second chance but told her that she would be terminated if she had an additional occurrence. The final missed shift constituted an additional occurrence. Therefore, the supervisor appropriately terminated her employment pursuant to the attendance policy. Following the defense verdict, Plaintiff moved for a new trial alleging that a juror failed to disclose material information during voir dire and on the basis that the verdict was against the manifest weight of the evidence. The motion was denied. Lost Wages: Not available. The parties agreed prior to settlement negotiations that all settlement demands and offers were to remain confidential. Length of Trial: 3 days. Plaintiff's Counsel: John Sherrod. Defendant's Counsel: Allison Day and Natalie McLaughlin. Judge Mark Serrott. Case Caption: *Natasha McKnight v. OhioHealth Corporation* Case No. 10 CV 116 (2011).

**Defense Verdict. Automobile Accident.** On April 17, 2009 Plaintiff Suhail Khoury was traveling eastbound on Livingston Avenue on a motorcycle when Defendant Crystal Morin pulled out in front of him from Saranac Drive. Mr. Khoury was unable to stop his motorcycle and struck the side

of Ms. Morin's Cadillac. Police officer Jeffrey Ackley witnessed the accident. He was off duty at the time, but claimed that Mr. Khoury was traveling 60-70 mph when Ms. Morin pulled out. Mr. Khoury denied that he was speeding. Ms. Morin was uninsured. Therefore, Plaintiff also asserted an uninsured motorist claim against his insurer, State Farm. Mr. Khoury sustained soft tissue injuries to his neck, back, right shoulder and right knee and suffered headaches. He completed his treatment by July of 2009. Medical Specials: \$47,616. Lost Wages: None. Plaintiff's Expert: Edwin Season, M.D. Defendant's Expert: Ashley Dunn, Ph.D., P.E. Last Settlement Demand: \$100,000.00 (UM policy limit) Last Settlement Offer: None. Length of Trial: 5 days. Counsel for Plaintiff: John K. Fitch. Counsel for Defendant Morin: James Connors. Counsel for Defendant State Farm: James Gallagher. Judge Guy Reece. Case Caption: *Subail Khoury v. Crystal Morin, et al.* Case No. 10CV 3731 (2011).



[mwaller@lanealton.com](mailto:mwaller@lanealton.com)



Monica L. Waller,  
Lane Alton &  
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