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TOP **PA** VERDICTS

OF 2010

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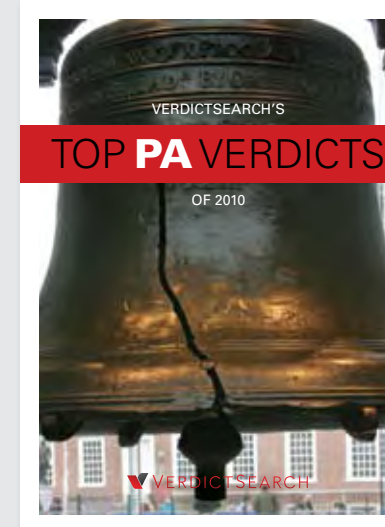
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Note: These charts are based on cases reported by VerdictSearch, an affiliate of *The Legal Intelligencer*. These verdicts are reported as issued after trial. The summaries and listings do not include whether post-trial motions or appeals have been decided or are pending. The list includes awards involving injuries only to one party in each case and claims that derive from those injuries.

VerdictSearch's Top Verdicts of 2010 is published by ALM Media, LLC
 120 Broadway, New York, NY 10271

TOP 20 CASE SUMMARIES

Bohning v. Cullen: \$95 million

From 2000 to 2002, plaintiffs' decedents Daniel Bohning, 37; Debra Shachter, 41; Jose Vicoso, 79; Samuel Muschlitz, 90; Henry Shimer, 81; Joseph Gostony, 83; Walter Mock Jr., 74; and Shirley Fish, 67, were patients of St. Luke's Hospital in Bethlehem.

Charles Cullen was a nurse at the hospital, also from 2000 to 2002, who was involved in their treatment and care. They were hospitalized for serious health conditions.

The estates' families alleged that the plaintiffs all died from medication overdoses administered by Cullen. Cullen told authorities he killed as many as 40 people but has not been charged in the deaths of the plaintiffs. Cullen is currently serving a life sentence in New Jersey after admitting he killed 29 people at hospitals there and in Pennsylvania.

The victims' families sued Cullen for wrongful death. Prior to trial, the court ruled that Cullen was responsible for the eight deaths after he failed to respond to the lawsuit and did not mount a defense. The case proceeded to trial on the issue of damages.

The families sought to recover punitive damages and damages pursuant to the Survival Act and Wrongful Death Act. Shachter, the second youngest victim, left behind a husband and three daughters.

The jury awarded the plaintiffs \$95 million.

This report is based on information that was provided by plaintiffs' counsel. Defense counsel declined to contribute.

Pridgen v. Avco Corp.: \$88.7 Million

A Philadelphia jury awarded nearly \$89 million in damages in a personal injury and products liability case involving a 1999 plane crash in which four people died and another suffered serious injuries.

The plaintiffs' attorney, Arthur A. Wolk, said the jury awarded \$24.7 million in compensatory damages and found that the defendant's conduct was malicious, wanton, willful or oppressive, allowing for a subsequent punitive damages phase of the trial.

After the trial court gave the jury a stipulated net worth of defendant Avco Corp. of about \$640 million, the jury went back to deliberations and returned later in the afternoon with an award of \$64 million in punitive damages, according to the verdict sheet.

Wolk said both sides stipulated to the net worth so that the defense couldn't contest on appeal that the jury was given insufficient economic information. The sole defendant at trial, a division of Avco known as Lycoming Engines, retained its ability to challenge the punitive damages on constitutional grounds, he said.

Continued on Page 8 >

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TOP PA VERDICTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
1	Bohning v. Cullen	\$95,000,000	Wrongful Death	Court of Common Pleas of Lehigh County	Jonathan B. Acklen, Bethlehem, PA of Cohen & Feeley; Mark K. Altomose, Bethlehem, PA of Cohen & Feeley; Kelly Clifford Rambo, Bethlehem, PA of Cohen & Feeley		3/11/2010
2	Pridgen v. Avco Corp.	\$88,700,000	Products Liability: Design Defect	Court of Common Pleas of Philadelphia County	Cynthia M. Devers, Philadelphia, PA of The Wolk Law Firm; Bradley J. Stoll, Philadelphia, PA of The Wolk Law Firm; Arthur Alan Wolk, Philadelphia, PA of The Wolk Law Firm	Lee Coffman, Aero Services Unlimited, Aircraft Maintenance, Santa Fe, NM; Richard H. McSwain, Ph.D., P.E., McSwain Engineering Inc., Materials Science, Pensacola, FL; Harvey S. Rosen, Ph.D., Economics, Cleveland, OH; Donald E. Sommer, Aircraft, Broomfield, CO Jeffrey W. Edwards, Pilot Performance/Error, St. Louis, MO	4/6/2010
3	Commonwealth of Pennsylvania v. Johnson & Johnson	\$51,850,562	Consumer Protection: Unfair Trade Practices and Consumer Protection Law	Commonwealth Court of Pennsylvania	Barry R. Eichen, Edison, NJ of Eichen, Crutchlow & McElroy, LLP; Donald E. Haviland, Jr., Philadelphia, PA of Haviland Hughes, LLC	William Comanor, Economics, Santa Barbara, CA; Frederick Warren-Boulton, Economics, Washington, DC; Ernst Berndt, Ph.D., Economics, Cambridge, MA	12/7/2010
4	Estate of Baumer v. A.W. Chesterton Co.	\$50,000,000	Products Liability: Asbestos	Court of Common Pleas of Allegheny County	Michael J. Gallucci, Pittsburgh, PA of Savinis, D'Amico & Kane, L.L.C.; John R. Kane, Pittsburgh, PA of Savinis, D'Amico & Kane, L.L.C.; Michael P. Robb, Pittsburgh, PA of Savinis, D'Amico & Kane, L.L.C.; Janice M. Savinis, Pittsburgh, PA of Savinis, D'Amico & Kane, L.L.C.	Mark S. Colella, M.D., Radiology, Natrona Heights, PA; Patricia A. Costantini, R.N., Costantini Rehab Inc., Life Care Planning, Pittsburgh, PA; Murray Finkelstein, M.D., Ph.D., Occupational Medicine; Richard L. Hatfield, Materials Science, Atlanta, GA; William Johnson, M.D., Ph.D., Technical, Augusta, GA; Jacques Legier, M.D., Riverside Regional Hospital, Pathology, Newport News, VA; James Rodgers, Ph.D., Economics, State College, PA	1/29/2010
5	Estate of Torres v. Wachovia Bank, N.A.	\$46,168,000	Wrongful Death	Court of Common Pleas of Berks County	Jay N. Abramowitch, Wyomissing, PA of Leisawitz Heller Abramowitch Phillips, P.C.; Kenneth Millman, Wyomissing, PA of Leisawitz Heller Abramowitch Phillips, P.C.	Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA	11/16/2010
6	Berger v. Zeghibe	\$34,150,000	Fraud	U.S. District Court, Eastern District of Pennsylvania	Antoinette R. Stone, Philadelphia, PA of Brown Stone Nimeroff, LLC; Daniel M. Boglioli, New York, NY of Kaye Scholer, LLP; Richard C. Seltzer, New York, NY of Kaye Scholer, LLP		8/2/2010
7	Van Tassel v. John Crane Inc.	\$30,000,000	Products Liability: Asbestos	Court of Common Pleas of Philadelphia County	Steven J. Cooperstein, Philadelphia, PA of Brookman Rosenberg Brown & Sandler; John M. DiDonato, Philadelphia, PA of Brookman Rosenberg Brown & Sandler; David B. Halpern, Philadelphia, PA of Brookman Rosenberg Brown & Sandler; Ben Braly, Dallas, TX of Simon, Eddins & Greenstone, LLP; Chris Panatier, Dallas, TX of Simon, Eddins & Greenstone, LLP	Arnold R. Brody, M.D., Cell Biology, New Orleans, LA; Daniel DuPont, M.D., Taylor Hospital, Asbestos-related Lung Disease, Ridley Park, PA; Eugene J. Mark, M.D., Pathology, Boston, MA; Steven S. Paskal, M.S.H., J.D., C.I.H., Industrial Hygiene, Severna Park, MD; Charles L. Blake, C.I.H., Industrial Hygiene, Kennesaw, GA; Louis Burgher, M.D., Asbestos-related Lung Disease, Omaha, NE; James C. Crapo, M.D., Pulmonology, Denver, CO; John Dupont, Ph.D., Lehigh University, Welding Equipment, Bethlehem, PA; Michael A. Graham, M.D., Independent Medical Examiner/IMES, St. Louis, MO; Michael Matteson, Ph.D., Product Testing, Olympia, WA; Donna M. Ringo, C.I.H., DMR & Associates, Industrial Hygiene, Louisville, KY; David Sargent Jr., Vessel Operations, Washington, DC; John Shuster, Geotechnical Engineering, Lorton, VA; Fred Toca, Industrial Hygiene, Atlanta, GA	3/23/2010
8	Commonwealth Court of Pennsylvania v. Bristol-Myers Squibb Company	\$27,617,952	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Jr., Philadelphia, PA of Haviland Hughes LLC	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Dr. Frederick R. Warren-Boulton, MICRA, Washington, D.C.	9/10/2010

TOP PA VERDICTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
9	Polett v. Public Communications Inc.	\$27,600,000	Negligence: Negligent Supervision	Court of Common Pleas of Philadelphia County	Carl E. Jones, Philadelphia, PA of Kline & Specter, P.C.; Shanin Specter, Philadelphia, PA of Kline & Specter, P.C.	Robert Booth, M.D., Orthopedic Surgery, Philadelphia, PA; Charles Clark, M.D., orthopedic surgery, Iowa City, IA	11/22/2010
10	Graham v. Haughey	\$18,900,000	Copyright Infringement	U.S. District Court, Eastern District of Pennsylvania	David J. Wolfsohn, Aleksander J. Goranin and John F. Murphy of Woodcock Washburn; Floyd Abrams of Cahill Gordon & Reindel		3/19/2010
11	Russell v. AW Chesterton Inc.	\$17,000,000	Products Liability: Asbestos	Court of Common Pleas of Philadelphia County	Aaron J. DeLuca, Spring, TX of DeLuca & Nemeroff, LLP; Barrett Naman, Spring, TX of DeLuca & Nemeroff, LLP; Rick Nemeroff, Spring, TX of DeLuca & Nemeroff, LLP; Benjamin Shein, Philadelphia, PA of Shein Law Center, Ltd.	Samuel P. Hammar, M.D., Diagnostic Specialties Laboratory, Pathology, Bremerton, WA; Richard A. Lemen, Ph.D., Asbestos, Duluth, GA; William Longo, Ph.D., Materials Analytical Services, Materials Science, Atlanta, GA; John C. Maddox, M.D., Pathology, Newport News, VA	2/19/2010
12	Nelson v. Crane Co.	\$14,500,000	Asbestos, Products Liability	Court of Common Pleas of Philadelphia County	John DiDonato, David Halpern and Steven Cooperstein of Brookman Rosenberg Brown & Sandler; Jeffrey S. King of K&L Gates; Christopher Santoro of Marshall Dennehey Warner Coleman & Goggin; Kurt Rasmussen of Rasmussen Willis Dickey & Moore		3/9/2010
13	Rice v. 2701 Red Lion Associates LP	\$12,400,000	Products Liability: Design Defect	Court of Common Pleas of Philadelphia County	Thomas J. Duffy, Philadelphia, PA of Duffy & Keenan; Kenneth F. Fulginiti, Philadelphia, PA of Duffy & Keenan	Todd J. Albert, M.D., Thomas Jefferson Universities and Hospitals, Neurosurgery, Philadelphia, PA; Kathleen Corrigan, Life Care Planning, Havertown, PA; Irene C. Mendelsohn, Vocational Rehabilitation/Counseling, Philadelphia, PA	2/23/2010
14	State Farm v. Lincow	\$12,100,000	Civil RICO	U.S. District Court, Eastern District of Pennsylvania	Cy Goldberg, Richard M. Castagna and Matthew A. Moroney of Goldberg Miller & Rubin; Joel W. Todd of Dolchin Slotkin & Todd		6/3/2010
15	Calgon Carbon Corp. v. ADA-ES Inc.	\$12,000,000	Contracts: Breach of Contract	U.S. District Court, Western District of Pennsylvania	Thomas E. Birsic, Pittsburgh, PA of K&L Gates, LLP; Jennifer J. Froehlich, Pittsburgh, PA of K&L Gates, LLP; Andrew R. Stanton, Pittsburgh, PA of K&L Gates, LLP	Mark M. Gleason, C.P.A., Gleason & Associates, CPAs, Pittsburgh, PA; Howard W. Pifer III, Ph.D., Economics, Scottsdale, AZ	7/29/2010
16	VanTassel v. Alfa Laval Inc.	\$12,000,000	Asbestos, Products Liability	Court of Common Pleas of Philadelphia County	Chris Panatier of Simon Eddins & Greenstone; Dallas		3/9/2010
17	Pursell v. Volkswagen AG	\$10,200,000	Products Liability/ Crashtworthiness	Court of Common Pleas of Bucks County	Larry Coben of Anapol Schwartz	Alan Cantor, AARCA, Pennsylvania	8/27/2010
18	Schroeder v. Anchor Darling Valve Co.	\$10,000,000	Asbestos	Court of Common Pleas of Philadelphia County	Aaron J. DeLuca, Barrett Naman and Rick Nemeroff of DeLuca & Nemeroff; Benjamin Shein of Shein Law Center		2/19/2010
19	Singleton v. Wyeth	\$9,450,000	Products Liability	Court of Common Pleas of Philadelphia County	Zoe Littlepage of Littlepage Booth; Samuel Abloeser of Williams Cuker Berezofsky; Heidi Hubbard of Williams & Connolly; David Dukes of Nelson Mullins Riley & Scarborough		2/22/2010
20	Decker v. Consol Energy Inc.	\$7,800,000	Negligence: Negligent Maintenance	Court of Common Pleas of Allegheny County	Carl A. Parise, Pittsburgh, PA of Carl A. Parise & Associates; Timothy Conboy, Pittsburgh, PA of Caroselli Beachler McTiernan & Conboy, LLC; John W. Brown, Pittsburgh, PA of John W. Brown & Associates	S. Philip Hundley, Architecture; Behzad Kasraie, P.E., O'Donnell Consulting Engineers Inc., Engineering, Pittsburgh, PA; Steven Klepper, Ph.D., Economics, Pittsburgh, PA; Michael P. McGonigal, M.D., Family Medicine, Bethel Park, PA; Mitchell H. Rothenberg, M.D., Orthopedic Surgery, Pittsburgh, PA; James Fellin, CPA, CFE, Lost Earnings, Pittsburgh, PA; John Frank, P.E., Technical Engineering Consultants Inc., Engineering, Pittsburgh, PA; Steven E. Kann, M.D., Tri-State Orthopaedics & Sports Medicine Inc., Orthopedic Surgery, Pittsburgh, PA; Jeffrey Kraus, M.D., Pain Management, Germantown, TN	11/23/2010

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Spence, Custer, Saylor, Wolfe & Rose, LLC is honored to be included in the Top Pennsylvania Verdicts of 2010 for its verdict in the District Court case of Edward J. Jacoby v. Admiral Merchants Motor Freight, Inc. for injuries sustained by a truck driver in a tractor trailer accident in Clearfield County, Pennsylvania.

Spence Custer recognizes members Ronald P. Carnevali, Jr. and Michael J. Parrish, Jr. and congratulates them on achieving one of the highest motor vehicle verdicts in Pennsylvania.

Spence Custer's personal injury specialists have built a reputation of quality representation and substantial results. Our experience, resources and professional relationships help us maximize case value. We regularly accept referrals from Pennsylvania attorneys seeking to obtain the best possible results for their clients.

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Left to right: Stephen A. Sheller, Jamie L. Sheller, Brian J. McCormick, Jr., and Claudine Q. Homolash

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AWARDED TWO OF THE TOP TEN VERDICTS IN PENNSYLVANIA IN 2010

3RD LARGEST VERDICT
\$51.85 million
against Johnson & Johnson



8TH LARGEST VERDICT
\$27.6 million
against Bristol-Myers Squibb



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TOP PA VERDICTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
21	Russell v. AW Chesterton Inc.	\$7,000,000	Asbestos	Court of Common Pleas of Philadelphia County	Aaron J. DeLuca, Barrett Naman and Rick Nemeroff of DeLuca & Nemeroff; Benjamin Shein of Shein Law Center		2/19/2010
22	MFS Inc. v. DiLazaro	\$6,500,000	Civil Rights: 42 USC 1983	U.S. District Court, Eastern District of Pennsylvania	Wayne C. Stansfield, Philadelphia, PA of Reed Smith, LLP; Thomas J. Zagami, Columbia, MD of Thomas J. Zagami, P.A.	Carl Miceli, A.S.A., C.S.A., Auctions and Appraisals, Inc., Appraisal, Westminster, MD; Mark W. Norris, C.P.A., A.B.V., Tucker & Meltzer Valuation Advisors, Natural Resources, Baltimore, MD	3/3/2010
23	Lanpher v. Alfa-Laval Inc.	\$6,500,000	Wrongful Death: Survival Damages	Court of Common Pleas of Philadelphia County	Benjamin Shein, Philadelphia, PA of Shein Law Center, Ltd.; Troyce G. Wolf, Dallas, TX of Waters & Kraus, LLP; Demetrios T. Zacharopoulos, Baltimore, MD of Waters & Kraus, LLP	Francis Burger, U.S. Navy, Maritime/Admiralty, Ocean Springs, MS; John C. Maddox, M.D., Pathology, Newport News, VA Jeffrey Giacomini, Ph.D., Mechanical; Thomas McCaffery, Maritime/Admiralty	3/5/2010
24	Estate of Blango v. Jeanes Hospital Inc.	\$6,000,000	Nursing Homes: Abuse or Neglect	Court of Common Pleas of Philadelphia County	Churchill Huston, Philadelphia, PA of The Maher Law Firm; Steven R. Maher, Winter Park, FL of The Maher Law Firm	Richard Berg, M.D., Infectious Diseases, Lutherville, MD; Edna Cox, R.D., Nutrition, Lexington, SC; Kathleen Fletcher, R.N., Nursing, Palmyra, VA; Mary Lynn King, R.N., Wound Analysis, Gainesville, SC; James H. Steg, M.D., Nursing, Belleair Bluffs, FL; Marie Brown-Etris, R.N., Convalescent Care/Elder Care, Philadelphia, PA; Ellen Marie Mattingly Currey, A.R.N.P., Nursing, St. Petersburg, FL; Charles Gordon, M.D., Geriatrics, Allentown, PA; Michael Silverman, M.D., Infectious Diseases, Philadelphia, PA	3/17/2010
25	Golini v. Alfa Laval Inc.	\$5,650,000	Asbestos	Court of Common Pleas of Philadelphia County	Benjamin Shein, Philadelphia, PA of the Shein Law Center; William R. Adams of Dickie McCamey & Chilcote		4/29/2010
26	Meshulam-Orem v. Interstate Building Maintenance Corp.	\$5,500,000	Premises Liability: Slip and Fall	Court of Common Pleas of Philadelphia County	Steven M. Mezrow, Philadelphia, PA of Pansini & Mezrow, P.C.; Michael O. Pansini, Philadelphia, PA of Pansini & Mezrow, P.C.	Scott M. Fried, D.O., Orthopedic Surgery, Blue Bell, PA; Donald E. Jennings, Ed.D., Psychology/Counseling, Philadelphia, PA; Steven Mandel, M.D., Thomas Jefferson University, Jefferson Medical College, Neurology, Philadelphia, PA; Rosalyn Pierce, C.R.C., Vocational Rehabilitation, Philadelphia, PA; David S. Tabby, M.D., Hahnemann University Hospital, Neurology, Philadelphia, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; Leonard A. Brody, M.D., Orthopedic Surgery, Southampton, PA; Lee A. Harris, M.D., Neurology, Philadelphia, PA	9/28/2010
27	Reed v. Rhodes	\$5,350,000	Medical Malpractice: Negligent Treatment	Court of Common Pleas of Delaware County	Jane B. Marton, Jenkintown, PA of Kornblau & Kornblau, P.C.; Gary Solomon, Jenkintown, PA of Kornblau & Kornblau, P.C.	Norman Bloom, M.D., Surgery/Oncology, Oncologic Surgery, New York, NY; David Fink, M.D., Psychiatry, Philadelphia, PA; Scott Herbert, M.D., Abington Memorial Hospital, Radiation Therapy, Abington, PA; Carl Schanbacher, M.D., Dermatology, Milford, MA; Barry Shmookler, M.D., Pathology, Rockville, MD; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; John Brooks, M.D., Pathology, Philadelphia, PA; Paul R. Gross, M.D., Dermatology, Philadelphia, PA; David T. Harris, M.D., ILankenau Hospital, Oncology, Wynnewood, PA; Stephen M. Mechanick, M.D., Psychiatry, Bryn Mawr, PA	9/29/2010
28	Estate of Long v. Golofsky	\$5,000,000	Wrongful Death	Court of Common Pleas of Allegheny County	David C. Martin Jr., Pittsburgh, PA of Martin & Lerda		11/8/2010

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WATERS & KRAUS, LLP PROUDLY CONGRATULATES TROYCE WOLF AND DEMETRIOS ZACHAROPOULOS FOR ACHIEVING RECOGNITION ON THE LEGAL INTELLIGENCER'S LIST OF "TOP VERDICTS & SETTLEMENTS"

#21: Koeberle v. John Crane Inc., Verdict: \$4.5M, Date: June 10, 2010. This verdict was obtained with assistance from the Shein Law Center, LTD on behalf of our asbestos client John Koeberle



Troyce Wolf is a partner in the firm's Dallas office. He specializes in toxic torts and asbestos litigation, as well as personal injury law.



Demetrios Zacharopoulos is an attorney in the firm's Baltimore office. His focus is on asbestos litigation, appellate law, and qui tam whistleblower litigation.

Waters & Kraus, LLP is a national plaintiffs' firm with a reputation for successfully representing asbestos and mesothelioma victims. Our practice has expanded considerably over the years to include qui tam (whistleblower) litigation, birth injury cases, complex product liability and personal injury/wrongful death cases, toxic tort litigation, and pharmaceutical product liability, as well as negligence and consumer class actions.

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 BY CONTINUING TO WIN MILLION
 AND MULTI-MILLION DOLLAR
 VERDICTS & SETTLEMENTS IN 2010.



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TOP PA VERDICTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
29	Federal Trade Commission v. Magazine Solutions LLC	\$4,782,011	Consumer Protection: Telemarketing and Consumer Fraud and Abuse Prevention Act	U.S. District Court, Western District of Pennsylvania	Dana C. Barragane, Cleveland, OH of Federal Trade Commission		3/22/2010
30	Koeberle v. John Crane Inc.	\$4,500,000	Products Liability: Failure to Warn	Court of Common Pleas of Philadelphia County	Benjamin Shein, Philadelphia, PA of Shein Law Center; Troyce G. Wolf, Dallas, TX of Waters & Kraus, LLP; Demetrios T. Zacharopoulos, Baltimore, MD of Waters & Kraus, LLP	Daniel Sterman, M.D., Hospital of the University of Pennsylvania, Pulmonology, Philadelphia, PA; Gordon Yu, M.D., Pathology, Philadelphia, PA; Peter J. Barrett, M.D., F.A.C.R., Radiology, Boston, MA; Stephen Markowitz, M.D., Occupational Medicine, New York, NY; Michael Matteson, Ph.D., Bioaerosol Sampling, Olympia, WA; Thomas S. McCaffrey, Maritime/Admiralty, Alexandria, VA; Frederick M. Toca, Ph.D., Industrial Toxicology, Atlanta, GA	6/15/2010
31	Sedor v. Community Medical Center	\$3,250,000	Negligence	Court of Common Pleas of Lackawanna County	Danielle M. Mulcahey, Scranton, PA of Wright & Reihner, P.C.; George A. Reihner, Scranton, PA of Wright & Reihner, P.C.; Joseph T. Wright Jr., Scranton, PA of Wright & Reihner, P.C.	Elizabeth Arruda, Arruda Legal Nurse Consulting, Legal Nurse Consulting, Rockland, ME; Herbert Fellerman, M.D., Diabetes, Kingston, PA; Mark Lukas, Ed.D., Vocational Rehabilitation, Media, PA; Terri S. Patterson, R.N., Life Care Planning, Plymouth Meeting, PA; William R. Prebola, M.D., Physical Medicine, Tunkhannock, PA; Frederick Rose, M.D., Infectious Diseases, Syracuse, NY; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; Seth Braunstein, M.D., Diabetes, Radnor, PA; Michael S. Dahn, M.D., Vascular Surgery, Farmington, CT; Thomas Dobosenski, Economics, Plymouth Meeting, PA; Christopher Earle, Economics, Plymouth Meeting, PA; Terry P. Leslie, Leslie Vocational Consulting, Vocational Rehabilitation, Landisville, PA; Katherine A. Murray-Leisure, M.D., Infectious Diseases, Lebanon, PA; Lee J. Sanders, M.D., Podiatry, Lebanon, PA; Mona Goldman Yudkoff, R.N., M.P.H., C.R.R.N., Mona Yudkoff Rehab Consultants, Life Care Planning, Bala Cynwyd, PA	10/8/2010
32	Murphy v. Oxford Airport Technical Services	\$3,200,000	Negligence: Negligent Maintenance	Court of Common Pleas of Philadelphia County	Steven M. Mezrow, Philadelphia, PA of Pansini & Mezrow, P.C.; Michael O. Pansini, Philadelphia, PA of Pansini & Mezrow, P.C.		3/5/2010
33	Vonner v. Mmeje	\$3,000,000	Medical Malpractice: Childbirth	Court of Common Pleas of Philadelphia County	Joshua Van Naarden, Philadelphia, PA of Ross Feller Casey, LLP	David L. Hopkins, A.S.A., Economics, King of Prussia, PA; Alexander Smythe, M.D., Fetal Medicine, Columbia, SC Anthony C. Sciscione, M.D., Fetal Medicine, West Chester, PA	11/8/2010
34	Kennedy v. Wyndor Farm, Inc., et al.	\$3,000,000	Horse Riding Accident	Court Common Pleas of Chester County	Michael O. Pansini and Steven M. Mezrow of Pansini & Mezrow	Sue M. McDonnell, Ph.D. of Unionville, PA	1/14/2010
35	Martik Brothers Inc. v. Huntington National Bank	\$2,430,000	Negligence: Negligent Misrepresentation	U.S. District Court, Western District of Pennsylvania	Phillip J. Binotto, Jr., Canonsburg, PA of Eckert, Seamans, Cherin & Mellott, L.L.C.; Marcia DePaula, Canonsburg, PA of Eckert, Seamans, Cherin & Mellott, L.L.C.; Jana P. Grimm, Canonsburg, PA of Eckert, Seamans, Cherin & Mellott, L.L.C.	David M. Williamson, P.E., Project Management, Pittsburgh, PA	3/30/2010

WHATEVER HAPPENED TO THE
 IDEA THAT ARBITRATION WOULD
 COST LESS THAN LITIGATION?

WAS THAT JUST A TRIAL BALLOON?



Richard Chernick, Esq.
 V.P. and Managing Director,
 JAMS Arbitration Practice

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TOP PA SETTLEMENTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
1	United States ex rel. Wetta v. AstraZeneca	\$520,000,000	Whistleblower	United States District Court, Eastern District of Pennsylvania	Stephen A. Sheller and Brian J. McCormick Jr. of Sheller PC; Michael Mustokoff, Mark Lipowicz and teresa Cavenagh of duane Morris; John C. Dodds of Morgan Lewis & Bockius		4/27/2010
2	Bro-Tech Corp. v. Thermax Inc.	\$38,000,000	Intellectual Property: Trade Secrets	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Jonathan E. Minsker, New York, NY of Kasowitz, Benson, Torres & Friedman, LLP; Joseph J. McGovern, Philadelphia, PA of Obermayer Rebmann Maxwell & Hippel, LLP; Shari Shapiro, Philadelphia, PA of Obermayer Rebmann Maxwell & Hippel, LLP; Sidney L. Gold, Philadelphia, PA of Sidney L. Gold & Associates, P.C.		2/24/2010
3	Frederick v. Range Resources-Appalachia LLC	\$29,000,000	Contracts: Breach of Contract	U.S. District Court, Western District of Pennsylvania, Erie	Joseph E. Altomare, Titusville, PA of Law Office of Joseph E. Altomare		7/20/2010
4	Commonwealth of Pennsylvania v. Schering-Plough Corporation	\$20,000,000	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Jr., Philadelphia, PA, of Haviland Hughes LLC.	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Dr. Frederick R. Warren-Boulton, MICRA, Washington, D.C.	12/1/2010
5	Michelle Joseph v. Lakewood Engineering & Manufacturing Company	\$18,275,000	Personal Injury, Products Liability	Court of Common Pleas of Philadelphia County	Alan M. Feldman and Daniel J. Mann, Philadelphia, PA of Feldman Shepherd	Royal A. Bunin, M.B.A., Bunin & Associates, Economics, Wynnewood, PA; Craig D. Clouser, P.E., Consulting Engineers & Scientist Inc., Metallurgy, Malvern, PA; Louis H. Gahagan, Cause & Origin, Lafayette Hill, PA; Mark S. Glassman, M.D., Pediatric Gastroenterology, Norwalk, CT; Daniel T. Gottuk, Ph.D., P.E., Fire Science, Baltimore, MD; Keith Jackson, Structural, McMurray, PA; Michael D. Katz, M.D., Pediatric Neurology, Hackensack, NJ; David J. Massari, Ph.D., Neuropsychology, Philadelphia, PA; Terri S. Patterson, R.N., Life Care Planning, Plymouth Meeting, PA; Wayne K. Ross, M.D., Forensic Pathology, Lancaster, PA; Mark P. Solomon, M.D., Plastic Surgery/Reconstructive Surgery, Bala Cynwyd, PA; Annie Steinberg, M.D., Psychiatry, Narberth, PA; Michael Wald, Electrical, Annapolis, MD; K. Scott Barnhill, P.E., Fire Science, Raleigh, NC; Robert Buckley, Cause & Origin, Philadelphia, PA; Harold B. Hairston Sr., Safety, Philadelphia, PA; Robert Miller, Electrical Heaters, Chicago, IL; Lawrence P. Sacco, P.E., Dawson Engineering Incorporated, Electrical, Edison, NJ; James A. Stavros, C.P.A., Forensic Resolutions Inc., Economics, Haddonfield, NJ; Mona Goldman Yudkoff, R.N., M.P.H., C.R.R.N., Mona Yudkoff Rehab Consultants, Life Care Planning, Bala Cynwyd, PA	8/16/2010

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Wolk and fellow attorneys Bradley Stoll and Cynthia Devers of his firm represented the crash survivor, who was 15 years old at the time, and three of those who died. The estate of the fourth victim did not bring a claim, he said.

Wolk argued the carburetor on the engine died at takeoff, causing power loss that resulted in an unsuccessful emergency landing. The pilot crashed not far from the airport where he was trying to return for the landing.

Defense attorney James Robinson of Cozen O'Connor said he argued there was nothing wrong with the carburetor and that it was pilot error that caused the crash. He argued the pilot overloaded the plane, causing it to stall.

"Lycoming is disappointed with the verdict, particularly given that the National Transportation Safety Board, in its investigation of the accident, found that the accident and the regrettable loss of life had absolutely nothing to do with Lycoming's engine," Robinson said. "Lycoming Engines will take the necessary legal steps for review in the trial court and pursue an appeal to overturn an unwarranted verdict."

The \$24.7 million in compensatory damages was split in varying amounts among the four plaintiffs and the \$64 million in punitive damages was awarded in a lump sum to the plaintiffs, according to the verdict sheet.

Filed in 2001, the case has gone back and forth to the state Superior and Supreme courts twice. Wolk said many of the issues on appeal dealt with the General Aviation Revitalization Act of 1994, which bars claims against an aircraft or component manufacturer more than 18

years from when the product was made. An exception to that rule, Wolk said, was whether the manufacturer willfully and materially misrepresents information to the Federal Aviation Administration.

On the first question of the verdict sheet, the 11-member jury found that exception to the statute of limitations applied in this case. Once that question was answered, the jury moved on to the state law issues of strict liability and negligence.

The jury came back 10-1 on the case, finding the product defective, Lycoming Engines negligent and the conduct meritorious of punitive damages, according to the verdict sheet. It found pilot Lendon Pridgen was not negligent and found Lycoming Engines was 100 percent negligent.

Wolk said the case could have been settled for "a fraction of the verdict." He said the offer prior to and during the two-week trial was \$75,000.

In talking to the jurors after the trial, Wolk said, the biggest take away was that they said they didn't find Lycoming Engines' vice president of engineering and its piloting expert credible.

The jury awarded Karen Pridgen, as representative of Lendon Pridgen's estate, \$5 million for her wrongful death claim and \$2.3 million for her survival action. As representative of Anthony Cipparone's estate, Karen Pridgen was awarded \$5 million for the wrongful death claim and \$3.8 million for the survival action. As representative of the estate of Dan Diggen, Denise Diggen was awarded \$5 million for the wrongful death action and \$600,000 for the survival action. Plaintiff Tyler Johnson was awarded \$3 million in non-economic damages, according to the verdict sheet.

Wolk said the surviving victim, Johnson,

is now fine except for the fact the he suffers from post-traumatic stress disorder "in the worst way." Wolk said he plans to file a motion for seven-and-a-half years' worth of delay damages.

The accident happened shortly after takeoff from Youngstown-Elser Metro Airport in North Lima, Ohio. The plane had initially taken off from Oshkosh, Wis., and refueled in Ohio. Upon takeoff from Ohio, the plane was headed to Pottstown, Pa., when it crashed, according to court papers.

– *The Legal Intelligencer*

Commonwealth v. Johnson & Johnson \$51 Million

The Commonwealth Court has entered a more than \$51 million bench verdict in favor of the Pennsylvania state government against pharmaceutical manufacturer Johnson & Johnson for allegedly overcharging state programs and consumers for prescription drug reimbursements.

On Dec. 7, Judge Robert Simpson filed a non-jury decision ordering the New Brunswick, N.J.-based drugmaker to reimburse the state government \$45,283,562 and pay civil penalties in the amount of \$6,567,000.

The total amount of the verdict was \$51,850,562.

In his decision in *Commonwealth v. Johnson & Johnson*, Simpson also barred Johnson & Johnson from quoting either to the Pennsylvania Department of Public Welfare or to state programs increased average wholesale prices (AWPs) for its drugs without also reporting current acquisition costs such as average manufacturers' prices or average sales prices.

In addition, Simpson prohibited the company from promoting or marketing

"spreads" – the difference between the price a prescriber pays for a drug and the price it is reimbursed for that drug – for any of its drugs that are reimbursed by state programs.

Simpson's ruling came a little more than two-and-a-half weeks after the Nov. 19 close of a five-week trial in the case.

In its corrected amended complaint, the state alleged that Johnson & Johnson "deliberately overstated" the AWP for its drugs, resulting in state programs – particularly Medicaid and the Pharmaceutical Assistance Contract for the Elderly, or PACE, Program – and consumers paying too much to reimburse prescribers and creating a spread that Johnson & Johnson could then market to drug dispensers.

The complaint offered the example of the Johnson & Johnson-manufactured Remicade, a physician-administered rheumatoid arthritis drug, which the company marketed based on the notion that physicians could profit from dispensing the drugs since the price at which they purchased them was lower than the price at which they would be reimbursed by the state.

The complaint further alleged that Johnson & Johnson engaged in similar misconduct when marketing prescription drugs to pharmacists.

The complaint said the company attempted to conceal the actual AWPs of its drugs by providing rebates, discounts and other financial incentives to pharmacists and asking them to keep those incentives confidential.

According to the complaint, Johnson & Johnson raised the AWPs of its drugs yearly without reflecting these discounts.

The state said the drugmaker violated

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TOP PA SETTLEMENTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
6	Ferguson v. Horsehead Corp., et al.	\$16,500,000	Industrial Accident	Lehigh County Court of Common Pleas	Andrew R. Duffy, Philadelphia, PA of Saltz, Mongeluzzi, Barrett & Bendesky, P.C.; Robert J. Mongeluzzi, Philadelphia, PA of Saltz, Mongeluzzi, Barrett & Bendesky, P.C.; Eunice Trevor, Philadelphia, PA of Saltz, Mongeluzzi, Barrett & Bendesky, P.C.; Robert Zimmerman, Philadelphia, PA of Saltz, Mongeluzzi, Barrett & Bendesky, P.C.	Sigrid Blome-Eberwein, M.D., Plastic Surgery/Reconstructive Surgery, Allentown, PA; David T. Bunin, F.S.A., Bunin and Associates, Economics, Wynnewood, PA; Royal A. Bunin, M.B.A., Bunin & Associates, Economics, Wynnewood, PA; Stephen A. Estrin, WSO-CSM/CSSD(SL), BCFE, FAFCE, Stephen A. Estrin & Co., Inc., Construction Safety, Sarasota, FL; Guy W. Fried, M.D., McGee Rehabilitation Center, Spinal Cord Damage, Philadelphia, PA; Mark Lukas, Ed.D., Vocational Rehabilitation, Media, PA; John O'Brien, M.D., Psychiatry, New Holland, PA; Nina Paonessa, D.O., Orthopedics, Allentown, PA; David Toler, P.E., Engineering, Edison, NJ; Mona Goldman Yudkoff, R.N., M.P.H., C.R.R.N., Mona Yudkoff Rehab Consultants, Life Care Planning, Bala Cynwyd, PA	8/20/2010
7	McKinney v. Philadelphia Housing Authority	\$11,788,000	Negligence: Negligent Maintenance	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Royce W. Smith, Philadelphia, PA of Kline & Specter, P.C.; Michael A. Trunk, Philadelphia, PA of Kline & Specter, P.C.; Garabet M. Zakeosian, Philadelphia, PA of Kline & Specter, P.C.	Betsy Bates, R.N., Life Care Planning, Elkton, MD; Guy W. Fried, M.D., McGee Rehabilitation Center, Physical Rehabilitation, Philadelphia, PA; Eckardt Johannning, M.D., Occupational Medicine, Albany, NY; Phil Morey, Ph.D., Industrial Hygiene, Gettysburg, PA; E. Neil Schachter, M.D., Pulmonology, New York City, NY; Michael Wichter, Ph.D., University of Pennsylvania, Economics, Philadelphia, PA; Jack Adler, M.D., F.A.C.P., Pulmonology, New York, NY; Gary Barach, C.P.A., Economics, Philadelphia, PA; Harriet Burge, Ph.D., Stachybotrys-fungus, Novato, CA; Ronald Carr, P.E., Structural, Bethlehem, PA; Frederick Cogen, M.D., Allergy/Asthma/Immunology, Meadowbrook, PA; John Kirby, M.D., Cooper Physicians Office, Lifespan Assessment, Cherry Hill, NJ; Allan E. Klein, Professional Management Services, Property Management, Sherman Oaks, CA; Bernard J. Morosco, Quality Control, New Hartford, NY; Harry M. Neill, C.I.H., Assessment & Evaluations, Exton, PA; James Noone, M.D., Holy Redeemer Hospital, Anesthesiology, Meadowbrook, PA; Julius Ortenzo, Quality Control, El Cajon, CA; Patrick Rafferty, M.S.P.H., C.I.H., Rafferty & James Consultants in Indoor Air Quality, Air Sampling & Testing, Devon, PA; Allan Snyder, Property Management, Aliso Viejo, CA; Mona Goldman Yudkoff, R.N., M.P.H., C.R.R.N., Mona Yudkoff Rehab Consultants, Life Care Planning, Bala Cynwyd, PA	5/3/2010
8	Estate of Leach v. Universal Health Services Inc.	\$10,500,000	Negligence: Negligent Hiring	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Mark A. Hoffman, Philadelphia, PA of Kline & Specter, P.C.; David Inoscho, Philadelphia, PA of Kline & Specter, P.C.; Thomas R. Kline, Philadelphia, PA of Kline & Specter, P.C.		2/4/2010

Obermayer proudly congratulates JOSEPH J. MCGOVERN

for obtaining \$38 Million for Bro-Tech Corp., the highest settlement in an Intellectual Property case in Pennsylvania in 2010*


As reported in *The Legal Intelligencer*, 5/31/11, *The Bro-Tech Corp. (USA) v. Thermax Inc., et al. (India)



The threat of corporate espionage resulting in trade secrets finding their way into the hands of foreign competitors is a reality in American business today. Using modern technology, a disaffected and determined high-level employee may bypass security systems, drain the life-blood of a company and transfer it to a competitor on the other side of the world very quickly. The scope of theft may not be known for months and the damage may be irreparable unless aggressive action is taken to stop losses. Success in these cases requires a creative, tenacious and experienced advocate.

Joseph J. McGovern, Chairman of Obermayer's Environmental Law Department and a Senior Partner, is highly regarded as one of the region's foremost litigators in complex matters involving science and technology. Prior to joining Obermayer in 1990, he served as an Assistant United States Attorney for the District of Massachusetts and as Senior Counsel in the U.S. Justice Department in Washington, DC. Mr. McGovern has handled major litigations in 15 states and the District of Columbia. Mr. McGovern has represented Bro-Tech Corp., a specialty chemical manufacturer headquartered in Pennsylvania, since 2005.

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Pennsylvania's Unfair Trade Practice and Consumer Protection Law.

Simpson agreed, saying Johnson & Johnson engaged in "deceptive practices."

Johnson & Johnson argued in its motion for a compulsory nonsuit that the state knew the AWP's did not reflect actual acquisition costs but chose to rely on them anyway.

"The court need look no further than the commonwealth's own actions to conclude that full knowledge regarding what AWP's do and do not represent had no causal impact on its decision to use AWP as its pricing benchmark – it still uses AWP's today."

But co-lead counsel for the state government, Donald E. Haviland Jr. of Haviland Hughes in Philadelphia, argued that the state is required by law to rely on AWP's.

In a footnote to the decision, Simpson said the court rejected as not credible the testimony of Johnson & Johnson's expert, Ernest R. Berndt, and others that the state "had knowledge of the prices paid for Johnson & Johnson defendants' branded drugs which was superior to that enjoyed by those defendants."

The drugmaker also argued in its motion that the state was judicially estopped from taking the opposite position in this case that it has successfully taken in prior litigation in which it has argued that it intended its reimbursement rates to be higher than those in other states to ensure drug dispensers make a profit on the cost of ingredients.

Johnson & Johnson also said in its motion that the state government's claims presented a non-justiciable political question because they sought damages based on the rates the programs would have paid if they had relied on lower reimbursement rates implemented by other states and private payers.

But Simpson rejected both arguments without further elaboration.

Simpson did, however, rule in favor of Johnson & Johnson with regard to the plaintiffs' claims of unjust enrichment, misrepresentation/fraud and civil conspiracy.

Haviland said that, at trial, Johnson & Johnson further contended that the spreads it had created were not as large as those of other drug manufacturers.

But, according to Haviland, the state argued that any spread is wrong.

"If you're gaming the system, you're gaming the system," he said.

Haviland's co-lead counsel, Barry R. Eichen of Eichen Crutchlow & McElroy in Edison, N.J., said he felt the verdict was "fair to both sides."

"I think it was a good result for the state, but I also think it was a pretty good result for the defendants," he said. "Frankly, I think the overcharges were higher. Our damages model was \$101 million."

Haviland, who worked on the case for 10 years before bringing Eichen in as co-lead counsel, said he was "really pleased" by the court's decision because it benefits Medicaid and the PACE Program.

Michael Heinley, spokesman for the Pharmaceutical Companies of Johnson &

Johnson, said in an e-mailed statement that the company is "pleased with the court's decision dismissing the majority of the claims brought by the commonwealth."

"We respectfully disagree with the court's provisional finding under the Pennsylvania Unfair Trade Practices and Consumer Protection Law and intend to pursue our arguments through motions before the court during the next phase of this case," the statement continued. "We believe the record at trial establishes that the J&J Companies acted responsibly with regard to drug pricing, and that Pennsylvania made reimbursement decisions with full knowledge regarding Average Wholesale Price's role in the pharmaceutical industry as a starting point for determining drug reimbursements."

– *The Legal Intelligencer*

Estate of Baumener v. A.W. Chesterton Co.: \$50 Million

From 1965 to 1966, plaintiffs' decedent Barry Baumener worked as a plumber for Zerbe Plumbing in Wyomissing; from 1967 to 1972, he was a laborer at Textile Machine Works in Reading; and from 1972 to 2008, he worked as a laborer at Carpenter Technology (also known as CarTech) in Reading.

Prior to his death, Baumener alleged that, during his tenures as a plumber and laborer, he was exposed to and inhaled asbestos dust and asbestos fibers that were in products manufactured, sold and/or supplied by A.W. Chesterton Co.; Allied Glove Corp.; American Optical Corp.; Baltimore Aircoil Co.; Crane Co.; Eaton Corp., as successor-in-interest to Cutler Hammer Inc.; Foseco Inc.; Garlock Inc.; Goulds Pumps Inc.; Grinnell Corp.; Honeywell Inc.; Industrial Holdings Corp., f/k/a Carborundum Co.; Ingersoll-Rand; Insul Co. Inc.; ITT Corp., f/k/a ITT Industries (Bell & Gossett); Mine Safety Appliance Co.; Nibco Inc.; Oglebay Norton Co., and its division Ferro Engineering; Reading Crane & Engineering Co.; Safety First Industries Inc., in its own right and as successor-in-interest to Safety First Supply Inc.; Saint-Gobain Abrasives Inc., formerly known as Norton Co.; Square D Co.; Thiem Corp., and its division, Universal Refractories; Viacom Inc., successor by merger to CBS Corp., f/k/a Westinghouse Electric Corp.; and Rust Engineering & Construction Inc. (Swindell Furnaces).

As a result of his exposure to the asbestos-containing products, Baumener developed mesothelioma that was diagnosed on April 20, 2009, at age 62. On Oct. 13, Baumener succumbed to the disease. Prior to his death, Baumener sued the aforementioned companies for products liability. All of the defendants settled confidentially from the case prior to trial, except for Oglebay Norton Co. According to Baumener, he spent his entire career at CarTech in the plant's melt shop, with the exception of plant shutdowns two to three weeks a year, when he would work either in the melt shop or in other areas of the plant. In the melt shop, Baumener worked as a laborer for a couple of weeks then as a utility man, setup man, pit man and pit leader from 1972 until late 1978, when he transferred to the continuous caster area of the melt shop. His responsibilities

included pouring steel and hot tops: the utility man cleaned up the area where the hot tops are stripped from the ingots after the steel is poured in them, and the pit man prepared the ingots for pouring and would put hot tops on top of the ingots. In his video deposition, Baumener testified that a crew was made up of a utility man, five pit men, a pit leader, a ladle man and a ladle man helper; a different crew would have two setup men, who prepared the molds, putting the hot tops on them, just the same as the pit men. Baumener and his co-workers identified Oglebay's Ferro Engineering division as the manufacturers of the subject hot tops.

According to plaintiffs' material science expert, Baumener would have had exposure to hot tops before the steel was poured during setup and after the steel was poured when the ingot was being stripped, regardless of whether he was a utility man, setup man, pit man or pit leader. Therefore, the source of Baumener's asbestos exposure was the result of his working with the defendant's hot tops.

Defense counsel argued that Oglebay Norton Co. did not sell any asbestos-containing products to Baumener's workplace, as it sold two types of non-asbestos containing products to his workplace in the late 1970s and early 1980s. This theory was supported by a corporate representative of Oglebay.

Baumener underwent chemotherapy following his mesothelioma diagnosis and was placed in hospice care shortly before his death. During his video deposition, which was recorded four days prior to his death, Baumener talked about his deteriorating condition, in which tumors in his lungs and abdomen cut off his air supply and caused him to vomit whenever he ingested food. He also talked about how he retired at age 61 to become a full-time caregiver for his wife, who suffers from multiple sclerosis.

The plaintiff sought to recover a maximum loss of \$1.7 million to care for Baumener's widow and a total economic loss of \$1,553,811 on behalf of the estate, which included loss of Social Security benefits and lost household services.

The jury found that Oglebay Norton Co. and its division, Ferro Engineering, manufactured, sold and/or supplied an asbestos-containing product to which Baumener was exposed. Jurors also found that the following defendants were negligent and their negligence was a factual cause of Baumener's mesothelioma: A.W. Chesterton Co.; Allied Glove Corp.; American Optical Corp.; Baltimore Aircoil Co.; Crane Co.; Eaton Corp., as successor-in-interest to Cutler Hammer Inc.; Foseco Inc.; Garlock Inc.; Goulds Pumps Inc.; Grinnell Corp.; Honeywell Inc.; Industrial Holdings Corp., f/k/a Carborundum Co.; Ingersoll-Rand; Insul Co. Inc.; ITT Corp., f/k/a ITT Industries (Bell & Gossett); Mine Safety Appliance Co.; Nibco Inc.; Oglebay Norton Co., and its division Ferro Engineering; Reading Crane & Engineering Co.; Safety First Industries Inc., in its own right and as successor-in-interest to Safety First Supply Inc.; Saint-Gobain Abrasives Inc., formerly known as Norton Co.; Square D Co.; Thiem Corp., and its division, Universal Refractories; Viacom Inc.,

successor by merger to CBS Corp., f/k/a Westinghouse Electric Corp.; and Rust Engineering & Construction Inc. (Swindell Furnaces). Each of the 25 defendants was attributed 4 percent in causal negligence as to a factual cause of Baumener's mesothelioma. Baumener's estate and widow were awarded \$50 million.

This report is based on court documents and information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

Estate of Torres v. Wachovia Bank, N.A.: \$46.1 million

On Sept. 12, 2005, plaintiffs' decedent Barbara Torres, 32, a bank teller, was fatally shot in the parking lot known as X and W at Reed and Washington streets, in Reading, as she left her job at a nearby Wachovia Bank. Another bank employee also leaving work witnessed the shooting and identified the shooter as Barbara's estranged husband, Miguel Torres. Mrs. Torres had obtained a restraining order against Mr. Torres, who had been showing up at the bank with gifts and attempting to reconcile their marital relationship. He shot his wife twice.

Barbara's parents, Angel and Catherine T. Lebron, on behalf of the estate of Torres, sued Miguel Torres for wrongful death. They also sued the parking lot and the bank for negligent security. The bank and parking lot defendants settled for a confidential amount prior to trial.

Mr. Torres has remained a fugitive from justice since the date of the shooting and has been indicted for first-degree murder. He is believed to be residing in the Dominican Republic.

The lawsuit proceeded to a plenary trial with the defendant in default. Witnesses were called to prove the shooting death and the circumstances leading up to it.

Mrs. Torres died from gunshot wounds. She was the oldest of her 10 siblings and was survived by her parents, who she helped financially by contributing approximately \$150 to \$200 per month toward bill payments. Her mother testified that it cost \$159,000 to administer her daughter's estate, including funeral expenses and property taxes.

An economist testified that Mrs. Torres would have earned \$981,000 if she had worked 50 additional years, based on her annual salary of \$25,900 and her pension and earning capacity.

The jury awarded \$46,168,000, which included \$168,000 for compensatory damages under the Wrongful Death Act and \$46 million for compensatory and punitive damages.

This report includes information that was gleaned from court documents and an interview of plaintiffs' counsel. Counsel for the settling defendants were not asked to contribute.

Berger v. Zeghibe: \$34.1 million


After two and a half days of deliberation, a federal jury found three defendants had acted fraudulently in a real estate investment deal.

Defendants Eli Weinstein, Ravinder Chawla, World Acquisition Partners

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TOP PA SETTLEMENTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
9	Commonwealth of Pennsylvania v. AstraZeneca Pharmaceuticals	\$10,000,000	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Jr., Philadelphia PA of Haviland Hughes LLC	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Frederick R. Warren-Boulton, MICRA, Washington, D.C.	5/1/2010
10	Rosa v. Penn-Jersey	\$10,000,000	Negligence: Negligent Maintenance	Philadelphia County Court of Common Pleas	Allan J. Aigeldinger, III, Philadelphia, PA of Craig A. Altman, P.C.; Steven M. Mezrow, Philadelphia, PA of Pansini & Mezrow; Michael O. Pansini, Philadelphia, PA of Pansini & Mezrow	Donald Aull, Accident Investigation & Reconstruction/ Failure Analysis/Product Liability, New York, NY	5/7/2010
11	Davis v. SOH Distribution Co. Inc.	\$10,000,000	Employment: Fair Labor Standards Act	U.S. District Court, Middle District of Pennsylvania, Harrisburg	Joseph J. Gigliotti, Fullerton, CA of Gigliotti & Gigliotti; Clayton D. Halunen, Minneapolis, MN of Halunen & Associates; Shawn J. Wanta, Minneapolis, MN of Halunen & Associates; Arnold Levin, Philadelphia, PA of Levin, Fishbein, Sedran & Berman; Daniel C. Levin, Philadelphia, PA of Levin, Fishbein, Sedran & Berman; Charles E. Schaffer, Philadelphia, PA of Levin, Fishbein, Sedran & Berman; Ira Spiro, Los Angeles, CA of Spiro Moss, LLP		3/29/2010
12	Commonwealth of Pennsylvania v. Aventis Pharmaceuticals	\$10,000,000	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Philadelphia PA, of Haviland Hughes LLC	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Dr. Frederick R. Warren-Boulton, MICRA, Washington, D.C.	10/1/2010
13	Potsko v. Oshkosh Truck Corp.	\$10,000,000	Wrongful Death	Philadelphia County Court of Common Pleas	Matthew A. Casey, Philadelphia, PA of Ross Feller Casey, LLP; Shanon S. Levin, Philadelphia, PA of Ross Feller Casey, LLP		3/17/2010
14	Goodman v. T.H. Properties, Inc., et al.	\$8,200,000	Construction Site Accident	Philadelphia County Court of Common Pleas	Michael O. Pansini, Philadelphia, PA of Pansini & Mezrow	Stephen A. Estrin of Sarasota, FL	2/22/2010
15	Commonwealth of Pennsylvania v. TAP Pharmaceutical Products, Inc.	\$8,000,000	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Jr., Philadelphia PA, of Haviland Hughes LLC	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Dr. Frederick R. Warren-Boulton, MICRA, Washington, D.C.	12/1/2010
16	Tavares v. Erickson Construction, LLC, et al.	\$7,887,000	Negligence	Court of Common Pleas of Philadelphia County	Robert Mongeluzzi and Ara Richard Avrigian, Philadelphia, PA of Saltz Mongeluzzi	Richard Doty, Ph.D., Otolaryngology, Philadelphia, PA; Stephen A. Estrin, WSO-CSM/CSSD(SL), BCFE, FAFCE, Stephen A. Estrin & Co., Inc., Construction Safety, Sarasota, FL; Guy W. Fried, M.D., McGee Rehabilitation Center, Physical Medicine, Philadelphia, PA; Donald E. Jennings, Ed.D., Vocational Rehabilitation, Philadelphia, PA; Edward A. Maitz, Ph.D., Neuropsychology, Philadelphia, PA; Gene Z. Salkind, M.D., Neurology, Huntingdon Valley, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; Mona Goldman Yudkoff, R.N., M.P.H., C.R.R.N., Mona Yudkoff Rehab Consultants, Life Care Planning, Bala Cynwyd, PA; Susan Davis, R.N., Life Care Planning, Philadelphia, PA; William E. Harris, A.V.A., Economics, Philadelphia, PA; Michael W. Hayslip, P.E., Engineering, Centerville, OH	7/1/2010



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TOP PA SETTLEMENTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
17	Joshua Tate v. Messiah College	\$7,600,000	Premises Liability	Court of Common Pleas of Philadelphia County	James Ronca, Philadelphia, PA of Anapol Schwartz	Guy Fried, MD of Philadelphia	11/1/2010
18	Smith v. Sandals Resorts International Ltd.	\$6,520,000	Wrongful Death: Survivorship Action	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Peter D. Friday, Pittsburgh, PA of Friday Porta Cox & Ward, LLC; Leon J. Greenspan, White Plains, NY of Greenspan & Greenspan; Michael E. Greenspan, White Plains, NY of Greenspan & Greenspan; Edward D. Ohlbaum, Philadelphia, PA of Law Office of Edward D. Ohlbaum; Douglas C. Broeker, Miami, FL of Sweetapple, Broeker & Varkas, P.L.	Marc Rabinoff, Ed.D., Labels & Warnings, Denver, CO; Laura Bonanomi, Ph.D., Economics, New York, NY; Sanford H. Davne, M.D., Orthopedic Surgery, Bala Cynwyd, PA; Patrick A. Gaughan, Ph.D., Economics, New York, NY; Francesco A. Pia, Ph.D., Labels & Warnings, Larchmont, NY; Ali M. Sadegh, Ph.D., Biomechanical, Franklin Lakes, NJ	4/19/2010
19	A.J.M. v. Northeastern Educational Intermediate Unit	\$5,000,000	Civil Rights: 42 USC 1983	U.S. District Court, Middle District of Pennsylvania, Scranton	Edwin A. Abrahamsen Jr., Scranton, PA of Abrahamsen, Moran & Conaboy, P.C.; James J. Conaboy, Scranton, PA of Abrahamsen, Moran & Conaboy, P.C.; Lawrence J. Moran, Scranton, PA of Lenahan & Dempsey, P.C.; Dennis C. McAndrews, Berwyn, PA of McAndrews Law Offices, P.C.; Christina A. Coury, Moosic, PA of Moran Law Group, LLC	Andrew Klein, Ed.D., Special Education, Philadelphia, PA; Jeffrey Naser, M.D., Child Psychiatry, Wayne, PA; Susan Scheerin, R.N., Nursing, Scranton, PA; Edward F. Dragan, Ed.D., Education Management Consulting, Learning Disabilities, Lambertville, NJ; Jessy Sandoval-Barrett, M.D., Adolescent Psychiatry, Reading, PA	5/28/2010
20	Commonwealth of Pennsylvania v. Bayer Corporation	\$4,700,000	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Jr., Philadelphia PA, of Haviland Hughes LLC	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Dr. Frederick R. Warren-Boulton, MICRA, Washington, D.C.	12/1/2010
21	DiPietro v. DiPietro	\$4,315,500	Hotel/Restaurant: Dram Shop	Philadelphia County Court of Common Pleas	David R. Cherry, Philadelphia, PA of Cherry, Fieger & Marciano, LLP; Kevin R. Marciano, Media, PA of Cherry, Fieger & Marciano, LLP	John DiGregorio, M.D. Ph.D., Toxicology, Philadelphia, PA; Guy W. Fried, M.D., McGee Rehabilitation Center, Physical Medicine, Philadelphia, PA; Alex Karras, O.T.R., Life Care Planning, Frazer, PA; Daniel Rapucci, Vocational Assessment, Malvern, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; Michael DeVivo, M.D., Physical Medicine, Birmingham, AL; Eric Fine, M.D., Addiction Behavior, Philadelphia, PA; Robert Goldman, M.D., Physical Medicine, Philadelphia, PA; Richard I. Katz, M.D., Albert Einstein Medical Center, Neurology, Philadelphia, PA; Kathleen R. Kuntz, R.N., Life Care Planning, Jamison, PA; Rosalyn Pierce, Ph.D., RP Vocational Rehabilitation, LLC, Vocational Rehabilitation, Philadelphia, PA; James A. Stavros, C.P.A., Forensic Resolutions Inc., Economics, Haddonfield, NJ; Javier Waksman, M.D., Toxicology, Aurora, CO	4/9/2010
22	In Re: Hydrogen Peroxide Antitrust Litigation	\$4,200,000		U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Mario N. Alioto; Brian Barry, Los Angeles, CA; Anthony J. Bolognese; Krishna B. Narine, Jenkintown, PA; Kevin H. Sitnik, Columbia, SC; Gordon Ball, Knoxville, TN of Ball & Scott; Joshua H. Grabar, Philadelphia, PA of Bolognese & Associates; Agnieszka M. Fryszman, Washington, DC of Cohen Millstein Hausfeld & Toll; Andrew B. Bullion, Washington, DC of Cohen Milstein Hausfeld & Toll PLLC; Joseph W. Cotchett, Burlingame, CA of Cotchett, Pitre, Simon & McCarthy; Richard A. Koffman, Philadelphia, PA of Fine Kaplan & Black; Steven A. Kanner, Bannockburn, IL of Freed Kanner London & Millen; William H. London, Bannockburn, IL of Freed Kanner London & Millen; Douglas A. Millen, Bannockburn, IL of Freed Kanner London & Millen; Solomon B. Cera, San Francisco, CA of Gold Bennett Cera & Sidener; Steven O. Sidener, San Francisco, CA of Gold Bennett Cera & Sidener; Linda P. Nussbaum, New York, NY of Grant & Eisenhoffer; Rex A. Sharp, Prairie Village, KS of Gunderson Sharp & Walke; William P. Butterfield, Washington, DC of Hausfeld LLP; Reena Gambhir, Washington, DC of Hausfeld LLP; Michael D. Hausfeld, Washington, DC of Hausfeld LLP; Vincent J. Esades of Heins Mills & Olson; Samuel D. Heins, Minneapolis, MN of Heins Mills & Olson; Robert N. Kaplan, New York, NY of Kaplan Fox & Kilsheimer; Jason A. Zweig, New York, NY of Kaplan Fox & Kilsheimer; Richard J. Kilsheimer, New York, NY of Kaplan Fox & Kilsheimer; William J. Blechman, Miami, FL of Kenny, Nachwalter, Seymour, Arnoldi Critchlow & Spector; Jeffrey A. Klaffer, Rye Brook, NY of Klaffer & Olsen; Christopher J. McDonald, New York, NY of Labaton Sucharow & Rudoff LLP; Bernard Persky, New York, NY of Labaton Sucharow & Rudoff LLP; Randy Renick, Pasadena, CA of Law Offices of Randy Renick; Richard A. Lockbridge, Minneapolis, MN of Lockbridge Grindal Nauen & Holstein; W. Joseph Bruckner, Minneapolis, MN of Lockbridge Grindal Nauen & Holstein; Sunny H. Kim, Minneapolis, MN of Lockbridge Grindal Nauen; John G. Felder, Jr., Columbia, SC of McGowan Hood & Felder; Chad A. McGowan, Rock Hill, SC of McGowan Hood Felder & Johnson; Geoffrey Spellberg, Oakland, CA of Meyers Nave Riback Silver & Wilson; Bruce L. Simon, San Francisco, CA of Pearson, Simon, Warshaw & Penny, LLP; Stanley Grossman, New York, NY of Pomerantz, Levy, Haudek, Block 7 Grossman; Everett J. Bowman, Charlotte, NC of Robinson Bradshaw & Hinson; Lawrence C. Moore, III, Charlotte, NC of Robinson Bradshaw & Hinson; Silpa Myneni, Charlotte, NC of Robinson Bradshaw & Hinson; Roy M. Bell, San Diego, CA of Ross Dixon & Bell; Jason S. Hartley, San Diego, CA of Ross Dixon & Bell; Geoffrey C. Rushing, San Francisco, CA of Saveri & Saveri Inc.; Guido Saveri, San Francisco, CA of Saveri & Saveri Inc.; Cadjo Zirpoli, San Francisco, CA of Saveri & Saveri Inc.; Richard A. Saveri, San Francisco, CA of Saveri & Saveri; Daniel R. Karon, Cleveland, OH of Weinstein Kitchenoff Scarlato Karon & Goldman; Thomas M. Bradshaw, Kansas City, KS of White Goss Bowers March Schulte & Weisenfels; Daniel O. Herrington, Kansas City, MO of White Goss Bowers March Schulte & Weisenfels; Matthew J. O'Laughlin, Kansas City, MO of White Goss Bowers March Schulte & Weisenfels; Paul T. Sullivan of Zelle Hofman Voebel & Mason; Francis O. Scarpulla, San Francisco, CA of Zelle Hofman Voebel Mason & Gette; Lani C. Cossette, Washington, DC of Zuckerman Spaeder		9/16/2010

TOP PA SETTLEMENTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
23	Estate of Iatarola v. Campbell's Auto Express Inc.	\$4,000,000	Wrongful Death	Philadelphia County Court of Common Pleas	Steven M. Mezrow, Philadelphia, PA of Pansini & Mezrow, P.C.; Michael O. Pansini, Philadelphia, PA of Pansini & Mezrow, P.C.	Rosalyn Pierce, M.A., Vocational Rehabilitation, Philadelphia, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; Barbara Wolf, M.D., Pathology, Leesburg, FL; Ian Hood, M.D., Forensic Pathology, Philadelphia, PA; Dwayne G. Owen, Accident Investigation & Reconstruction/Failure Analysis/Product Liability, Champaign, IL; Stephen J. Schorr, Accident Reconstruction, Philadelphia, PA; Chad L. Staller, The Center for Forensic Economic Studies, Economics, Philadelphia, PA; Jasen M. Walker, Ed.D., Vocational Rehabilitation, Valley Forge, PA	6/22/2010
24	Schlier v. Captain John G. Rice and Schlier v. Lt. David Douglas and Wreckers International v. Commonwealth of Pennsylvania and Pennsylvania State Police	\$4,000,000	First Amendment	United States District Court, M.D. Pa.	Michael T. Sweeney, Cletus P. Lyman and Michael S. Fettner of Lyman & Ash; Sarah C. Yergler of the State Office of Attorney General; R. H. Hawn Jr. of the Pennsylvania State Police Chief Counsel's Office		2/1/2010
25	Commonwealth of Pennsylvania v. Dey Laboratories	\$4,000,000	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Jr., Philadelphia PA, of Haviland Hughes LLC	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Dr. Frederick R. Warren-Boulton, MICRA, Washington, D.C.	12/1/2010
26	Butler v. Urban Brands Inc.	\$3,250,000	Motor Vehicle: Rear-ender	Montgomery County Court of Common Pleas	Harry A. Dorian Jr., Bensalem, PA of Dorian, Goldstein, Wisniewski & Orchinik, P.C.	Andrew G. Bongiovanni, D.O., Internal Medicine, Secane, PA; David L. Hopkins, A.S.A., Economics, King of Prussia, PA; Mona Goldman Yudkoff, R.N., M.P.H., C.R.R.N., Mona Yudkoff Rehab Consultants, Life Care Planning, Bala Cynwyd, PA; Kathleen R. Kuntz, R.N., Life Care Planning, Philadelphia, PA; Irene C. Mendelsohn, Vocational Rehabilitation/Counseling, Philadelphia, PA; James A. Stavros, C.P.A., Forensic Resolutions Inc., Economics, Haddonfield, NJ; Merrick J. Wetzler, M.D., Orthopedic Surgery, Voorhees, NJ	12/10/2010
27	Delandro v. County of Allegheny	\$3,000,000	Civil Rights: 42 USC 1983	U.S. District Court, Western District of Pennsylvania, Pittsburgh	D. Aaron Rihn, Pittsburgh, PA of Robert Peirce & Associates, P.C.	Robert L. Tanenbaum, Ph.D., Economics	9/15/2010
28	Estate of Pluck v. Connell LP	\$3,000,000	Workplace Safety	Philadelphia County Court of Common Pleas	Richard M. Jurewicz, Esq., Philadelphia, PA of Galfand Berger, LLP	Frank L. Burg, COSHA, Safety (Construction), Woodstock, IL; Ian Hood, J.D., M.D., Ch.B., Forensic Pathology, Philadelphia, PA; Gordon D. Moskowitz, Ph.D., Biomechanical, Eagleville, PA; Walter Rockey, Railroads, Hanover, PA; Andrew G. Verzilli, Ph.D., Verzilli & Verzilli and Consultants Inc., Economics, Lansdale, PA; James L. Kenkel, Ph.D., University of Pittsburgh, Economics, Pittsburgh, PA; Tara L.A. Moore, Ph.D., Biomechanical, Philadelphia, PA; Randall E. Morris, Rail Sciences Inc., Railroad, Scottsdale, GA; Emanuel Rubin, M.D., Thomas Jefferson University, Pathology, Philadelphia, PA	2/5/2010



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TOP PA SETTLEMENTS OF 2010

RANK	CASE NAME	AMOUNT	TYPE OF ACTION	COURT	ATTORNEYS	EXPERTS	DATE
29	Estate of Leith v. People's Natural Gas Co.	\$2,900,000	Wrongful Death	Allegheny County Court of Common Pleas	Alan H. Perer, Pittsburgh, PA of Swensen, Perer & Kontos		5/14/2010
30	Joseph and Susan Rice v. Bayer Corporation, et al.	\$2,604,853	Pharmaceutical Liability	Court of Common Pleas of Philadelphia County	James Ronca, Philadelphia, PA of Anapol Schwartz	Dr. Glenn M. Chertow - Nephrology (San Francisco, CA)	5/1/2010
31	Ezell v. Delaware County School Bus Co.	\$2,000,000	Motor Vehicle: Bus	Philadelphia County Court of Common Pleas	David E. Sternberg, Philadelphia, PA of Wapner, Newman, Wigizer, Brecher & Miller, P.C.	Scott Bartlett, M.D., General Practice, Philadelphia, PA; George C. Govatos, Ph.D., Accident Investigation & Reconstruction/Failure Analysis/Product Liability, Wilmington, DE; Phillip Storm Jr., M.D., Neurology, Philadelphia, PA	3/30/2010
32	Estate of Wilkerson v. Kennywood Park Co.	\$1,945,000	Premises Liability: Amusement Park/Place of Entertainment	Allegheny County Court of Common Pleas	Jonathan M. Cohen, Philadelphia, PA of Kline & Specter, P.C.; Thomas R. Kline, Philadelphia, PA of Kline & Specter, P.C.; Royce W. Smith, Philadelphia, PA of Kline & Specter, P.C.		1/15/2010
33	Schickram v. Boss Pet Products Inc.	\$1,900,000	Products Liability: Design Defect	Philadelphia County Court of Common Pleas	Thomas F. Sacchetta, Media, PA of Sacchetta & Baldino		3/15/2010
34	Estate of Wardrop v. A. Duie Pyle Inc.	\$1,700,000	Wrongful Death	Philadelphia County Court of Common Pleas	Kenneth F. Fulginiti, Philadelphia, PA of Duffy + Partners	Frank Costanzo, Accident Reconstruction, Chester Springs, PA; David L. Hopkins, A.S.A., Economics, King of Prussia, PA; Wayne K. Ross, M.D., Forensic Pathology, Lancaster, PA; Alfred Bows, Ph.D., Biomechanics, San Antonio, TX; William Cloyd, P.E., Engineering, Lexington, KY; Brooks Rugemer, Accident Reconstruction, Lancaster, PA; Werner E. Spitz, Ph.D., Forensic Pathology, St. Clair Shores, MI	8/27/2010
35	Velez v. Architectural Metal Contractors	\$1,500,000	Construction: Accidents	Philadelphia County Court of Common Pleas	John Popilock, Philadelphia, PA of Schwarz, Cleary, Josem & Schwarz, LLC; Daniel A. Schwarz, Philadelphia, PA of Schwarz, Cleary, Josem & Schwarz, LLC	Maria Babinetz, Signature Rehabilitation Services, LLC, Vocational Rehabilitation, Philadelphia, PA; Guy W. Fried, M.D., McGee Rehabilitation Center, Physical Medicine, Philadelphia, PA; Steven Grossinger, D.D., Neurology, Swarthmore, PA; Scott H. Jaeger, M.D., Orthopedic Surgery, Philadelphia, PA; Donald E. Jennings, Ed.D., Vocational Rehabilitation, Feasterville, PA; Gene Salkind, M.D., Neurology, Huntingdon Valley, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; Barbara Watson, Ph.D., Psychology/Counseling, Philadelphia, PA; Mona Goldman Yudkoff, R.N., M.P.H., C.R.R.N., Mona Yudkoff Rehab Consultants, Life Care Planning, Bala Cynwyd, PA	1/19/2010

> *Continued from Page 10*
 Corp., and Pine Projects were found liable for conspiracy to defraud Berger, and were ordered to pay Berger \$33 million in compensatory damages. In addition, Weinstein, another defendant, Mark Sahaya, and Pine Projects were ordered to pay \$3 million in punitive damages. Yet another defendant, James Rappoport, was not found liable for any claims, but settled prior to trial for \$3.7 million.

According to a counterstatement from plaintiff Berish Berger, Richard Zeghibe and Ravinder Chawla were interested in acquiring a property named River City to flip for a profit. The property cost approximately \$32.5 million and they planned to sell it for as much as \$100 million.

At that time, Zeghibe and Chawla enlisted Sahaya to find a buyer for River City, according to Berger's counterstatement. He was promised a \$10 million commission for that work.

According to Berger's counterstatement, Sahaya found two buyers who eventually dropped their interest in River City, forcing Zeghibe and Chawla to extend their agreement with R&F Penn to complete acquisition of River City. Ultimately, however, Sahaya was able to sell Weinstein on the property. He was interested in buying the River City property for the asking price of \$62.5 million, according to defendant's joint pretrial statement. According to an agreement among Weinstein and Chawla and Zeghibe, Weinstein was to pay a non-refundable \$12 million deposit, in addition to closing costs of \$2.85 million.

Weinstein, Chawla and Zeghibe then tried to arrange for a \$52 million mortgage, from which Weinstein would take over the mortgage debt and pay \$10 million for the equity of River City property,

using funds he would obtain from others, according to Berger's counterstatement. It was then that Zeghibe and Chawla, acting through World Acquisition Partners, enlisted architect James Rappoport to create development plans to "justify a \$52 million mortgage on a property Zeghibe and Chawla were purchasing for \$32.5 million," according to Berger's counterstatement.

Zeghibe and Chawla then obtained a formal appraisal of River City from Cushman & Wakefield, who valued the property at \$77 million. However, Berger's counterstatement said, the plans designed by Rappoport and the appraisal by Cushman & Wakefield did not take into account the new "125-foot law" passed by the city council on June 8, 2006. The law puts a limit on how tall a building can be – 125 feet or under – but Rappoport's design included buildings that were 50-65 stories high.

According to Berger's counter-statement, Zeghibe, Chawla, Weinstein and Rappoport were all aware of the 125-foot law, but failed to inform Berger of this law during his financial involvement in the project.

Berger and Weinstein came to know each other through Chaim Zev Leifer, a real estate broker. Leifer attested to Weinstein's trustworthiness and informed Berger that he knew of some new investment opportunities. When Weinstein and Berger met, according to Berger's counter statement, "Weinstein represented that a bank would loan \$51.5 million for the River City property," but no such loan agreement had been made.

At this time, the counter-statement alleged, that Zeghibe and Chawla began to become distrustful of Weinstein due to a series of bounced checks and failed to pay

promised expenses – notably, the \$2.85 million in closing costs he failed to pay on time, resulting in default of the property.

After meeting with Weinstein and Rappoport in Philadelphia on Dec. 6, 2006, Berger was ready to become involved with the River City project. On Dec. 18, 2006 Berger had Kilbride Investment Limited wire \$12 million to Montgomery Abstract. On Dec. 19, 2006, Berger, by way of Buystore Limited, had \$9.5 million wired to Weinstein and Pine Projects. Zeghibe and Chawla then used Berger's money to provide the equity payment for their purchase of River City.

According to the counter-statement, in February 2007, Zeghibe and Chawla cashed out the equity in River City by arranging a new \$30 million mortgage from UBS. From this deal Zeghibe and Chawla received more than \$5 million in cash from the proceeds of the new loan, and the equity in River City was rendered virtually useless. It was at this time when the two looked into purchasing another parcel, 2040 Market St., for \$21 million.

In order to get Berger to provide financially for this project, Weinstein manufactured competing offers. According to the counterstatement, Chawla, Weinstein, and Sahaya created fraudulent letters of interest from "investors" in purchasing the air rights for 2040 Market St. The letters appeared to be from a company named Ram Associates, however Ram had neither the interest nor the means to purchase air rights for 2040 Market St., according to the counterstatement.

It was then that Weinstein attempted to extract more money from Berger, by falsely claiming to have completed acquisition of both River City and 2040 Market St., and that there were some "unexpected

expenses requiring Berger to provide further funds."

Between Jan. 8 and 19, 2007, Berger wired an additional \$15 million to cover the alleged expenses. It was soon after this that Berger suspected he was being defrauded, and he hired an attorney to meet with Weinstein and his attorney to review the documentation for transactions. At the Jan. 24, 2007, meeting, Weinstein was unable to produce said documentation but assured Berger that the documents were in another office.

On Jan. 29, 2007, Weinstein sent a letter with five attached checks "purporting to represent payments by Weinstein in connection with purchasing River City and 2040 Market St." The checks Weinstein attached were actually forged Commerce Bank teller checks, that were created by altering the date, subject line and amount of the check.

One of the checks, No. 813-10349, was originally obtained from Commerce Bank to the amount of \$10 made payable to WAP. When Berger received the check, it was made payable to WAP but this time for \$4,663,472.45. At this point Berger refused to pay anymore until "complete and satisfactory documentation of all of the transactions Weinstein described." Weinstein was unable to present the proper documents, and so he sent Berger a notice of termination of their relationship. Berger accepted and demanded the return of his funds.

Inevitably, both properties were defaulted on and UBS sold River City in a foreclosure sale for \$3 million. In all, Berger transferred \$36.5 million to the defendants with nothing in return.

– *The Legal Intelligencer*

Continued on Page 18 >

ASBESTOS

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE
Nelson v. Crane Co.	\$14,500,000	Asbestos, Products Liability	Court of Common Pleas of Philadelphia County	John DiDonato, David Halpern and Steven Cooperstein of Brookman Rosenberg Brown & Sandler; Jeffrey S. King of K&L Gates; Christopher Santoro of Marshall Dennehey Warner Coleman & Goggin; Kurt Rasmussen of Rasmussen Willis Dickey & Moore	3/9/2010
VanTassel v. Alfa Laval Inc.	\$12,000,000	Asbestos, Products Liability	Court of Common Pleas of Philadelphia County	Chris Panatier of Simon Eddins & Greenstone; O'Connell Tivin Miller & Burns	3/9/2010
Schroeder v. Anchor Darling Valve Co.	\$10,000,000	Asbestos	Court of Common Pleas of Philadelphia County	Aaron J. DeLuca, Barrett Naman and Rick Nemeroff of DeLuca & Nemeroff; Benjamin Shein of Shein Law Center	2/19/2010
Russell v. AW Chesterton Inc.	\$7,000,000	Asbestos	Court of Common Pleas of Philadelphia County	Aaron J. DeLuca, Barrett Naman and Rick Nemeroff of DeLuca & Nemeroff; Benjamin Shein of Shein Law Center	2/19/2010
Golini v. Alfa Laval Inc.	\$5,650,000	Asbestos	Court of Common Pleas of Philadelphia County	Benjamin Shein of the Shein Law Center; William R. Adams of Dickie McCamey & Chilcote	4/29/2010

CIVIL RIGHTS

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
MFS Inc. v. DiLazaro	\$6,500,000	Civil Rights: 42 USC 1983	U.S. District Court, Eastern District of Pennsylvania	Wayne C. Stansfield, Philadelphia, PA of Reed Smith, LLP; Thomas J. Zagami, Columbia, MD of Thomas J. Zagami, P.A.	3/3/10	Carl Miceli, A.S.A., C.S.A., Auctions and Appraisals, Inc., Appraisal, Westminster, MD; Mark W. Norris, C.P.A., A.B.V., Tucker & Meltzer Valuation Advisors, Natural Resources, Baltimore, MD
Gensey v. Michael Taras, D.M.D., L.L.C.	\$76,804	Civil Rights: Pregnancy Discrimination	Lehigh County Court of Common Pleas	George S. Kounoupis, Bethlehem, PA of Hahalis & Kounoupis, P.C.	5/3/10	
Johnson v. Wild Acres Lakes Property and Homeowners Association	\$35,000	Civil Rights: 42 USC 1983	U.S. District Court, Middle District of Pennsylvania, Scranton	Shelley L. Centini, Wilkes-Barre, PA of Dyller Law Firm; Barry H. Dyller, Wilkes-Barre, PA of Dyller Law Firm	2/24/10	William B. Head, Jr., M.D., Neurology, Staten Island, NY I. Howard Levin, M.D., Katz-Bennett Levin Neurology, Neurology, Philadelphia, PA
Zeolla-Barnes v. John C.R. Kelly Realty	\$11,250	Civil Rights: Pregnancy Discrimination	Allegheny County Court of Common Pleas	Tara E. Fertelmes, Pittsburgh, PA of Steele Law Office	6/7/10	

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CONSUMER

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Commonwealth of Pennsylvania v. Johnson & Johnson	\$51,850,562	Consumer Protection: Unfair Trade Practices and Consumer Protection Law	Commonwealth Court of Pennsylvania	Barry R. Eichen, Edison, NJ of Eichen, Crutchlow & McElroy, LLP; Donald E. Haviland, Jr., Philadelphia, PA of Haviland Hughes, LLC	12/7/10	William Comanor, Economics, Santa Barbara, CA; Frederick Warren-Boulton, Economics, Washington, DC Ernst Berndt, Ph.D., Economics, Cambridge, MA
Commonwealth Court of Pennsylvania v. Bristol-Myers Squibb Company	\$27,617,952	Consumer Fraud	Commonwealth Court of Pennsylvania	Donald E. Haviland, Jr., Philadelphia, PA of Haviland Hughes LLC	9/10/10	Dr. William S. Comanor, Department of Economics, University of California, Santa Barbara, CA; Dr. Frederick R. Warren-Boulton, MICRA, Washington, D.C.
Federal Trade Commission v. Magazine Solutions LLC	\$4,782,011	Consumer Protection: Telemarketing and Consumer Fraud and Abuse Prevention Act	U.S. District Court, Western District of Pennsylvania	Dana C. Barragante, Cleveland, OH of Federal Trade Commission	3/22/10	
Dixon-Rollins v. Experian Information Solutions Inc.	\$530,000	Consumer Protection: Fair Credit Reporting Act	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Geoffrey H. Baskerville, Philadelphia, PA of Francis & Mailman, P.C.; Mark D. Mailman, Philadelphia, PA of Francis & Mailman, P.C.; John Soumilas, Philadelphia, PA of Francis & Mailman, P.C.	3/8/10	
Gore v. Rothrock Chevrolet Inc.	\$30,000	Consumer Protection: Unfair Trade Practices and Consumer Protection Law	Philadelphia County Court of Common Pleas	William C. Bensley, Philadelphia, PA of Bensley Law Offices, LLC	6/3/10	Charles Barone, Automotive Maintenance & Repairs, Valley Forge, PA George H. Meinschein, Meinschein Engineering Consultants LLC, Mechanical, Freehold, NJ
Kertesz v. VAC Motorsports Inc.	\$21,321	Consumer Protection: Unfair Trade Practices and Consumer Protection Law	Philadelphia County Court of Common Pleas	Michael D. Power, Glen Mills, PA of Power & Associates, P.C.	10/14/10	Brett Anderson, A.S.E., Koala Motorsports, Diminished Value, Novelty, OH William Knobloch, Discovery Automotive, Automotive Maintenance & Repairs, Placerville, CA
Zuccarello v. Ford Motor Co.	\$15,120	Consumer Protection: Unfair Trade Practices and Consumer Protection Law	Philadelphia County Court of Common Pleas	Richard A. Scholer, Ambler, PA of Kimmel & Silverman, P.C.	12/10/10	

CONTRACTS

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Calgon Carbon Corp. v. ADA-ES Inc.	\$12,000,000	Contracts: Breach of Contract	U.S. District Court, Western District of Pennsylvania	Thomas E. Birsic, Pittsburgh, PA of K&L Gates, LLP; Jennifer J. Froehlich, Pittsburgh, PA of K&L Gates, LLP; Andrew R. Stanton, Pittsburgh, PA of K&L Gates, LLP	7/29/10	Mark M. Gleason, C.P.A., Gleason & Associates, CPAs, Pittsburgh, PA Howard W. Pifer III, Ph.D., Economics, Scottsdale, AZ
Reliant Healthcare Management Inc. v. Ashton Hall Inc.	\$1,829,269	Contracts: Breach of Contract	Philadelphia County Court of Common Pleas	Mark L. Rhoades, Philadelphia, PA of Mitts Milavec, LLC	8/3/10	Laurence D. Rich, Samson Senior Properties, Damage Models, Farmington Hills, MI
Kontonotas v. Hygrosol Pharmaceutical Corp.	\$1,689,063	Contracts: Breach of Contract	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Eugene J. Malady, Media, PA of Eugene J. Malady, LLC; Thomas D. Schneider, Wallingford, PA of Law Office of Thomas D. Schneider	1/27/10	
Breakers Beach and Boardwalk Resort L.P. v. Rosen	\$1,500,000	Contracts: Breach of Contract	Chester County Board of Arbitrators	Phillip D. Berger, Narberth, PA of Lundy, Flitter, Beldecos & Berger, P.C.	9/1/10	
Infocrossing Inc. v. TMG Health Inc.	\$1,002,500	Contracts: Breach of Contract	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Douglas Smillie, Center Valley, PA of Fitzpatrick, Lentz & Bubba, P.C.	5/14/10	
Powell Steel Corp. v. PKF-Mark III Inc.	\$935,000	Contracts: Breach of Contract	Philadelphia County Court of Common Pleas	Edward Seglias, Philadelphia, PA of Cohen Seglias Pallas Greenhall & Furman, P.C.	3/9/10	
Hartman, Underhill & Brubaker LLP v. Lutkewitte	\$622,799	Contracts: Breach of Contract	Lancaster County Court of Common Pleas	Kevin M. French, Lancaster, PA of Hartman Underhill & Brubaker, LLP; Mark E. Lovett, Lancaster, PA of Hartman Underhill & Brubaker, LLP	4/16/10	
Luber v. Cataldi	\$402,000	Contracts: Breach of Contract	Philadelphia County Court of Common Pleas	Alan L. Frank, Elkins Park, PA of Alan L. Frank Law Associates, P.C.	1/21/10	
DDRTC Waterfront Town Center LLC v. Three Rivers Barbecue LLC	\$379,890	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Jennifer L. Cerce, Pittsburgh, PA of Maiello Brungo & Maiello, LLP; John H. Prorok, Pittsburgh, PA of Maiello Brungo & Maiello, LLP	3/31/10	
Moore-Boehm Enterprises Inc. v. South Park School District	\$353,895	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Mark S. Shaffer, Pittsburgh, PA of Law Office of Mark S. Shaffer; Scott M. Hare, Pittsburgh, PA of Law Office of Scott Hare	5/14/10	
Alwine v. A&D Specialists Inc.	\$209,509	Contracts: Oral Agreement	Lancaster County Court of Common Pleas	Andrea Shaw, Carlisle, PA of Law Office of Andrew H. Shaw, P.C.; Andrew H. Shaw, Carlisle, PA of Law Office of Andrew H. Shaw, P.C.;	2/9/10	
Concannon v. Coldwater Canyon Capital LLC	\$200,000	Contracts: Breach of Contract	Delaware County Court of Common Pleas	Patrick T. Henigan, Media, PA of Eckell, Sparks, Levy, Auerbach, Monte, Sloane, Matthews & Auslander, P.C.	7/13/10	
Beholder Productions Inc. v. Catona	\$184,142	Contracts: Breach of Contract	Montgomery County Court of Common Pleas	Mitchell L. Paul, Philadelphia, PA of Law Offices of Mitchell L. Paul	5/18/10	
Krando Metal Products Inc. v. American Architectural Inc.	\$181,366	Contracts: Breach of Contract	Delaware County Court of Common Pleas	John P. Capuzzi Sr., Newtown Square, PA of Imperatrice, Amarant, Capuzzi & Bell	7/16/10	Anthony DiAngelus, Krando Metal Products Inc., Engineering, Broomall, PA Scott A. Measley, Economics, Philadelphia, PA; Joel Zober, Zober Industries, Inc., Metallurgy, Croydon, PA
Clark v. Cohen	\$179,093	Contracts: Breach of Contract	Bucks County Court of Common Pleas	Douglas C. Maloney, Langhorne, PA of Begley, Carlin & Mandio, L.L.P.	10/5/10	
Oelmann v. New	\$162,990	Contracts: Breach of Contract	Montgomery County Court of Common Pleas	Judson H. Shutt, Wayne, PA of Law Office of Judson H. Shutt	3/12/10	Thomas Zeigler, P.E., Construction, Pottstown, PA
Estate of Smith v. Harvey, Pennington, Herting & Renneisen, LLC	\$161,782	Contracts: Breach of Contract	Bucks County Court of Common Pleas	Robert J. Donaghy, Newtown, PA of Law Offices of Robert J. Donaghy	6/15/10	
Renz v. Kamyk	\$95,506	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Mark F. McKenna, Pittsburgh, PA of McKenna & Associates, P.C.	11/12/10	
Premier Concrete Inc. v. Borough of Malvern	\$71,000	Contracts: Breach of Contract	Chester County Court of Common Pleas	Gary C. Bender, Media, PA of Forbes, Bender, Paolino & DiSanti, P.C.	9/28/10	John Sucher, Bituminous Concrete/Pavement, Eddystone, PA Steve Macanga, Macanga Paving Contractors, Bituminous Concrete/Pavement, West Chester, PA
Collier Foundation Systems Inc. v. Oxbridge Development Corp.	\$65,900	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Mark F. McKenna, Pittsburgh, PA of McKenna & Associates, P.C.	3/31/10	
Gordon v. City of Philadelphia	\$62,332	Contracts: Breach of Contract	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Bruce M. Rotfeld, Philadelphia, PA of Bruce M. Rotfeld, P.C.	4/9/10	Alan G. Fastman, Helpful Home Inspection, LLC, Construction, Media, PA
Paski v. Jaskiewicz	\$42,698	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	James N. Perich, Pittsburgh, PA	1/19/10	
Kayne v. Hussein	\$25,000	Contracts: Oral Agreement	Allegheny County Court of Common Pleas	John L. Butya, McKees Rock, PA; Alexander J. Jamiolkowski, Pittsburgh, PA of Egan & Jamiolkowski	4/6/10	
Dunst v. Bona Vita Development Inc.	\$25,000	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Timothy J. Kidd, Pittsburgh, PA	11/9/10	
Niklaus v. Radcliffe	\$24,293	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Sean J. Carmody, Pittsburgh, PA of Patberg, Carmody & Ging, P.C.	2/4/10	
Cappetta v. Graves	\$22,637	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Mark A. May, Pittsburgh, PA of Cohen & Grigsby, P.C.	3/19/10	Raymond J. Coll, Construction, Pittsburgh, PA; Edward N. Gerdun, Construction Design, Pittsburgh, PA
Graciano Corp. v. R.A. Glancy & Sons Inc.	\$21,180	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Thomas C. Gricks III, Pittsburgh, PA of Schnader Harrison Segal & Lewis, LLP	9/20/10	
Searight v. Haney	\$14,250	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Jeffrey P. Myers, Wexford, PA of The Myers Law Firm, P.C.	3/17/10	
Charles L. Moles Associates Inc. v. Montgomery County Tax Claim Bureau	\$12,701	Contracts: Breach of Contract	Montgomery County Court of Common Pleas	Robert A. Maro, Norristown, PA of Maro & Maro, P.C.	2/12/10	

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CONTRACTS *(continued)*

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Reichert v. D&L Fleck	\$12,600	Contracts: Breach of Contract	Chester County Court of Common Pleas	David M. Burkholder, King of Prussia, PA of Powell, Trachtman, Logan, Carrle & Lombardo, P.C.; Paul A. Logan, King of Prussia, PA of Powell, Trachtman, Logan, Carrle & Lombardo, P.C.	6/16/10	Roman Jastrzebski, P.E., Engineering, Philadelphia, PA; Timothy Van Amburgh, Mold & Fungal Identification, Edgemont, PA
Fox Rothschild LLP v. Mazumder	\$10,020	Contracts: Breach of Contract	Montgomery County Court of Common Pleas	David I. Grunfeld, Philadelphia, PA of Astor Weiss Kaplan & Mandel, LLP	3/8/10	
Gateway Engineers Inc. v. Ligo	\$9,791	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Thomas H. Ayoob III, Pittsburgh, PA of Thomas H. Ayoob, III & Associates, LLC; Robert J. Brown, Pittsburgh, PA of Thomas H. Ayoob, III & Associates, LLC	1/22/10	
Iron City Contracting LLC v. Millen	\$8,250	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Lynn R. Emerson, Bridgeville, PA of BusinessLegal, P.C.	1/29/10	
Manahan v. Designer's Edge By Lou Inc.	\$8,085	Contracts: Mistake	Centre County Court of Common Pleas	Joseph P. Green, Bellefonte, PA of Lee, Green & Reiter, Inc.	1/20/10	
Virgi v. Robinson Township	\$5,450	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	William C. Kaczynski, Pittsburgh, PA of Law Offices of William C. Kaczynski	5/6/10	John Pieto, Asphalt, Pittsburgh, PA
Morton B. DeBroff, P.C. v. McGriff	\$5,166	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Morton B. DeBroff, Pittsburgh, PA of Morton B. DeBroff, P.C.	2/3/10	
Macioce v. Brander Inc.	\$3,154	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	David A. Young, Wexford, PA of Malone Middleman, P.C.	11/17/10	
Ricketts v. D'Amico	\$2,137	Contracts: Breach of Contract	Allegheny County Court of Common Pleas	Richard J. Walters, Pittsburgh, PA of Law Offices of Richard J. Walters	5/5/10	

> *Continued from Page 14*

Commonwealth of Pennsylvania v. Bristol-Myers Squibb Co.: \$27.6 million

A Commonwealth Court judge has ordered pharmaceutical company Bristol-Myers Squibb Co. to stop inflating the wholesale price of its drugs purchased by the state's pharmaceutical drug programs for the poor and for the elderly.

Commonwealth Court Judge Robert E. Simpson said in a Sept. 10 order in *Commonwealth of Pennsylvania v. Bristol-Myers Squibb Co.* that Bristol-Myers, headquartered in New York City, violated the Pennsylvania Unfair Trade Practices and Consumer Protection Law with unfair or deceptive practices. The judge said Bristol-Myers owes \$27.6 million to the state of Pennsylvania for the price of drugs charged in violation of fair trade practices.

But the judge said in his order that he was not awarding damages or attorney fees. The judge said he did not have sufficient information to calculate civil penalties because the plaintiff's expert did not limit his information to how many times the average wholesale price changed for Bristol-Myers Squibb's drugs from 1991 until 2004 and the expert may have included drugs not subject to the litigation.

Simpson's order followed a defense jury verdict in the case. The jury did not find common-law negligent misrepresentation or fraudulent misrepresentation by Bristol-Myers Squibb, Simpson wrote, but he said that the standard under the unfair trade practices law is different. A plaintiff's lack of reliance on the representation and a plaintiff's knowledge that a representation is inaccurate are not "complete defenses in an enforcement action brought in the public interest," Simpson said.

The state of Pennsylvania, through the state Attorney General's Office, sued 13 pharmaceutical companies in 2004 on the allegation that the companies inflated the wholesale prices of drugs purchased by state-funded prescription drug programs,

including the state Medicaid program for the poor, the state prescription drug program for senior citizens, the Pharmaceutical Assistance Contract for the Elderly (PACE), and a medical-prescription plan for state employees, the Pennsylvania Employees Benefit Trust Fund.

The Pennsylvania Attorney General's Office retained outside counsel, Donald E. Haviland Jr. of Haviland Hughes in Philadelphia, to prosecute the civil claims on its behalf. The plaintiff's trial co-counsel was Barry Eichen of Eichen Crutchlow & McElroy in Edison, N.J.

Bristol-Myers Squibb's lead counsel includes Mike Moore of Sonnenschein Nath & Rosenthal in Dallas and Steven M. Edwards of Hogan Lovells in New York.

Haviland said the evidence in support of the common-law claims was presented to the jury and the evidence in support of the statutory claim was presented to the judge during the same trial, but separate closings over the categories of claims were held.

Haviland said he wanted to try the case against Bristol-Myers Squibb first because it was the most difficult case of all the cases pending against the pharmaceutical defendants. It was the most difficult case because of the fact that it's the only pharmaceutical company that claims to not have reported the average wholesale prices of its drugs, Haviland said.

"It made it more difficult than the others given the allegation of price-setting and they're represented by a terrific law firm," Haviland said.

Haviland said he was not disappointed that the jury ruled against the common-law claims considering the judge's ruling in favor of the statutory claim. Haviland said the Attorney General's Office wanted to see what a jury would do with the common-law claims, and he believes this is the first case in the country to pursue common-law claims, rather than statutory-based unfair practices claims, for the wholesale prices charged by drug companies to state governments for government-supported pharmaceutical programs.

The judge's ruling will help the state's programs continue to fulfill their mission of providing health care benefits to some of the most vulnerable members of society, Haviland said.

The plaintiff argued that Bristol-Myers Squibb overcharged the state of Pennsylvania \$114 million for more than 20 drugs, Haviland said.

"Bristol-Myers Squibb believes that the jury correctly determined that it was not liable for negligent misrepresentation or fraud," the company said in a statement. "BMS disagrees with the court's decision finding it liable under the Pennsylvania consumer protection statute and has asked the court to vacate its ruling."

In a series of settlements over the last few years, the Attorney General's Office has reached accords of \$10 million with AstraZeneca, of Wayne, Pa., \$6.95 million with Abbott Laboratories of Abbott Park, Ill., \$1.8 million with GlaxoSmithKline, of Philadelphia, and \$1.3 million with TAP Pharmaceutical Products Inc., of Lake Forest, Ill., according to announcements from the office or court documents.

Amgen Inc., of Thousand Oaks, Calif., Baxter Healthcare Corp., of Deerfield, Ill., and Boehringer Ingelheim Roxane, of Ridgefield, Conn., also agreed to pay \$13 million collectively, according to another announcement from the office.

The settlement with TAP was part of a federal multidistrict litigation over one drug, Haviland said, while the state's claims over another drug are still pending.

Cases against Pharmacia & Upjohn, of Peapack, N.J., and now a subsidiary of Pfizer; Bayer Corp., of Pittsburgh; and Schering-Plough Corp., of Kenilworth, N.J., are still pending for trial.

Aventis Pharmaceuticals, of Bridgewater, N.J., and Dey Inc., of Napa, Calif., also still have their cases pending.

The judge's order in *Commonwealth of Pennsylvania v. Bristol-Myers Squibb Co.* will not become effective until post-trial practice is completed.

— *The Legal Intelligencer*

Polett v. Public Communications Inc.: \$27.6 million

A Philadelphia jury returned a \$27.6 million verdict in favor of a woman and her husband who said she was injured while taking part in a promotional video for an artificial knee implant.

Philadelphia Common Pleas Court Judge Frederica A. Massiah-Jackson presided over the trial in *Polett v. Public Communications Inc.* The judge confirmed that the jury awarded \$26.6 million to plaintiff Margo Polett and \$1 million to plaintiff Dan Polett for loss of consortium. The jury apportioned 36 percent negligence to public relations company Public Communications Inc., the Chicago firm hired to make the artificial knee video, 34 percent negligence to orthopedic medical device manufacturer Zimmer, and 30 percent negligence to Margo Polett, the judge confirmed.

The plaintiffs' recovery may be reduced by \$8.28 million to \$19.32 million because of the finding of negligence on the part of Polett. Polett, 71, of Gladwyne, Pa., now must use a walker and she has had four surgeries that have failed to improve her condition, the plaintiffs' memorandum said. Plaintiffs' counsel, Shanin Specter, said Polett's injury was catastrophic because she went from being active in many charitable activities and in her family's life to needing a walker to be able to get around.

The jury deliberated for 10 hours over three days, Specter said.

Polett had knee replacements in both of her knees June 27, 2006, according to the plaintiffs' complaint.

During a follow-up visit with her physician, Robert Booth asked Polett to participate in a promotional video for Gender Solutions Knee, an artificial knee created by Booth and manufactured by Zimmer, the plaintiffs' pretrial memorandum said.

Polett agreed to participate in filming the video Aug. 21, 2006, the complaint said. But the video firm never contacted any of her medical providers to find out what activities Polett could perform safely

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for the promotional video, the plaintiffs' memorandum said.

"Polett was caused by defendants to continue using an exercise bike and treadmill for several minutes during the filming of the video, despite informing defendants ... that she was tired," the complaint said.

Public Communications and Zimmer were negligent for not having any medical professionals available to oversee the filming of Polett doing the rehabilitation exercises and for not verifying with Booth and her other health care providers what level of activity would be safe for Polett to undertake, the Poletts argued in court papers.

Cheryl Terhost, Public Communications' director of the film, testified that she failed to ask Polett if she had been medically cleared to participate in the film, Specter said.

Lola Yoder, the Zimmer executive overseeing the production of the video, said she expected that Terhost would verify if Polett could participate in the film and that she was concerned that Polett said she had not been on a bicycle since the surgery, Specter said. But Yoder said her concern was allayed when Polett was willing to get on the exercise bicycle anyway, Specter said.

Polett assumed that Yoder or Terhost had talked to her surgeon and gotten clearance for the activities she was asked to perform, Specter said.

During follow-up visits over the next several months after the promo shoot, Polett told Booth she had been experiencing pain in both of her knees since the filming. Polett was diagnosed with an injury in her right knee cap and an injury to the muscle that affects knee extension, according to the plaintiffs' papers.

Booth testified for the plaintiffs, while Charles Clark, an Iowa City, Iowa, orthopedist, testified for the defense via videotape deposition, Specter said. The defendants denied negligence, according to their answers.

Polett had further surgeries on her right knee in 2006, 2007 and 2008, the complaint said.

Specter said he did not talk to the jury. Defense lawyers William J. Conroy and Kurt Stitche could not be reached for comment.

The plaintiffs' co-counsel included Carl E. Jones Jr.

Other defendants, including Pennsylvania Hospital; University of Pennsylvania Health System; Booth; 3B Orthopaedics; Video Track Productions Inc., a Philadelphia-based business; Steven Rhyker, owner of Video Track Productions; New City Productions, a Wilmington, Del., firm; and Marcel Franck, owner of New City Productions; were dismissed by stipulation.

The plaintiffs did not sue Booth, and he was brought into the case by a counterclaim, Specter said.

The Poletts demanded at least seven figures, and no offers were extended, the plaintiffs' memorandum said.

Polett is a board member at Rosemont College, and Dan Polett owns Wilkie

Lexus, the regional Lexus dealer, according to a news release.

— *The Legal Intelligencer*

Graham Co. v. Haughey: \$18.9 million

When a jury awarded almost \$18.9 million in a copyright infringement case nearly four years ago, it set the wheels in motion for a legal roller coaster ride that included a new trial with a verdict of less than \$1.7 million, followed by an appeal that led to reinstatement of the first verdict.

Now Chief U.S. District Judge Harvey Bartle III has ruled that the first jury's verdict was not "excessive," as the defense had argued, paving the way for motions from the plaintiff seeking pre-judgment and post-judgment interest that could swell the award to more than \$30 million.

The ruling is a victory for plaintiffs attorneys David J. Wolfsohn, Aleksander J. Goranin and John F. Murphy of Woodcock Washburn.

In the suit, *Graham Co. v. Haughey*, a Philadelphia insurance brokerage firm brought copyright claims against one of its former employees and the brokerage firm he now works for.

Graham claimed that former employee Thomas Haughey took copies of two massive company manuals when he left in 1991 to join USI Holdings Corp., of Briarcliff Manor, N.Y., and that USI Holdings ignored the copyright notices on the books and began using them in its own sales proposals. At trial, the plaintiffs lawyers set out to show that more than \$31 million in USI's revenue over a 13-year period was connected to sales proposals that included some of Graham's copyrighted content.

In its June 2006 verdict, the jury concluded that both Haughey and USI Holdings had infringed Graham's copyrights and specifically rejected a defense argument that the suit had been filed too late, concluding instead that Graham had no opportunity to discover the violations prior to February 2005, when it filed the suit.

The jury said USI Holdings should pay \$16,562,230 and that Haughey should pay \$2,297,397, for a total verdict of \$18,859,627.

But Bartle set aside the first verdict and ruled that Graham had ignored "storm warnings" that should have alerted it to the possibility of Haughey's infringement, and that the statute of limitations therefore should have confined the plaintiff's claims to just three years instead of the 13 years of alleged infringing conduct considered by the first jury.

In February 2008, a second jury awarded \$1.4 million against USI and \$268,000 against Haughey.

Both sides appealed. Attorney Floyd Abrams of Cahill Gordon & Reindel argued on behalf of USI and Haughey that Bartle never should have applied the discovery rule because the injury rule applies to copyright infringement actions. He also argued that the plaintiff never proved the causal connection between the copyright infringement and the damages awarded to Graham.

Wolfsohn argued that the first jury's verdict ought to be reinstated and that

Bartle's only error was to set it aside.

In March 2009, the 3rd U.S. Circuit Court of Appeals sided with Wolfsohn, finding that Bartle erred when he held that Graham was dilatory in bringing suit and that it was limited to damages occurring during the three-year period prior to the filing of the complaint.

The appellate court remanded the case so that Bartle could have the first opportunity to address two key arguments he'd never ruled on — whether the first jury's verdict was "excessive" and whether it had properly distinguished between revenue stemming from infringement and funds that were attributable to other factors.

Abrams urged Bartle to grant a new trial on damages, arguing that the jury's decision to award more than 70 percent of the revenue was excessive.

In the lengthy sales process for complex corporate insurance proposals, Abrams argued, the alleged infringement, even if proven, played only a minor role as compared to the pre-proposal investigation and analysis of the client's business and face-to-face meetings.

But Wolfsohn pointed to testimony from Graham's CEO, William Graham, that the copyrighted manuals were critical components in securing contracts.

Under copyright law, Wolfsohn said, the plaintiff's burden is only to show a nexus between the infringing conduct and the revenue; the burden then shifts to the defense to show that other factors were responsible.

To set aside the jury's verdict, Wolfsohn argued, the defense would have to

show that no reasonable jury could have reached the conclusions it did.

Bartle sided with Wolfsohn, finding that the jury's award cannot be considered excessive because "there was ample evidence presented at trial to support the jury's allocation of 70 percent to 75 percent of profits to infringement."

The first jury, Bartle noted, had also "heard compelling evidence from Graham that the defendants willfully destroyed financial documents relevant to this action."

Evidence at trial, Bartle noted, showed that in October 2005, after Graham's suit was filed, "USI shredded between 12 to 20 boxes of financial and accounting documents."

On the basis of that evidence, Bartle said, "the jury was free to infer, for instance, that the infringing material was used by USI and Haughey in more proposals than it actually produced in discovery and was more significant in generating the sale of insurance and commissions than defendants wanted the jury to believe."

Abrams declined to comment on the ruling except to say, "We are studying the ruling and will decide on our response within a few days."

— *The Legal Intelligencer*


Russell v. AW Chesterton Inc.: \$17 million, Schroeder v. Anchor Darling Valve Co.: \$10 million

During the 1960s and 1970s, plaintiff's decedent Marlin Russell was a laborer in a variety of industrial sites in the Philadel-

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INSURANCE

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Carvalho v. Homesite Insurance Company of Pennsylvania	\$140,735	Insurance: Denial of Claim	Lehigh County Court of Common Pleas	Robert M. Davison, Bethlehem, PA of Miller & Davison; Thomas J. Burns, Elgin, IL of O'Connell Tivin Miller & Burns, LLC	3/31/10	
Spector v. Fireman's Fund Insurance Co.	\$104,424	Insurance: Denial of Claim	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Anthony S. Pinnie, Media, PA	7/15/10	
Geico General Insurance Co. v. Barone	\$14,993	Insurance: Subrogation	Allegheny County Court of Common Pleas	Paul M. Schofield Jr., Springfield, PA of The Law Office of Paul F. D'Emilio, LLC	3/19/10	

INTENTIONAL TORTS

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Davidson v. Burlison	\$1,511,500	Intentional Torts: Assault and Battery	Cumberland County Court of Common Pleas	Wade D. Manley, Lemoyne, PA of Johnson, Duffie, Stewart & Weidner, P.C.; John A. Statler, Lemoyne, PA of Johnson, Duffie, Stewart & Weidner, P.C.	9/25/10	
Law Office of Douglas T. Harris v. Philadelphia Waterfront Partners LP	\$1,215,000	Intentional Torts: Intentional Infliction of Emotional Distress	Philadelphia County Court of Common Pleas	James R. Kahn, Philadelphia, PA of Margolis Edelstein	7/19/10	Stuart F. Ebby, Hangley Aronchick Segal & Pudlin, Real Estate, Philadelphia, PA; Howard A. Paul, Ph.D., Psychology/Counseling, North Brunswick, NJ
McCann v. Miller	\$811,933	Intentional Torts: Assault and Battery	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Stephen R. Bolden, Philadelphia, PA of Fell & Spalding; Robert E. Paul, Philadelphia, PA of Paul, Reich & Myers, P.C.	10/25/10	
McHugh v. Villella	\$267,000	Intentional Torts: Assault	Allegheny County Court of Common Pleas	Richard C. Thiele, Pittsburgh, PA of Law Offices of Richard C. Thiele	3/23/10	
Lynch v. Bickel	\$220,000	Intentional Torts: Assault and Battery	Philadelphia County Court of Common Pleas	Jill J. Holden, Philadelphia, PA of James Jarrett & Schwartz, P.C.; Jonathan J. James, Philadelphia, PA of James Jarrett & Schwartz, P.C.; Michael C. Schwartz, Philadelphia, PA of James Jarrett & Schwartz, P.C.	5/21/10	
Sullivan v. Peak Technical Services Inc.	\$172,700	Intentional Torts: Tortious Interference with a Contract	Allegheny County Court of Common Pleas	David C. Brumfield, Pittsburgh, PA of Alpern Schubert, P.C.	2/3/10	
Troff v. Hold Fast Entertainment	\$75,000	Intentional Torts: Assault and Battery	Allegheny County Court of Common Pleas	Luca Giorgi, Pittsburgh, PA of Friday, Porta, Cox & Ward, LLC	1/21/10	
Albert v. Albert	\$50,000	Intentional Torts: Assault and Battery	Bucks County Court of Common Pleas	Matthew Taylor Wilkov, Lansdale, PA of Rubin Glickman Steinberg & Gifford, P.C.	5/27/10	
Barry v. Martin	\$10,000	Intentional Torts: Assault and Battery	Philadelphia County Court of Common Pleas	Edward Singer, Philadelphia, PA of Law Offices of Edward Singer	1/4/10	Michael Martin Cohen, M.D., Neurology, Bala Cynwyd, PA
Whipkey v. Keslar Lumber Co.	\$4,513	Intentional Torts: Conversion	Westmoreland County Court of Common Pleas	John A. Klamo, Cherry Hill, NJ of John A. Klamo, Esq., P.C.	3/16/10	Robert C. McColly, A.C.F., Forest Land Services Inc., Forestry, Ligonier, PA

MEDICAL MALPRACTICE

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Reed v. Rhodes	\$5,350,000	Medical Malpractice: Negligent Treatment	Court of Common Pleas of Delaware County	Jane B. Marlon, Jenkintown, PA of Kornblau & Kornblau, P.C.; Gary Solomon, Jenkintown, PA of Kornblau & Kornblau, P.C.	9/29/10	Norman Bloom, M.D., Surgery/Oncology, Oncologic Surgery, New York, NY; David Fink, M.D., Psychiatry, Philadelphia, PA; Scott Herbert, M.D., Abington Memorial Hospital, Radiation Therapy, Abington, PA; Carl Schanbacher, M.D., Dermatology, Milford, MA; Barry Shmookler, M.D., Pathology, Rockville, MD; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; John Brooks, M.D., Pathology, Philadelphia, PA; Paul R. Gross, M.D., Dermatology, Philadelphia, PA; David T. Harris, M.D., Ilankenau Hospital, Oncology, Wynnewood, PA; Stephen M. Mechanick, M.D., Psychiatry, Bryn Mawr, PA
Vonner v. Mmeje	\$3,000,000	Medical Malpractice: Childbirth	Court of Common Pleas of Philadelphia County	Joshua Van Naarden, Philadelphia, PA of Ross Feller Casey, LLP	11/8/10	David L. Hopkins, A.S.A., Economics, King of Prussia, PA; Alexander Smythe, M.D., Fetal Medicine, Columbia, SC Anthony C. Sciscione, M.D., Fetal Medicine, West Chester, PA
O'Connor v. Pedano	\$1,533,000	Medical Malpractice: Failure to Diagnose	Philadelphia County Court of Common Pleas	Neil T. Murray, Philadelphia, PA of Sheridan & Murray, LLC	4/28/10	William Alleyne, M.D., Internal Medicine, New York, NY; Lorraine E. Buchanan, R.N., M.S.N., C.R.R.N., Life Care Planning, Blue Bell, PA; Leon Costa, M.D., Orthopedic Surgery, Princeton, NJ; Oliver Herndon, M.D., Nursing Home Medical Practice, Philadelphia
Santos v. Wills Surgery Center	\$750,000	Medical Malpractice: Eye Surgery	Philadelphia County Court of Common Pleas	Mitchell H. Klevan, Philadelphia, PA of Mitchell H. Klevan, LLC	1/15/10	Joel Confino, M.D., The Eye Care & Surgery Center, Cataract Surgery, Westfield, NJ Richard Tipperman, M.D., Ophthalmology, Philadelphia, PA
Busch-Fish v. Armstrong County Memorial Hospital	\$551,500	Medical Malpractice: Failure to Test	Allegheny County Court of Common Pleas	Mark J. Homyak, Pittsburgh, PA of The Homyak Law Firm; Eve W. Semins, Pittsburgh, PA of The Homyak Law Firm	5/21/10	Christopher Haines, M.D., General Practice, Philadelphia, PA; Ira Mehlman, M.D., Emergency Medicine, New York, NY; Michael Siegel, M.D., Radiology, Brooklyn, NY; Christopher Bonnett, M.D., Cardiology, Pittsburgh, PA; Jerome E. Granato, M.D., F.A.C.C., Allegheny General Hospital, Echocardiography, Pittsburgh, PA; Fred Harchelroad, M.D., Toxicology, Pittsburgh, PA; Theodor Herwig, M.D., Family Medicine, Columbus, OH; Paul Ladenson, M.D., Endocrinology, Baltimore, MD; David Silber, M.D., Cardiology, Hershey, PA; Martin I. Surks, M.D., Montefiore Medical Center, Endocrinology, Bronx, NY; Thomas Traill, M.D., Cardiology, Baltimore, PA

> *Continued from Page 19*

phia, central Pennsylvania and New York areas. He worked with and around seal pipes, glanges, pumps and valves.

In November 2007, Russell was diagnosed with mesothelioma and died the following September at age 70.

In the early 1970s, plaintiff's decedent Dale Schroeder worked as a boiler technician in the Navy and then transitioned into the private sector as a maintenance mechanic for a power plant in Georgia. Schroeder performed mostly pipe and valve work during his tenure in both capacities.

On June 6, 2008, Schroeder was diagnosed with mesothelioma and died on Jan. 4, 2009, at the age of 53.

Prior to his death, Russell, claiming that the equipment he worked with contained asbestos, sued manufacturers AW Chesterton Inc., Westinghouse Electric Corp., Cleaver Brooks, Crane Co., Flowserve US Inc., Foster Wheeler Corp. Inc., Garlock Inc., General Electric Co., Goulds Pumps Inc., Grinnell Corp., IMO Industries, Ingersoll Rand Co., JH France Refractories Co., Lear Corp., Masland Corp., Melrath Gasket Inc., Riley Stoker Corp., Safety First Industries Inc., Yarway Corp. and Zurn Industries Inc.

Prior to his death, Schroeder, alleging that his cancer was the result of his exposure to asbestos from his tenure in the Navy and power plant, sued Anchor Darling Valve Co., Armstrong Int'l Inc., BW IP International Co., CBS Corp., Copes Vulcan Inc., Crane Co., FMC Corp., Foster Wheeler

Energy Corp., General Electric Co., Goulds Pumps Inc., Grinnell Corp., Honeywell International, IMO Industries, Ingersoll Rand Co., John Crane Inc., Melrath Gasket Inc., Melrath Supply & Gasket Co., Milwaukee Valve Co. Inc., Riley Power Inc., Sepco Corp., Sidney Facility Management Inc., Spirax Sarco Co. Inc., SVI Corp., Yarway Corp. and Zurn Industries Inc.

During a trial in which both Russell's and Schroeder's cases were tried at once, the plaintiffs either confidentially settled with defendants or voluntarily dismissed them from the case; however, the identity of which defendants settled or were dismissed was not disclosed.

After plaintiffs resolved the claims with the other defendants, counsel waived the jury and tried their cases before Judge Sheldon Jelin. The only remaining defendant was Melrath Gasket Inc. of Philadelphia, which did not answer plaintiffs' discovery; this prompted the court to strike the company's defenses at trial, where it was not presented or represented by counsel.

In a video deposition taken before their deaths, Russell and Schroeder identified the gaskets that were manufactured by Melrath. Plaintiffs' counsel argued that Melrath made a defective product that it knew or should have known was defective, which Melrath failed to provide adequate warnings on its gaskets detailing the hazards of asbestos.

Plaintiffs' materials scientist expert tested Melrath's gaskets and determined that they contain asbestos and that usage

of the gaskets creates significant asbestos exposure to that person and other people in close proximity.

According to Richard Lemen, former assistant United States surgeon general, the fatal hazards of asbestos exposure was known since the early 1930s.

Russell, following his diagnosis, underwent radiation treatment and chemotherapy and stopped shortly before his death. He was survived by his wife, four children and grandchildren. The estate sought to recover about \$200,000 for medical bills and funeral expenses, as well as pain and suffering.

At the time of his diagnosis, Schroeder was working at the Georgia power plant. His wife sought an economic loss of \$1.6 million and approximately \$400,000 in past medical costs. Married with two daughters, Schroeder, at the time of his diagnosis, was in the process of adopting his granddaughter because her mother was unable to care for her. In his taped deposition before his death, Schroeder discussed things that he needed to do in his life but could not due to mesothelioma.

Through directed verdicts, the court awarded \$7 million to Russell's estate and \$10 million to Schroeder's estate, for a total of \$17 million.

Following the trial, counsel for Melrath filed for post-trial relief, arguing that the verdict contrasted with the evidence. The court denied the motion, and the defendant appealed. The court then directed the defendant to file in writing what counsel contended was wrong at trial and where it

preserved the area.

This report is based on information that was provided by plaintiffs' counsel. The defendant was not represented at trial, though it has since retained counsel. Its current attorneys were not asked to contribute.

Nelson v. Crane Co., Bell v. Crane Co., VanTassel v. Alfa: \$30 million total

A Philadelphia jury has awarded a total of \$30 million to plaintiffs in three separate asbestos cases that were tried together last month, though the plaintiffs' attorneys say their clients will see a fraction of that money because of prior settlements with the bulk of the defendants.

The reverse bifurcated trials were held together before Senior Judge Esther R. Sylvester, with the eight-member jury coming down with the damages on March 9 and a finding of liability on March 23.

In *Nelson v. Crane Co.*, the jury awarded \$14.5 million to Darlene Nelson as the executrix of the estate of her husband, James Nelson, who died at 54 from mesothelioma. The jurors then found all of the 11 defendants listed on the verdict sheet liable for the damages. Only three defendants remained in the case, however – Crane Co., Hobart and Lincoln. The companies' shares of the verdict equal \$3.95 million.

In the post-trial motions, the firm included a 12th bankrupt defendant that had also settled and asked that the verdict be molded to include the additional defen-

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MOTOR VEHICLE

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Estate of Smith v. Boyle	\$2,320,000	Motor Vehicle: Intersection	Allegheny County Court of Common Pleas	None reported; Elizabeth F. Collura, Pittsburgh, PA of Swensen, Perer & Kontos; Alan H. Perer, Pittsburgh, PA of Swensen, Perer & Kontos	2/9/10	Jay K. Jarrell, Forensic Human Resources, Economics, Pittsburgh, PA; R. Paul McCauley, Police Practices & Procedures, Indiana, PA Joseph J. Stine, JJS Consulting Associates, Inc., Police Practices & Procedures, Warrington, PA
Skinner v. United Parcel Service Inc.	\$1,816,539	Motor Vehicle: Truck	Philadelphia County Court of Common Pleas	Christopher Fleming, Wexford, PA of Leonard, Sciolla, Hutchison, Leonard & Tinari, LLP; Michael Tinari, Philadelphia, PA of Leonard, Sciolla, Hutchison, Leonard & Tinari, LLP	5/5/10	Ronald R. Baade, Commonwealth Transportation Consultants, Trucks, Mifflin, PA; Frederick Hellman, M.D., Qualified Medical Examiner, Media, PA; Roger E. Rozsas, Accident Investigation & Reconstruction/ Failure Analysis/Product Liability, Media, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; Burton Weiss, M.D., Brain Injury/Trauma, Philadelphia, PA; Thomas J. Ayres, Ph.D., Visibility Studies, Kensington, CA; Charles Callery, M.D., Neurosurgery, La Jolla, CA; Samuel Chewning, Orthopedics, Statesville, NC; Gregory Cowhey, Economics, Blue Bell, PA; Bijan Etamad, M.D., Psychiatry, Villanova, PA; Stephen J. Fenton, P.E., Kineticorp, Accident Reconstruction, Englewood, CO; William Neale, Kineticorp, Accident Investigation & Reconstruction/ Failure Analysis/Product Liability, Denver, CO
Klages v. Mercer County Housing Authority	\$1,600,900	Motor Vehicle: Motorcycle	Mercer County Court of Common Pleas	Stephen J. Del Sole, Pittsburgh, PA of Del Sole Cavanaugh Stroyd LLC; Patrick K. Cavanaugh, Pittsburgh, PA of Del Sole Cavanaugh Stroyd, LLC	1/15/10	Matthew Marlin, Ph.D., Economics, Pittsburgh, PA James Baranowski, Accident Investigation & Reconstruction/ Failure Analysis/Product Liability, Pittsburgh, PA; Fred Hanscom, P.E., Traffic, Markham, VA
James v. Arsenich	\$1,320,000	Motor Vehicle: Multiple Impact	Philadelphia County Court of Common Pleas	Vaughn A. Booker, Philadelphia, PA; M. Gerard Bradley, Media, PA of Brooks, Bradley & Kenney	6/10/10	Edward Barbieri, Ph.D., Drug Toxicology, Glenside, PA; James F. Bonner, M.D., Physical Medicine, Chester, PA; Stephen J. Bosacco, M.D., Orthopedic Surgery, Philadelphia, PA; Bruce H. Grossinger, D.O., Neurology, Wilmington, DE; Steven M. Schorr, P.E., DJS Associates Inc., Accident Reconstruction, Abington, PA; Joseph Bernstein, M.D., Orthopedic Surgery, Philadelphia, PA; William M. O'Toole, Ph.D., Vocational Assessment, Media, PA; Scott Rushton, M.D., Orthopedics, Philadelphia, PA
Thompson v. Lau	\$900,000	Motor Vehicle: Lane Change	Philadelphia County Court of Common Pleas	Bruce L. Neff, Philadelphia, PA of Neff and Associates	12/7/10	James F. Bonner, M.D., Physical Medicine, Chester, PA; Harold A. Schwartz, Ram Technology Services, Inc., Accident Investigation & Reconstruction/ Failure Analysis/Product Liability, Red Lion, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultant
Moyer v. Office Max	\$850,000	Motor Vehicle: Pedestrian	Philadelphia County Court of Common Pleas	Kenneth F. Fulginiti, Philadelphia, PA of Duffy + Partners	8/24/10	Irene C. Mendelsohn, Vocational Rehabilitation/Counseling, Philadelphia, PA; Robert Sing, D.O., Physical Medicine, Springfield, PA; Chad L. Staller, The Center for Forensic Economic Studies, Economics, Philadelphia, PA; Joseph Bernstein, M.D., Orthopedic Surgery, Philadelphia, PA; Michael L. Brooks, M.D., Neuroradiology, Thornton, PA
Jacoby v. Admiral Merchants Motor Freight Inc.	\$750,000	Motor Vehicle: Rear-ender	U.S. District Court, Western District of Pennsylvania, Johnstown	Ronald P. Carnevali, Johnstown, PA of Spence, Custer, Saylor, Wolfe & Rose, LLC; Michael J. Parrish Jr., Johnstown, PA of Spence, Custer, Saylor, Wolfe & Rose, LLC	9/14/10	Christopher J. Bellicini, M.D., Orthopedic Surgery, Greensburg, PA; Brian E. Gunnlaugson, M.D., Orthopedic Surgery, Johnstown, PA; Richard T. Kozakiewicz, D.O., Physical Medicine, Greensburg, PA; Richard J. Mancini, Mancini Expert Weather Investigations,

MOTOR VEHICLE (continued)

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Schotter v. Bednarek	\$547,000	Motor Vehicle: Head-On	Monroe County Court of Common Pleas	James B. Dilseimer, Philadelphia, PA of Cohen, Placitella & Roth, P.C.	6/11/10	Donald E. Jennings, Ed.D., Vocational Assessment, Philadelphia, PA; Alex Perez, M.D., Neurology, East Stroudsburg, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; William R. Prebola, M.D., Physical Medicine, Wilkes-Barre, PA; Andrew Shaer, M.D., Jeanes Hospital, Radiology, Rockledge, PA; William Walker, C.R.C., Vocational Rehabilitation, Falls, PA
Houston v. Stanford	\$500,000	Motor Vehicle: Rear-ender	Philadelphia County Court of Common Pleas	Thomas A. Masterson Jr., Philadelphia, PA of Luny Law	8/17/10	Richard H. Kaplan, M.D., Magee Rehabilitation Hospital, Pain Management, Philadelphia, PA
Shipley v. Amica Mutual Insurance Co.	\$400,000	Motor Vehicle: Underinsured Motorist	Delaware County Court of Common Pleas	J. Michael Sheridan, Media, PA of Sheridan, Bracken & Wenke, L.L.P.	6/18/10	
Matus v. Chilewski	\$270,000	Motor Vehicle: Rear-ender	Philadelphia County Court of Common Pleas	Donald F. Manchel, Philadelphia, PA of Donald F. Manchel & Associates	8/27/10	Steven Mandell, M.D., Neurology, Philadelphia, PA Richard I. Katz, M.D., Albert Einstein Medical Center, Neurology, Philadelphia, PA
Lineman v. City of Philadelphia	\$250,000	Motor Vehicle: Road Defect	Philadelphia County Court of Common Pleas	Marc T. Sacchetta, Media, PA of Sacchetta & Falcone	5/14/10	Jeffrey Rosenberg, D.D.S., Dental Implants, Philadelphia, PA; Jim Schultz, P.E., Road/Highway, Philadelphia, PA
Outlaw v. Taylor-Green	\$250,000	Motor Vehicle: Intersection	Philadelphia County Court of Common Pleas	Paul H. Kahn, Philadelphia, PA of Law Office of Paul H. Kahn	7/26/10	Sara Marks Tabby, M.D., Physical Medicine, Philadelphia, PA
Crosby v. Vaccarro	\$211,500	Motor Vehicle: Rear-ender	Erie County Court of Common Pleas	Dennis G. Kuftic, Edinboro, PA of Devine & Kuftic	2/19/10	Chad Meeker, D.C., Chiropractic, Corry, PA; David Wagner, Ph.D., Biophysics, Edinboro, PA; David Welsh, M.D., Orthopedic Surgery, Philadelphia, PA Daniel Bursick, M.D., Neurosurgery, Erie, PA
Romanick v. Krivorutskaja	\$200,000	Motor Vehicle: Rear-ender	Philadelphia County Court of Common Pleas	Edward F. Chacker, Philadelphia, PA of Gay Chacker & Mittin, P.C.	3/25/10	Randall N. Smith, M.D., Delaware Valley Orthopedic & Spine Center, Orthopedic Surgery, Philadelphia, PA
Vetere v. Highlander Holdings Inc.	\$200,000	Motor Vehicle: Red Light	Allegheny County Court of Common Pleas	Peter Kurzweg, Pittsburgh, PA of Law Offices of Peter H. Kurzweg	3/16/10	Anthony Manes, D.C., Chiropractic, Cranberry, PA Paul S. Lieber, M.D., Pain Management, Pittsburgh, PA
Johnston v. Pierce	\$197,000	Motor Vehicle: Multiple Vehicle	Philadelphia County Court of Common Pleas	Jason I. Manus, Philadelphia, PA of Spear, Greenfield & Richman, P.C.	2/5/10	Joseph P. Guagliardo, D.O., Orthopedics, Bensalem, PA John T. Williams, D.O., Orthopedics, Philadelphia, PA
Weisback v. Indian River Transportation Co.	\$175,000	Motor Vehicle: Broadside	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Paul H. Kahn, Philadelphia, PA of Law Offices of Samuel Fishman	3/19/10	Mark Avart, D.O., Orthopedics, Philadelphia, PA; George C. Govatos, Ph.D., Accident Investigation & Reconstruction/ Failure Analysis/ Product Liability, Wilmington, DE; Philip Spergel, Ph.D., Vocational Rehabilitation/Counseling, Jenkintown, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA; William J. Markmann, M.D., Holy Redeemer Hospital, Orthopedics, Huntingdon Valley, PA; Irene Mendelsohn, Ph.D., Vocational Rehabilitation/ Counseling, Penn Valley, PA
Patel v. Way Services Inc.	\$159,896	Motor Vehicle: Single Vehicle	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Michael E. Kosik, Harrisburg, PA of Angino & Rovner, P.C.	2/23/10	Duffield Ashmead, M.D., Hand Surgery, Hartford, CT
Jespersen v. Szeliga	\$150,000	Motor Vehicle: Left Turn	Philadelphia County Court of Common Pleas	Joseph F. Schwartz, Ardmore, PA of Silver & Silver	1/13/10	
Houston v. Smith	\$150,000	Motor Vehicle: Tractor-Trailer	U.S. District Court, Western District of Pennsylvania, Johnstown	Mark E. Milsoop, Pittsburgh, PA of Berger and Green	11/17/10	Brooks Rugemer, Trucking Industry, Lancaster, PA; Peter Sotos, M.D., Orthopedic Surgery, Kittanning, PA; Richard Spiro, M.D., Neurosurgery, Pittsburgh, PA; Ivan Tarkin, M.D., Orthopedic Surgery, Pittsburgh, PA Carmen Daecher, Trucking Industry, Camp Hill, PA
Matuliewich v. Colonial Airport Parking Inc.	\$150,000	Motor Vehicle: Bicycle	Philadelphia County Court of Common Pleas	Jeffrey M. Cooper, Upper Darby, PA of Levin & Cooper	9/3/10	Larry Chou, M.D., Premier Orthopaedic and Sports Medicine Associates Ltd., Physical Medicine, Philadelphia, PA Joseph Bernstein, M.D., Orthopedic Surgery, Philadelphia, PA
Anim v. Miller	\$141,700	Motor Vehicle: Rear-ender	Allegheny County Court of Common Pleas	J. Kerrington Lewis, Pittsburgh, PA of Lewis, Lewis & Reilly	11/24/10	Charles F. Sturm, M.D., Internal Medicine, Monroeville, PA Jon A. Levy, M.D., Greater Pittsburgh Orthopaedic Associates, Orthopedic Surgery, Pittsburgh, PA
Bare v. Anderson	\$140,000	Motor Vehicle: Rear-ender	Delaware County Court of Common Pleas	Richard T. Kupersmith, Philadelphia, PA of Weinstein, Schleifer & Kupersmith, P.C.	7/29/10	David N. Bosacco, M.D., Riddle Memorial Hospital, Orthopedic Surgery, Media, PA; Michael L. Brooks, M.D., Neuroradiology, Thornton, PA; Mark Lucas, Ph.D., Vocational Rehabilitation, Media, PA; Lance Owen Yarus, M.D., Orthopedic Surgery, Philadelphia, PA; Stuart L. Gordon, M.D., Taylor Hospital, Orthopedic Surgery, Ridley Park, PA; Scott S. Gordon, M.D., Orthopedic Surgery, Kissimmee, FL; Andrew Shaer, M.D., Jeanes Hospital, Neuroradiology, Rockledge, PA; Jasen M. Walker, Ed.D., Vocational Rehabilitation, Valley Forge, PA
Laruffa v. Forbes	\$135,750	Motor Vehicle: Rear-ender	Philadelphia County Court of Common Pleas	Dale G. Larrimore, Philadelphia, PA of Larrimore & Farnish, LLP	3/25/10	Norman R. Huertgen, D.C., Chiropractic, Erdenheim, PA; Bruce Menkowitz, M.D., Montgomery Hospital Medical Center, Orthopedic Surgery, Norristown, PA Michael J. Mandarino, M.D., Orthopedics, Philadelphia, PA





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dant and have a portion of its share paid out by the remaining defendants. That situation would have the three companies remaining in the case paying four-twelfths of the verdict minus the 12th company's settlement payout, which would come out to about \$4.8 million.

In *Bell v. Crane Co.*, the jury awarded \$3.5 million to Larry Bell II, the administrator of the estate of Larry Bell, who died at 62 from mesothelioma. The jurors then found the 20 defendants listed on the verdict sheet liable. Only Crane Co. remained in the case and will be responsible for one-twentieth of the verdict, or \$175,000.

In *VanTassel v. Alfa Laval Inc.*, the jurors awarded the estate of Richard VanTassel

\$12 million and then found the 15 defendants listed on the verdict sheet liable for the damages.

VanTassel's attorney, Chris Panatier, said John Crane Co. – a different company than Crane Co. – was the only defendant left in the case brought on behalf of VanTassel, who was 64 when he died of mesothelioma. His main exposure came from his two years as a boiler tender on a destroyer for the Navy, where every day he handled pipe valves that were sealed with the sheet gasket coating made by John Crane and another company, Panatier said. John Crane will be responsible for \$800,000 of the \$12 million verdict. Like in Nelson, Panatier said he plans on asking that the bankrupt defendant be

included in the liability portion and having John Crane be responsible for that 16th share as well as its initial share. That would bring the damages against John Crane to about \$1.5 million.

John DiDonato, the plaintiffs attorney in Nelson and Brown, said the defendants in all three of the cases basically conceded the mesothelioma was caused by asbestos exposure and didn't present evidence toward the damages phase of the trial.

In the Nelson case, defendants Lincoln and Hobart were welding rod manufacturers. They argued it was impossible that the welding rods at issue could give off respirable fibers of asbestos and therefore couldn't have contributed to the asbestos

exposure, DiDonato said.

A pulmonology doctor, Daniel Dupont, was the only expert DiDonato put on the stand. In testifying in the Nelson case, Dupont had to go up against his brother, defense expert and metallurgist John Dupont. The metallurgist testified that in looking at the formulas for creating the rods, there was no way they could have given off asbestos fibers.

DiDonato said he took a “common sense” approach and put employees on the stand who had used the rods and testified they saw dust coming off the rods and that they inhaled it. He said welding rod manufacturers have been very successful in their defense across

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the country, but the jury in *Nelson* found them liable.

A spokeswoman for Hobart and Lincoln regarding the *Nelson* case said the companies plan to appeal the ruling, which she said was contrary to the evidence and scientific facts.

"We have very strong appellate arguments and believe the verdict will be overturned on appeal," spokeswoman Brandy Bergman said in a statement. "Importantly, this decision does not change the defendants' position with respect to these welding rod related asbestos cases. The fact remains that judges and juries around the country have overwhelmingly rejected these claims and we will continue to defend ourselves vigorously against these types of claims."

For its defense in *Nelson*, DiDonato said Crane Co. argued that the sheet gasket material it manufactured and was used by Nelson during his work at Luken Steel gave off such low levels of asbestos that it was the same as the ambient air. Crane Co. alternatively argued, DiDonato said, that the material was composed of a less dangerous type of asbestos fiber that doesn't enter the lungs as easily.

DiDonato said his expert testified all types of asbestos cause mesothelioma and that "every substantial exposure" can cause the disease. They argued it's impossible to differentiate which exposure caused the illness, he said.

The smaller verdict in *Bell*, DiDonato said, was evidence of the fact that the jury really distinguished the cases. Larry Bell had a number of other health problems aside from mesothelioma, including being a heavy smoker, already needing oxygen before he was diagnosed with mesothelioma, kidney disease, prior drug use and post-traumatic stress disorder from his time serving in Vietnam, DiDonato said.

In *Bell*, as in *Nelson*, sole defendant Crane Co. was found liable for its sheet gasket products. Bell's exposure to asbestos, the plaintiffs argued, came from his time in the Navy, working in the Pittsburgh Plant and working as an electrician. DiDonato said the jurors were unanimous in all three cases when it came to the damages stage. They came out 7-1 on the liability phase, he said.

Crane Co.'s attorney in Bell and Nelson, Jeffrey S. King of K&L Gates in Boston, said the company "continues to believe strongly that its products were not responsible for the injuries at issue in these cases." He said Crane Co. has filed post-trial motions seeking either judgment notwithstanding the verdict, a new trial or remittitur of the verdict.

— *The Legal Intelligencer*

Rice v. 2701 Red Lion Associates LP: \$12.4 million

When plaintiff Leroy Rice's products liability claim went to trial on the issue of damages for the second time, Rice was awarded over \$1.5 million more than the first time his claim went to a jury. A jury awarded \$12.4 million to Rice, a forklift operator who was partially paralyzed in a warehouse accident, according to court papers.

Rice was previously awarded \$10.6 million in damages during a trial in 2006. The state Superior Court reversed the verdict and remanded the case for a new trial in a June 26 unpublished opinion. Dyck presided over the second trial, and Judge Eugene E.J. Maier presided over the first trial.

With delay damages, the entire award could wind up being \$17.4 million, said plaintiff's counsel Thomas J. Duffy Jr. Rice operated a forklift at a frozen food warehouse where the food was stored on racks made by defendant Interlake Material Handling Inc., court papers said. Rice alleged that the racking was not affixed to the wall and stabilizing floor bolts had been sheared off. Rice, now 45, knocked into the racking while operating his forklift and walked away to get help.

As he walked away, the racking broke and frozen food was dropped onto Rice, who suffered massive spinal cord injuries from being crushed under thousands of pounds of frozen food, the plaintiff's pre-trial conference memorandum said.

Interlake Material Handling appealed the first verdict. Superior Court Judge Richard B. Klein, writing for the three-judge panel, said that Interlake should have a new trial on damages and on Interlake's cross-claims for indemnity and contribution against the other defendants. Interlake's liability was not allowed to be retried, Duffy said.

Before the trial, Rice reached a collective settlement of \$3.38 million with defendants 2701 Red Lion Associates, the warehouse owner; Walter A. Schmidt Inc., which installed the racking system; and Warehouse Technologies and Curtis-service Inc., which performed maintenance on the racking, *The Legal Intelligencer* previously reported.

The settlement shifted the nature of the case, Klein said, so the plaintiff only needed to establish liability against Interlake.

On a plaintiff motion, Maier barred Interlake from presenting evidence to consider the claims against the settling defendants. Interlake also was barred from calling two damages experts retained by defendant Schmidt, Klein said.

Klein wrote that it was an error to exclude testimony from witnesses listed on the plaintiff's and other defendants' pre-trial lists because Interlake had reserved the right to call those witnesses.

Interlake did not call the witnesses the Superior Court said Interlake should have been able to call as live witnesses, and Interlake instead relied upon deposition and trial testimony from those witnesses, Duffy said.

Interlake has cross-claims against warehouse owner 2701 Red Lion Associates, Walter A. Schmidt Inc. and Stokes Equipment Company Inc., the company that sold the original racking and assisted in the installation of the racking in 1979, court papers said.

The jury found in favor of those defendants, according to the trial work sheet.

Duffy said he thought the jury might have awarded more in damages during the retrial because Rice's condition has worsened over the last three years.

The plaintiff's memorandum, dated from 2006, said that Rice's past and future medical bills, lost wages and fringe benefits totaled \$8.7 million.

Interlake is insured with Chartis with a \$50 million policy, Duffy said.

Defense counsel could not be reached for comment.

— *The Legal Intelligencer*

State Farm v. Lincow: \$12.1 Million

State Farm Mutual Automobile Insurance Co. decided to accept an award of \$12.1 million over the possibility of receiving \$15.4 million when it was made to choose between taking a trebling of a jury's compensatory award of more than \$4 million or leaving the compensatory award unchanged and keeping the jury's award of \$11.4 million in punitives.

Under the law, the winning plaintiff in such cases cannot have both a trebling of the RICO compensatory damages and punitive damages, but must "elect" to take one or the other.

Now State Farm has opted for the smaller judgment, but has the added security of knowing that all nine defendants named in the suit are jointly and severally liable for the entire \$12.1 million award.

In *State Farm v. Lincow*, U.S. District Judge Eduardo C. Robreno also awarded more than \$945,000 in attorney fees and nearly \$220,000 in costs to the winning plaintiffs lawyers — Cy Goldberg, Richard M. Castagna and Matthew A. Moroney.

Goldberg and Castagna both declined

to be interviewed about State Farm's decision on the damages election issue.

State Farm's civil RICO suit accused three doctors of operating a fraud mill that sharply inflated the costs of medical care for car accident victims.

After a three-week trial in March 2009, the jury awarded State Farm more than \$4 million in compensatory damages and \$11.4 million in punitive damages.

Lead defendant Arnold Lincow, an osteopathic doctor alleged to be the leader of the fraud ring, was hit the hardest with an order to pay \$5 million in punitive damages. The jury also levied punitive awards of \$600,000 each against two other osteopaths, Lawrence Forman and Richard Mintz, and two chiropractors, Stephen Hennessy and Richard Butow. Another doctor, Stephen Sacks, struck a confidential settlement with State Farm prior to the trial.

Four medical service companies were also hit with punitive awards.

Lincow's company, 7622 Medical Center, was ordered to pay \$2.5 million in punitives; and punitive awards of \$500,000 each were levied against Medical Management Consulting Inc., Allied Medical Group and Jefron X-Ray Inc. In its verdict, the jury concluded that all nine of the defendants hit with punitive awards were participants in a RICO conspiracy and had committed both common law fraud and statutory insurance fraud.

Lead defense attorney Joel W. Todd,

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NEGLIGENCE

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Polett v. Public Communications Inc.	\$27,600,000	Negligence: Negligent Supervision	Court of Common Pleas of Philadelphia County	Carl E. Jones, Philadelphia, PA of Kline & Specter, P.C.; Shanin Specter, Philadelphia, PA of Kline & Specter, P.C.	11/22/10	Robert Booth, M.D., Orthopedic Surgery, Philadelphia, PA Charles Clark, M.D., Orthopedic Surgery, Iowa City, IA
Decker v. Consol Energy Inc.	\$7,800,000	Negligence: Negligent Maintenance	Court of Common Pleas of Allegheny County	Carl A. Parise, Pittsburgh, PA of Carl A. Parise & Associates; Timothy Conboy, Pittsburgh, PA of Caroselli Beachler McTiernan & Conboy, LLC; John W. Brown, Pittsburgh, PA of John W. Brown & Associates	11/23/10	S. Philip Hundley, Architecture; Behaz Kasraie, P.E., O'Donnell Consulting Engineers Inc., Engineering, Pittsburgh, PA; Steven Klepper, Ph.D., Economics, Pittsburgh, PA; Michael P. McGonigal, M.D., Family Medicine, Bethel Park, PA; Mitchell H. Rothenberg, M.D., Orthopedic Surgery, Pittsburgh, PA; James Fellin, CPA, CFE, Lost Earnings, Pittsburgh, PA; John Frank, P.E., Technical Engineering Consultants Inc., Engineering, Pittsburgh, PA; Steven E. Kann, M.D., Tri-State Orthopaedics & Sports Medicine Inc., Orthopedic Surgery, Pittsburgh, PA; Jeffrey Kraus, M.D., Pain Management, Germantown, TN
Sedor v. Community Medical Center	\$3,250,000	Negligence	Court of Common Pleas of Lackawanna County	Danielle M. Mulcahey, Scranton, PA of Wright & Reihner, P.C.; George A. Reihner, Scranton, PA of Wright & Reihner, P.C.; Joseph T. Wright Jr., Scranton, PA of Wright & Reihner, P.C.	10/8/10	Elizabeth Arruda, Arruda Legal Nurse Consulting, Legal Nurse Consulting, Rockland, ME; Herbert Fellerman, M.D., Diabetes, Kingston, PA; Mark Lukas, Ed.D., Vocational Rehabilitation, Media, PA; Terri S. Patterson, R.N., Life Care Planning, Plymouth Meeting
Murphy v. Oxford Airport Technical Services	\$3,200,000	Negligence: Negligent Maintenance	Court of Common Pleas of Philadelphia County	Steven M. Mezrow, Philadelphia, PA of Pansini & Mezrow, P.C.; Michael O. Pansini, Philadelphia, PA of Pansini & Mezrow, P.C.	3/5/10	
Martik Brothers Inc. v. Huntington National Bank	\$2,430,000	Negligence: Negligent Misrepresentation	U.S. District Court, Western District of Pennsylvania	Phillip J. Binotto, Jr., Canonsburg, PA of Eckert, Seamans, Cherin & Mellott, L.L.C.; Marcia DePaula, Canonsburg, PA of Eckert, Seamans, Cherin & Mellott, L.L.C.; Jana P. Grimm, Canonsburg, PA of Eckert, Seamans, Cherin & Mellott, L.L.C.	3/30/10	David M. Williamson, P.E., Project Management, Pittsburgh, PA
Hannon v. Temple University of Commonwealth System of Higher Education	\$1,687,769	Negligence: Negligent Maintenance	Philadelphia County Court of Common Pleas	David Brian Rodden, Philadelphia, PA of Rodden & Rodden; Kristin N. Vairo, Philadelphia, PA of Rodden & Rodden	4/29/10	Lorraine E. Buchanan, R.N., M.S.N., C.R.R.N., Life Care Planning, Blue Bell, PA; Donald E. Jennings, Ed.D., Vocational Assessment, Feasterville, PA; John S. Posusney, P.E., Civil, Mt. Laurel, NJ; Gene Salkind, M.D., Neurology, Huntington Valley, PA; Walter E. Green, R.A., Fleisher Forensics, Architecture, Fort Washington, PA; Peter Lento, Vocational Assessment, Lafayette Hill, PA
Eisenberry v. Shaw Brothers L.L.C.	\$1,400,000	Negligence: Negligent Maintenance	U.S. District Court, Middle District of Pennsylvania, Scranton	Michael R. Goffer, Scranton, PA of Michael R. Goffer, Esquire	2/9/10	
Tourneau Inc. v. IPC International Corp.	\$533,179	Negligence: Negligent Security	Philadelphia County Court of Common Pleas	Laura A. Taylor, Philadelphia, PA of Yost & Tretta, LLP; Richard W. Yost, Philadelphia, PA of Yost & Tretta, LLP	11/19/10	Howard Moster, Practical Protection Associates Inc., Mall Security Daniel Kennedy, Ph.D., Forensic Criminology Assoc., Criminology, Troy, MI
Milanj Diamonds Inc. v. IPC International Corp.	\$408,000	Negligence: Negligent Security	Philadelphia County Court of Common Pleas	Laura A. Taylor, Philadelphia, PA of Yost & Tretta, LLP; Richard W. Yost, Philadelphia, PA of Yost & Tretta, LLP	9/17/10	Howard Moster, Practical Protection Associates Inc., Mall Security Daniel Kennedy, Ph.D., Forensic Criminology Assoc., Criminology, Troy, MI
Petrose v. Sovereign Bank	\$60,000	Negligence: Negligent Infliction of Emotional Distress	Philadelphia County Court of Common Pleas	Martin Stanshine, Philadelphia, PA of Stanshine & Sigal, P.C.	10/19/10	Christian Kohler, M.D., Psychiatry, Philadelphia, PA; John O'Brien, M.D., Psychiatry, New Holland, PA
Parr v. Merida	\$25,000	Negligence: Negligent Entrustment	Allegheny County Court of Common Pleas	Patrick W. Murray, Pittsburgh, PA of Stewart, Murray & Associates Law Group, L.L.C.; Jonathan M. Stewart, Pittsburgh, PA of Stewart, Murray & Associates Law Group, L.L.C.	9/17/10	James L. Kenkel, Ph.D., University of Pittsburgh, Economics, Pittsburgh, PA; Gerard Myers, D.O., Pain Control Center of Pittsburgh, Pain Management, Monaca, PA Jon B. Tucker, M.D., Tucker Orthopedics, Orthopedic Surgery, Pittsburgh, PA
Santiago v. City of Philadelphia	\$25,000	Negligence: Police as Defendant	Philadelphia County Court of Common Pleas	Frank A. Rothermel, Philadelphia, PA of Bernhardt & Rothermel, P.C.; Warren I. Siegel, Philadelphia, PA of Bernhardt & Rothermel, P.C.	7/21/10	

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who represented all of the defendants to stand trial, filed post-trial motions urging Robreno to overturn the verdict.

Todd argued that State Farm failed to prove RICO liability and that its theory of the case was flawed because it never proved the existence of a distinct RICO enterprise.

Lincow, Todd argued, could not be found to have conspired with the corporations he owned, and other defendants likewise could not be found to have conspired with the corporations that employed them.

Todd argued that the jury could find that all the defendants were employees of Lincow, and therefore could not have been liable under RICO conspiracy since employees of the same entity acting within the scope of their employment cannot conspire with each other or the corporate entity.

Robreno canvassed the law and found that the 3rd U.S. Circuit Court of Appeals has never decided whether the intracorporate conspiracy doctrine bars a RICO

Section 1962(d) claim. The five circuits that have addressed the issue are split, he noted, with the 7th, 9th and 11th holding that it is no bar, but the 4th and 8th holding that it is.

But despite the jurisprudential uncertainty, Robreno found that all of the defendants were potentially liable for RICO conspiracy because State Farm had "substantial evidence" that each defendant was "acting in pursuit of their own interests and not for the benefit of the corporation."

Robreno also rejected Todd's argument that the trial was rendered unfair because of prejudicial evidentiary rulings including the judge's decision to allow the plaintiffs to show portions of the videotaped deposition of Lincow, where he became upset and unruly.

Since Lincow was available to take the stand, Todd argued, the only reason to use the video was to inflame the jury.

Robreno disagreed, saying the video was properly introduced as an "admission" and that Lincow, who has been deposed before as an expert witness, should have

known that his filmed testimony could be shown in court.

"That Dr. Lincow may have come to regret his boorish behavior at the deposition is not grounds for excluding it. In the final analysis, a deposition is a court proceeding and a witness and counsel are responsible for how they behave at depositions," Robreno wrote.

Attorney Michael Dolchin, responding on behalf of all the defendants, said he had no comment on Robreno's rulings, but that the defense team is already working on an appeal to the 3rd Circuit.

— *The Legal Intelligencer*

Calgon Carbon Corp. v. ADA-ES Inc.: \$12 million

A clean-coal technology firm was awarded \$12 million late last month by a federal court jury in Pittsburgh in its breach of contract suit against a manufacturer of "powdered activated carbon," one of the key components of a newly emerging process for removing mercury from the emissions at coal energy plants.

After a seven-day trial, the jury concluded

that Pittsburgh-based Calgon Carbon Corp. had breached its contract with ADA Environmental Solutions of Littleton, Colo., by failing to pay commissions on sales of carbon to Midwest Generation, an independent electric power producer.

The jury said in its verdict that Calgon should pay \$3 million in past due commissions, and a lump sum of \$9 million in future commissions.

In doing so, the jury specifically rejected Calgon's argument that any future commission award should be on a pay-as-you-go basis, with the jury deciding only whether a percentage should be paid as a commission, but not how much would be paid over the course of the contract.

Plaintiffs attorney John J. Gotaskie Jr. said in an interview that U.S. District Judge Gary L. Lancaster had put the lawyers "on the clock," telling both sides that they would be strictly limited to 17 hours of presentation time before the jury.

Lawyers' speeches, examinations of witnesses and even brief remarks made during objections were counted toward

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PRODUCTS LIABILITY

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Pridgen v. Avco Corp.	\$88,700,000	Products Liability: Design Defect	Court of Common Pleas of Philadelphia County	Cynthia M. Devers, Philadelphia, PA of The Wolk Law Firm; Bradley J. Stoll, Philadelphia, PA of The Wolk Law Firm; Arthur Alan Wolk, Philadelphia, PA of The Wolk Law Firm	4/6/10	Lee Coffman, Aero Services Unlimited, Aircraft Maintenance, Santa Fe, NM; Richard H. McSwain, Ph.D., P.E., McSwain Engineering Inc., Materials Science, Pensacola, FL; Harvey S. Rosen, Ph.D., Economics, Cleveland, OH; Donald E. Sommer, Aircraft, Broomfield, CO; Jeffrey W. Edwards, Pilot Performance/Error, St. Louis, MO
Estate of Baumener v. A.W. Chesterton Co.	\$50,000,000	Products Liability: Asbestos	Court of Common Pleas of Allegheny County	Michael J. Gallucci, Pittsburgh, PA of Savinis, D'Amico & Kane, L.L.C.; John R. Kane, Pittsburgh, PA of Savinis, D'Amico & Kane, L.L.C.; Michael P. Robb, Pittsburgh, PA of Savinis, D'Amico & Kane, L.L.C.; Janice M. Savinis, Pittsburgh, PA of Savinis, D'Am	1/29/10	Mark S. Colella, M.D., Radiology, Natrona Heights, PA; Patricia A. Costantini, R.N., Costantini Rehab Inc., Life Care Planning, Pittsburgh, PA; Murray Finkelstein, M.D., Ph.D., Occupational Medicine; Richard L. Hatfield, Materials Science, Atlanta, GA; William Johnson, M.D., Ph.D., Technical, Augusta, GA; Jacques Legier, M.D., Riverside Regional Hospital, Pathology, Newport News, VA; James Rodgers, Ph.D., Economics, State College, PA
Van Tassel v. John Crane Inc.	\$30,000,000	Products Liability: Asbestos	Court of Common Pleas of Philadelphia County	Steven J. Cooperstein, Philadelphia, PA of Brookman Rosenberg Brown & Sandler; John M. DiDonato, Philadelphia, PA of Brookman Rosenberg Brown & Sandler; David B. Halpern, Philadelphia, PA of Brookman Rosenberg Brown & Sandler; Ben Braly, Dallas, TX of Sim	3/23/10	Arnold R. Brody, M.D., Cell Biology, New Orleans, LA; Daniel DuPont, M.D., Taylor Hospital, Asbestos-related Lung Disease, Ridley Park, PA; Eugene J. Mark, M.D., Pathology, Boston, MA; Steven S. Paskal, M.S.H., J.D., C.I.H., Industrial Hygiene, Severna Park, MD
Russell v. AW Chesterton Inc.	\$17,000,000	Products Liability: Asbestos	Court of Common Pleas of Philadelphia County	Aaron J. DeLuca, Spring, TX of DeLuca & Nemeroff, LLP; Barrett Naman, Spring, TX of DeLuca & Nemeroff, LLP; Rick Nemeroff, Spring, TX of DeLuca & Nemeroff, LLP; Benjamin Shein, Philadelphia, PA of Shein Law Center, Ltd.	2/19/10	Samuel P. Hammar, M.D., Diagnostic Specialties Laboratory, Pathology, Bremerton, WA; Richard A. Lemen, Ph.D., Asbestos, Duluth, GA; William Longo, Ph.D., Materials Analytical Services, Materials Science, Atlanta, GA; John C. Maddox, M.D., Pathology, Newport News, VA
Rice v. 2701 Red Lion Associates LP	\$12,400,000	Products Liability: Design Defect	Court of Common Pleas of Philadelphia County	Thomas J. Duffy, Philadelphia, PA of Duffy & Keenan; Kenneth F. Fulginiti, Philadelphia, PA of Duffy & Keenan	2/23/10	Todd J. Albert, M.D., Thomas Jefferson Universities and Hospitals, Neurosurgery, Philadelphia, PA; Kathleen Corrigan, Life Care Planning, Havertown, PA; Irene C. Mendelsohn, Vocational Rehabilitation/Counseling, Philadelphia, PA
Pursell v. Volkswagen AG	\$10,200,000	Products Liability/ Crashworthiness	Court of Common Pleas of Bucks County	Larry Coben of Anapol Schwartz	8/27/10	Alan Cantor, AARCA, Pennsylvania
Singleton v. Wyeth	\$9,450,000	Products Liability	Court of Common Pleas of Philadelphia County	Zoe Littlepage of Littlepage Booth; Samuel Abloeser of Williams Cuker Berezofsky; Heidi Hubbard of Williams & Connolly; David Dukes of Nelson Mullins Riley & Scarborough	2/22/10	
Koeberle v. John Crane Inc.	\$4,500,000	Products Liability: Failure to Warn	Court of Common Pleas of Philadelphia County	Benjamin Shein, Philadelphia, PA of Shein Law Center; Troyce G. Wolf, Dallas, TX of Waters & Kraus, LLP; Demetrios T. Zacharopoulos, Baltimore, MD of Waters & Kraus, LLP	6/15/10	Daniel Sterman, M.D., Hospital of the University of Pennsylvania, Pulmonology, Philadelphia, PA; Gordon Yu, M.D., Pathology, Philadelphia, PA Peter J. Barrett, M.D., F.A.C.R., Radiology, Boston, MA; Stephen Markowitz, M.D., Occupational Medicine, New York
Estate of Wolfinger v. 20th Century Glove Corp. of Texas	\$825,000	Products Liability: Asbestos	Philadelphia County Court of Common Pleas	Eliot B. Present, Philadelphia, PA of Paul, Reich & Myers, P.C.	5/6/10	Arthur L. Frank, M.D., Hannaman Hospital, Occupational Medicine, Philadelphia, PA; Jonathan Gelfand, M.D., Asbestos-related Lung Disease, Philadelphia, PA; Harvey Specter, M.D., Crozer-Chester Medical Center, Pathology, Chester, PA; Louis Burgher, M.D., Pulmonology, Omaha, NE; Thomas Eager, Ph.D., MIT, Metallurgy, Cambridge, MA; Mary Finn, Industrial Hygiene, Des Moines, IA; Andrew Ghio, M.D., Pulmonary/Respiratory Diseases, Chapel Hill, NC; Allen R. Gibbs, M.D., Pathology, Los Angeles, CA; Alan Pope, M.D., Asbestos-related Lung Disease, Cherry Hill, NJ
Walston v. Home Depot U.S.A. Inc.	\$87,807	Products Liability: Failure to Warn	U.S. District Court, Eastern District of Pennsylvania, Philadelphia	Michael Cancelliere, Jr., Philadelphia, PA of Howard, Brenner & Nass, P.C.	7/1/10	Edward T. Luckiewicz, P.E., Chemical, Rydal, PA; Michael A. Picariello, M.D., Otolaryngology, Kennett Square, PA; Carl Zimmerman, M.D., General Practice, Kennett Square, PA Scott Manaker, M.D., Pulmonology, Philadelphia, PA

WRONGFUL DEATH

CASE NAME	AMOUNT	TYPE OF ACTION	COURT NAME	ATTORNEYS	DATE	EXPERTS
Bohning v. Cullen	\$95,000,000	Wrongful Death	Court of Common Pleas of Lehigh County	Jonathan B. Acklen, Bethlehem, PA of Cohen & Feeley; Mark K. Altemose, Bethlehem, PA of Cohen & Feeley; Kelly Clifford Rambo, Bethlehem, PA of Cohen & Feeley	3/11/10	
Estate of Torres v. Wachovia Bank, N.A.	\$46,168,000	Wrongful Death	Court of Common Pleas of Berks County	Jay N. Abramowitch, Wyomissing, PA of Leisawitz Heller Abramowitch Phillips, P.C.; Kenneth Millman, Wyomissing, PA of Leisawitz Heller Abramowitch Phillips, P.C.	11/16/10	Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA
Lanpher v. Alfa-Laval Inc.	\$6,500,000	Wrongful Death: Survival Damages	Court of Common Pleas of Philadelphia County	Benjamin Shein, Philadelphia, PA of Shein Law Center, Ltd.; Troyce G. Wolf, Dallas, TX of Waters & Kraus, LLP; Demetrios T. Zacharopoulos, Baltimore, MD of Waters & Kraus, LLP	3/5/10	Francis Burger, U.S. Navy, Maritime/Admiralty, Ocean Springs, MS; John C. Maddox, M.D., Pathology, Newport News, VA Jeffrey Giacomini, Ph.D., Mechanical; Thomas McCaffery, Maritime/ Admiralty
Estate of Long v. Golofsky	\$5,000,000	Wrongful Death	Court of Common Pleas of Allegheny County	David C. Martin Jr., Pittsburgh, PA of Martin & Lerda	11/8/10	
Estate of Schuenemann v. Dremz LLC	\$1,964,758	Wrongful Death: Survival Damages	Philadelphia County Court of Common Pleas	R. Erick Chizmar, Philadelphia, PA of Levy, Baldante, Finney, Rubenstein, Cohen & Chizmar, P.C.	5/17/10	G. John DiGregorio, M.D., Ph.D., Drug Toxicology, Willow Grove, PA; Donald E. Jennings, Ed.D., Vocational Assessment, Feasterville, PA; Andrew C. Verzilli, M.B.A., Verzilli & Verzilli Consultants Inc., Economics, Lansdale, PA
Estate of Garner v. Girard Medical Center	\$1,750,000	Wrongful Death: Survivorship Action	Philadelphia County Court of Common Pleas	Frank A. Rothermel, Philadelphia, PA of Bernhardt, Rothermel & Siegel, P.C.; Warren I. Siegel, Philadelphia, PA of Bernhardt, Rothermel & Siegel, P.C.	7/1/10	Stephen W. Hornyak, M.D., Colon & Rectal Surgery, Staten Island, NY Mark J. Ingerman, M.D., Lanckenau Hospital, Infectious Diseases, Wynnewood, PA
Scarpa v. Tyler Memorial Hospital	\$1,200,000	Wrongful Death: Survival Damages	Lackawanna County Court of Common Pleas	Matthew A. Cartwright, Plains, PA of Munley, Munley & Cartwright, P.C.	4/19/10	Robert G. Brueckner, Health Care Management, Joplin, MO; William J. O'Riordan, M.D., Emergency Medicine, La Jolla, CA; Norman J. Snow, M.D., University of Illinois, Cardiothoracic Surgery, Chicago, IL Matthew R. Astroff, M.D., Gastroenterology, Allentown, PA
Estate of Fontanez v. Temple University Hospital Inc.	\$750,000	Wrongful Death	Philadelphia County Court of Common Pleas	Thomas J. Duffy, Philadelphia, PA of Duffy + Partners; John Mirabella, Philadelphia, PA of Duffy + Partners	10/26/10	David L. Hopkins, A.S.A., Economics, King of Prussia, PA; Edgar J. Kenton, M.D., Emory University, Neurology, Atlanta, GA; Donald A. Nicklas, M.D., Pathology, Audubon, PA; David Pearse, M.D., John Hopkins University, Pulmonology, Baltimore, MD Mark J Brow

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the total number of minutes allotted to each side.

Calgon, which was represented by a team of lawyers led by Thomas E. Birsic of K&L Gates, has vowed to appeal.

“We were surprised and very disappointed by the jury’s verdict,” said John S. Stanik, Calgon’s chairman, president and chief executive officer. “We believe that there are several grounds for appeal, and we will vigorously pursue them.”

In the suit, ADA-ES claimed that Calgon had limited experience selling to the power industry, and that the two firms had struck an agreement to work together in securing a contract with Midwest that called for Calgon to pay ongoing commissions to ADA-ES if the contract were secured.

The suit also alleged that Calgon had reaffirmed its commitment repeatedly just prior to exercising an option to terminate.

In court papers, ADA-ES said that “during July and August of 2007 the parties confirmed repeatedly in writing to each other and to Midwest and/or its agents that the termination of the MOU [memorandum of understanding] had no impact on the parties’ pending bid to Midwest and that their joint efforts regarding Midwest would continue notwithstanding the termination of the MOU.”

The suit said Calgon announced in March 2008 that it had been awarded a contract to supply at least \$55 million worth of carbon to Midwest.

But when ADA-ES requested a commission payment schedule, the suit alleged that Calgon stated for the first time in June 2008 that it would not pay any commissions.

Calgon contended in court papers that it never breached the contract, and that Midwest had specifically rejected a joint proposal from Calgon and ADA-ES prior to its acceptance of a contract with Calgon alone.

Both Calgon and ADA-ES had agreed that the MOU could be terminated “for convenience,” meaning “for any reason at all,” Calgon’s lawyers argued.

No commissions were owed, Calgon argued, because the MOU was terminated with adequate notice prior to the signing of the Calgon-Midwest contract.

But ADA-ES argued in court papers that the contract with Midwest was the result of a bidding process that stretched over several months and that Calgon and ADA-ES had worked together closely on the process.

Midwest never rejected the joint proposal, ADA-ES argued, and Midwest also didn’t have enough time to go through the same sort of formal bidding process for Calgon alone, according to court papers.

– *The Legal Intelligencer*

Pursell v. Volkswagen AG: \$10.2 million

Chelsea Pursell, 16, suffered catastrophic injuries in May 2004 when the 1992 Volkswagen Jetta in which she was riding struck a utility pole on Lehigh Street in Allentown.

A Bucks County jury awarded Pursell \$8.7 million in economic damages for past medical expenses, future medical expens-

es and past and future lost earnings. The jury also awarded Pursell \$1.5 million in non-economic damages.

According to the plaintiffs’ pretrial memorandum, Pursell was leaving an event at an Allentown park with Kristofer Young and three friends. Young lost control of his car and struck a utility pole about one foot from the edge of the road.

Pursell was riding in the rear, center seat of the Volkswagen wearing the lap belt. As a result of the crash, Pursell suffered lacerations to her internal organs and a spinal court injury resulting in paraplegia and loss of bowel and bladder control.

Pursell and her parents sued Young; Volkswagen AG, which manufactured the car; and Volkswagen of America Inc., which imported the car. The plaintiffs also sued PP&L Electric Utilities Corp., which placed the utility pole that the car struck.

The utility company settled before trial for \$100,000. Defense counsel for Young said the plaintiffs declined an offer of the driver’s \$100,000 automobile insurance policy limit.

The plaintiffs alleged the Volkswagen was not crashworthy and that the car’s defectively designed rear seat system caused Pursell’s injuries.

Plaintiffs’ counsel said experts testified at trial that the Volkswagen’s rear seat and restraint system were designed contrary to published literature.

Volkswagen disputed that the car was unsafe or caused Pursell’s injuries and claimed that Young and the utility company were responsible parties. Young admitted that he caused the accident but disputed that his actions were the cause of Pursell’s injuries, according to the plaintiffs’ memorandum.

The plaintiffs claimed all non-liquidated damages under state law. Based on medical bills and expert testimony regarding the nature of Pursell’s injuries and the type of care she will require, the plaintiffs claimed economic damages in the range of \$7.4 to \$9.5 million.

The plaintiffs have also requested delay damages of \$1.67 million, plaintiffs’ counsel said.

Plaintiffs’ counsel said the trial lasted from Jan. 11, when the jury was picked, until Jan. 30 when the verdict was returned. The jury deliberated for about six hours.

Plaintiffs’ counsel said his clients rejected an offer to settle the case before trial for \$600,000. Defense counsel for Volkswagen would not comment on settlement offers.

Volkswagen did not dispute the severity of Pursell’s injuries. It focused on the design of the car arguing that no seatbelt can protect an occupant from all injuries, that the accident at issue was highly unusual and that Pursell’s injuries were caused by the severity and nature of the accident, not the car design.

According to the verdict slip, the jury assigned 51 percent of the liability to Young, 39 percent to Volkswagen and 10 percent to PP&L.

Because Young’s policy limit is \$100,000, plaintiffs’ counsel said the plaintiffs expect to collect 90 percent of the verdict less that amount from Volk-

swagen under the doctrine of joint and several liability.

Volkswagen has filed a motion for post trial relief seeking a judgment notwithstanding the verdict and a new trial on grounds that the evidence the plaintiffs presented did not create an issue of fact for the jury.

An attorney for PP&L referred calls to the company’s spokesman, who declined to comment.

– *The Legal Intelligencer*

Singleton v. Wyeth: \$9.4 Million

A Philadelphia jury has decided that drugmaker Wyeth should be punished with punitive damages for the warnings provided to a plaintiff and her doctor over the risk of breast cancer from Wyeth’s hormonal drug Prempro.

The jury awarded \$6 million in punitive damages and \$3.45 in compensatory damages in *Singleton v. Wyeth*. According to plaintiffs’ counsel Zoe Littlepage, this case is the first in the country involving a plaintiff diagnosed with breast cancer well after the July 2002 release of the Women’s Health Initiative, a randomized, controlled trial of the risks and benefits of hormone replacement.

The WHI received national notoriety because the study was discontinued early because of its finding that HRT correlated to an increased risk of invasive breast cancer and other health problems.

Littlepage said the jury’s verdict was significant because plaintiff Audrey Singleton was prescribed Prempro during a period in which the label had changed following the WHI, and the jury verdict showed the jury found that Wyeth didn’t react appropriately to the WHI.

“We think the jury’s verdict is a very important statement to Wyeth that the community of Pennsylvania does not appreciate the way Wyeth acted toward the grandmothers of this country,” Littlepage said.

After four hours of deliberation, the jury awarded Singleton, of Chatom, Ala., \$3.25 million in compensatory damages after finding that Wyeth failed to adequately warn Singleton’s doctor about the risks of Prempro; that Singleton’s doctor would have recommended a different treatment for Singleton’s menopause if he had been adequately warned of the risks of Prempro; and that Prempro was a cause of Singleton’s breast cancer.

The jury also awarded \$200,000 for the loss of consortium claim brought by Singleton’s husband, Charles Singleton. The jury also said that Wyeth’s conduct warrants punitive damages.

The jury deliberated for only seven minutes during the punitive damages phase before returning its verdict of \$6 million.

The trial lasted four weeks.

When the jury was polled during the liability phase, 11 of 12 jurors found in favor of the plaintiffs. When the jury was polled during the punitive damages phase, all 12 jurors agreed with the verdict.

The verdict in Singleton has continued the run of jury verdicts in favor of plaintiffs in Philadelphia hormone-replacement therapy cases. There are 1,500 HRT mass tort cases pending in Philadelphia Com-

mon Pleas Court.

Singleton used Wyeth-made Prempro, a combination estrogen-progestin drug, for six years before her diagnosis with breast cancer in January 2004.

In a statement, Wyeth expressed disappointment in the verdict.

Wyeth also said in its statement that it has won in 24 of 29 HRT cases set for trial through a combination of rulings by judges, verdicts by juries and dismissals by plaintiffs to avoid going to trial.

Among the still-pending plaintiffs’ verdicts are several Philadelphia verdicts.

During arguments on punitive damages, Littlepage said defendant Wyeth made a concerted effort from 1975 to 2004 to not study any risks of breast cancer associated with its blockbuster-selling drug Prempro and to downplay negative findings in research conducted by others.

“Corporations listen through money,” Littlepage said.

Dukes asked the jury to punish out of a place of rationality, not a place of anger. Dukes said that Wyeth employees have made “a real effort” to make sure the Prempro warnings were fair, understandable and adapted to the current state of scientific knowledge. He also argued that there is a reasonable debate among scientists about breast cancer.

– *The Legal Intelligencer*

Decker v. Consol Energy Inc.: \$7.8 Million

Two men who fell 14 feet to the ground when a staircase they were on collapsed have been awarded a combined \$7.8 million by an Allegheny County jury.

David Gillingham and Clifford Decker had stepped onto an outdoor staircase in July 2007 while at a Consol Energy research plant when it collapsed, according to Decker’s pretrial statement.

According to the statement, the collapse was caused by a series of corroded bolts that gave way while the men were on the staircase.

Decker’s pretrial statement said he suffered “fractures to the femoral neck, mid-shaft femur and distal femur of his left leg as well as a left intertrochanteric femur fracture of the hip, a knee injury and various lacerations, abrasions and contusions.”

The injuries, according to the pretrial statement, left Decker “totally non-weight-bearing” for more than 5 months and required him to use crutches for another three months. He still uses a cane, according to the statement.

Though Decker has been able to return to work, his attorneys argued that he did so in a diminished capacity and that he continues to receive physical therapy treatments.

A sales representative for a mining pump manufacturer, Decker was required to “enter mines, climb ladders, walk catwalks, traverse construction zones and actively walk the work site with the users and potential users of the pumps.”

Decker can no longer perform those activities, however, and that has impacted his ability to make the money he was making pre-injury, according to the statement.

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An economic expert predicted that loss of income to be more than \$1.6 million.

In making their case, the plaintiffs argued that Consol failed to properly maintain their staircase and that such negligence led to its collapse.

Tim Conboy, who represented Decker, said he and his co-counsel, John Brown and Carl Parise, argued to the jury hearing the case that \$20 would have fixed the problem with the nut and bolt system that held the stairwell in place.

The staircase was more than 40 years old at the time of the collapse, according to Decker's pretrial statement.

"The defendant's sole liability defense is that they had no notice," Conboy wrote in the pretrial statement. "They did not know that the old metal hardware was rusty and corroded."

Consol, in its pretrial statement, argued that the "alleged unsafe condition" was hidden inside the wall to which the staircase was attached and that there were no visible signs of defects.

"Prior to the collapse, there was no evidence of any problem with the staircase - numerous employees, including the plaintiff, used the staircase hundreds of times without incident and without any swaying, creaking or movement, and the visible exterior of the fasteners/bolts showed no signs of deterioration," Consol's pretrial statement read.

Further, argued Consol, it did not design or construct the building and it exercised "reasonable care" in inspecting

the property.

During periodic maintenance inspections, Consol had teams perform inspections of the research plant every two months.

"No one, including the plaintiffs, noticed any problems with the staircase in the form of creaking, swaying or otherwise," the defense pretrial statement reads. "In fact, photographs taken immediately after the accident revealed no visible evidence of any excessive rust, and no evidence of any problems with the bolts/nuts as would have been reasonably in view prior to the accident."

Conboy said Consol vigorously contested liability throughout the trial but that he and his co-counsel were confident in the case.

Conboy's co-counsel, John Brown, said the plaintiffs' used the fact that the staircase was old and the bolts were not immediately visible to their advantage. Instead of being a notice defense, Brown said, the plaintiffs argued that such a staircase should be given extra attention.

A jury awarded Gillingham \$5 million and Decker \$2.8 million.

"We saw this as a damages case," Conboy said.

- *The Legal Intelligencer*

MFS Inc. v. DiLazaro: \$6.5 million

On Jan. 24, 2003, plaintiff MFS Inc., which owned a mineral wool manufacturing facility in Bethlehem, received a field enforcement order by the Department of Environmental Protection (DEP) based on

a notice of violation (NOV) for an alleged malodor that had been issued to the plant on Nov. 8, 2001. It was the first NOV issued to the facility since MFS took over its operation in 1988. Involved in issuing the NOV were four employees of the DEP's northeast regional office: regional director, Michael Bedrin, air program manager, Thomas A. DiLazaro, chief counsel for the governor's office, Sean L. Robbins, and another DEP employee, Mark Wejkszner.

On Feb. 17, 2006, after three years of attempts to repeal the field enforcement order, and after repeated, failed attempts to sell the plant, MFS closed the facility.

MFS sued Bedrin, DiLazaro, Wejkszner and Robbins for violations of its constitutional rights under the First and Fourteenth Amendments.

Plaintiffs' counsel argued that the defendants were negligent for, among other things, issuing the plaintiff erroneous notices of violation for an alleged malodor; issuing a field enforcement order to MFS that the DEP knew to be based on an unsubstantiated NOV issued to the company one year prior; interfering with the plaintiff's due process rights to be free to pursue an occupation without undue governmental interference; and disseminating false and misleading information about the plaintiff to the public, press and government officials.

Counsel for the plaintiff also contended that one of the defendants falsely reported the plaintiff was the source of Benzene in the area, when in fact it was not. The defendants also interfered with

MFS' ability to operate its facility and, in not reissuing its Title V permit in a timely manner, prevented it from selling the facility to a third party, said counsel.

The defendants denied that these alleged acts amount to constitutional violations and contended that at no time did the defendants interfere with the plaintiff's ability to operate its facility or interfere with the plaintiff's ability to sell its facility to a third party. Further, the defendants contended that they were entitled to qualified immunity from the plaintiff's constitutional claims and from the plaintiff's claim of tortious interference.

The plaintiff sought \$9,279,978 in damages.

The jury found for the plaintiff and against the defendants in the amount of \$6.5 million. Jurors awarded MFS Inc. \$2.6 million against DiLazaro, \$1.625 million against Bedrin, \$650,000 against Wejkszner, and \$1.625 million against Robbins.

This report is based on court documents and information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

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