Received 10/16/2020 12:51:01 PM Supreme Court Western District

Filed 10/16/2020 12:51:00 PM Supreme Court Western District
18 WAP 2020

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

Docket No. 18 WAP 2020

ROBERT KIRKSEY, JR.,

Appellant,

v.

CHILDREN'S HOSPITAL OF PITTSBURGH OF UPMC, UNIVERSITY OF PITTSBURGH PHYSICIANS, and SATYANARAYANA GEDELA, M.D.,

Appellees.

BRIEF OF *AMICI CURIAE*, THE PENNSYLVANIA ORTHOPAEDIC SOCIETY, THE HOSPITAL AND HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA, AND THE PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, FILED IN SUPPORT OF APPELLEES

Appeal from the Order of the Superior Court of Pennsylvania entered October 9, 2019, at Docket No. 421 WDA 2018, denying reargument *en banc* and affirming the judgment of the Court of Common Pleas of Allegheny County, Pennsylvania, entered on December 1, 2017, at Case No. G.D. 14-010939.

Michael K. Feeney, Esquire
PA I.D. #88530

MATIS BAUM O'CONNOR
912 Fort Duquesne Blvd.
Pittsburgh, PA 15222
(412) 338-4750

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES OF COURT

STATEMENT OF INTEREST OF *AMICI CURIAE* PURSUANT TO Pa.R.A.P. 531(b)(2)

Amicus Curiae, the Pennsylvania Orthopaedic Society, is a non-profit organization founded in 1956 and represents over 1,200 orthopaedic surgeons, residents, and fellows practicing throughout the Commonwealth of Pennsylvania. The organization's Mission is "to enhance our members' ability to provide the highest quality musculoskeletal care." Its Vision is to "be the primary organization that promotes quality musculoskeletal health for the citizens of Pennsylvania."

Amicus Curiae, the Hospital and Healthsystem Association of Pennsylvania ("HAP") is a statewide membership services organization that advocates for nearly 240 Pennsylvania acute and specialty care, primary care, subacute care, long-term care, home health, and hospice providers, as well as the patients and communities they serve.

Amicus Curiae, the Pennsylvania Coalition for Civil Justice Reform is a statewide, nonpartisan alliance of organizations and individuals representing businesses, professional and trade associations, health care providers, nonprofit entities, taxpayers, and other perspectives. The coalition is dedicated to bringing fairness to litigants by elevating awareness of civil justice issues and advocating for reform."

Amici Curiae all have a special interest in the outcome of this case and have significant concerns regarding how it will substantially and negatively affect their

respective memberships. *Amici Curiae* are all recognized as credible sources of information and data to decision makers in Harrisburg and throughout the Commonwealth of Pennsylvania, including the General Assembly, the Governor's Office, and state regulatory agencies.

Pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(2), funding support for this Brief of *Amici Curiae* was provided in part by Curi, the MedPro Group, Inc., the Ophthalmic Mutual Insurance Company, ProAssurance Companies, and The Doctors Company.

ARGUMENT

Plaintiff's proposed jury instruction was never filed and is not part of the certified record on appeal. This alone is fatal to Plaintiff's appeal.

If judged on the merits, this case must be seen for what it is: a trial court's refusal of a poorly-crafted jury instruction that is disingenuous, factually wrong, biased, and unwarranted. This is the instruction that Plaintiff requested at trial:

> You have heard conflicting testimony as to whether Dr. Gedela advised JerriLynne Kirksey and Robert Kirksey of the risk of rash. It is for you to decide the credibility of such testimony. However, even though there is such a dispute in the testimony, even if you were to credit the testimony of Dr. Gedela, and not Mrs. Kirksey, there is no defense in this case of assumption of the risk.

(R. 002733a).

Boiled down to its essence, the proposed instruction reads, "***The witnesses gave conflicting testimony, you decide who's credible. But, your decision doesn't matter because the issue isn't relevant.***" It doesn't make sense. It sends the jury on a fool's errand. It misrepresents Dr. Gedela's testimony, given that he never testified at trial about discussions with either the patient or the patient's mother regarding the risk of developing a rash. And then, it prejudicially mandates that, whatever the jury's finding on credibility, Dr. Gedela loses, thereby improperly impugning Dr. Gedela's credibility overall.

The proposed instruction, if read to the jury, would have injected substantial confusion into the jury's deliberations. The trial court was well within its discretion to deny the proposed instruction for this reason alone. After the trial court rightly denied the charge, Plaintiff never offered alternative language for his proposed instruction that may have cured such confusion. (R. 001398-9a).

There is certainly a myriad of jury instructions that could have addressed Plaintiff's concerns about consent and assumption of the risk in a less confusing and less prejudicial manner. This Honorable Court contemplated the issuance of such guidance when it decided Mitchell v. Shikora, noting that "we are confident that trial judges will serve their evidentiary gate-keeping function in this regard and, through instruction and comment, ensure that juries understand the proper role of such evidence at trial." Mitchell v. Shikora, 209 A.3d 307, 320 (Pa. 2019). But the above-quoted instruction, ***and this alone***, is what's before this Honorable Court. Even if this Honorable Court were to decide that clarification had been warranted, Plaintiff's proposed instruction falls on its face in accomplishing that goal. Any exploration of what a proper jury instruction should be would therefore constitute *dicta*.

This is not a case suited to make good law, regardless of one's position on the substantive issue. The proposed jury instruction is clumsy and unnecessarily prejudicial, thereby leaving this Honorable Court to invent and speculate, in *dicta*, on what might have constituted a reasonable charge. Plaintiff also fails to detail why

the proposed jury instruction was warranted in the first place, given that the defense did not argue that the patient or his mother consented to or assumed the risks of his medications. Rather, the defense's discussions of the potential risks and complications of the patient's medications helped establish the standard of care in Dr. Gedela's prescribing of those medications.

For these reasons, this case does not warrant this Honorable Court's valuable time and must be dismissed as having been ***improvidently granted*** pursuant to Supreme Court Internal Operating Procedures, § 3(C)(3).

I. Plaintiff's proposed jury instruction is not included in the certified record and, as such, his claim is waived.

Pennsylvania Rule of Civil Procedure 226, which governs points for charge, requires as follows:

> Points upon which the trial judge is requested to charge the jury shall be so framed that each may be completely answered by a simple affirmation or negation. Attorneys shall hand copies of requested points for charge to the trial judge and to the opposing attorneys before the closing addresses to the jury are begun. ***A requested point for charge that was presented to the trial judge becomes part of the record when the point is read into the record, or filed in the office of the prothonotary prior to filing a motion for post-trial relief regarding the requested point for charge.***

Pa.R.Civ.P. 226(a) (emphasis added).

Plaintiff's proposed jury instruction was not read into the record, nor did Plaintiff file it with the trial court. Plaintiff has therefore "failed to ensure that the

certified record contain[ed] a copy of the instruction." Bennyhoff v. Pappert, 790 A.2d 313, 318–19 (Pa. Super. 2001). ***This is fatal to his claim.*** Plaintiff's failure to include his proposed jury instruction in the certified record results in an inability "to compare the charge [Plaintiff] ... requested to the charge actually given in order to determine if the trial court did, in fact, err. As such, [Plaintiff has] waived this claim." Id.

Plaintiff's appeal must be dismissed as having been improvidently granted.

II. **While this Honorable Court has commented approvingly on trial judges providing guidance to juries in medical malpractice cases that involve "consent" and/or "risks and complications" evidence, the proposed jury instruction in this case falls far short of that goal.**

This Honorable Court has created a clear framework for determining the admissibility of "consent" and "risks and complications" evidence in medical malpractice cases in its recent decisions, Brady v. Urbas, 111 A.3d 1155 (Pa. 2015), and Mitchell v. Shikora, 209 A.3d 307 (Pa. 2019).

First, in Brady, a patient claimed that her podiatrist was negligent with respect to three different surgeries on the second toe of her right foot. Specifically, she claimed that the podiatrist failed to determine the cause of her original toe condition and, as a result, recommended and performed procedures that were contraindicated. Brady, 111 A.3d at 1158. In advance of trial, the plaintiffs filed a motion *in limine* to exclude consent-related evidence, including surgical consent forms that the

patient had signed before each procedure. The plaintiffs argued that such evidence was not relevant to whether the podiatrist performed within the appropriate standard of care. Id. The trial court denied the motion and admitted the surgical consent forms into evidence. The jury returned a defense verdict and, on appeal, the Superior Court of Pennsylvania vacated and remanded. Id. at 1158-59.

On further appeal, this Honorable Court affirmed, holding that "evidence that a patient affirmatively consented to treatment after being informed of the risks of that treatment is ***generally*** irrelevant to a cause of action sounding in medical negligence." Id. at 1164 (emphasis added). As discussed in additional detail below, this Honorable Court specifically declined to create a bright-line rule that would automatically deem consent-related evidence irrelevant. Id. at 1162.

The other shoe dropped in 2019, when this Honorable Court issued its decision in the Mitchell case. In Mitchell, the plaintiff claimed that her OB/GYN negligently performed a laparoscopic hysterectomy in May 2016, resulting in a perforation of her colon. She sued, claiming that the doctor had failed to identify her colon before making an incision into her abdomen, which she claimed constituted a breach of the standard of care. As here, the plaintiff did not plead a claim for lack of informed consent. Mitchell, 209 A.3d at 310.

Prior to trial, the plaintiff filed a motion *in limine* to exclude evidence of her informed consent to the risks of the procedure, as well as evidence of the risks

themselves. The trial court granted her motion with respect to evidence of her informed consent, but allowed evidence of the risks and complications themselves. Id. At trial, the defense introduced evidence of the risks of the procedure, including that perforation of the colon may occur even during a properly-performed laparoscopic hysterectomy, in the absence of any negligence. The jury returned a defense verdict. Id. at 311.

On appeal, this Honorable Court recognized two discrete categories of evidence in medical malpractice cases: (1) informed consent evidence; and (2) risks and complications evidence. The former, under Brady, are "generally irrelevant to a cause of action sounding in medical negligence." Brady, 111 A.3d at 1164. In addressing the latter, this Honorable Court reasoned:

> The complex nature of the practice of medicine — requiring, in the litigation realm, expert testimony for virtually all aspects of a plaintiff's burden to prove negligence, as well as in defense to those allegations — is central to our admissibility inquiry. Determining what constitutes the standard of care is complicated, involving considerations of anatomy and medical procedures, and attention to a procedure's risks and benefits. Further, a range of conduct may fall within the standard of care. While evidence that a specific injury is a known risk or complication does not definitively establish or disprove negligence, it is axiomatic that complications may arise even in the absence of negligence. We emphasize that "[t]he art of healing frequently calls for a balancing of risks and dangers to a patient. Consequently, if injury results from the course adopted, where no negligence or fault is present, liability should not be imposed upon the institution or agency actually seeking to assist the patient." … As a result, risks and complications evidence may clarify the applicable standard of care, and may be essential to provide, in

> this area, a complete picture of that standard, as well as whether such standard was breached. Stated another way, risks and complications evidence may assist the jury in determining whether the harm suffered was more or less likely to be the result of negligence. Therefore, it may aid the jury in determining both the standard of care and whether the physician's conduct deviated from the standard of care. We recognized as much in Brady. … As such, we hold that evidence of the risks and complications of a procedure may be admissible in a medical negligence case for these purposes.
>
> Indeed, medical negligence cases involve a classic confrontation among experts, each testifying as to the appropriate standard of care, any breach of that standard, and whether such breach caused injury. The weighing of this evidence is for the jury, not the court. Such evidence, and, indeed, any evidence, is to be liberally admitted at trial, and is relevant if it has "any tendency to make a fact [of consequence] more or less probable than it would be without the evidence." … Importantly, the process commands not that evidence be reliable, but that reliability be assessed in a particular manner: by "testing in the crucible of cross-examination." … Cross-examination, according to Professor John Henry Wigmore, is "beyond any doubt the greatest legal engine ever invented for the discovery of truth." … Thus, the expert testimony, and any additional evidence, in a medical negligence case will be vetted through direct and cross-examination. Ultimately, it is for the jury to determine whether a patient's injury is the result of negligence. We find that, without the admission of testimony of known risks or complications, where appropriate, a jury may be deprived of information that a certain injury can occur absent negligence, and, thus, would be encouraged to infer that a physician is a guarantor of a particular outcome.

Mitchell, 209 A.3d at 318-19 (citations omitted). Importantly, this Honorable Court emphasized in Mitchell that, "[w]hile we recognize that this determination allows for the potential that a jury might mistakenly conclude that an injury was merely a

risk or complication of a surgery, rather than as a result of negligence, we believe that the significant consequences of a prohibition on such evidence tip the scales in favor of admissibility[.]" Id. at 320.

Because of the potential of juror confusion with the admissibility of risks and complications evidence, this Honorable Court noted that "we are confident that trial judges will serve their evidentiary gate-keeping function in this regard and, through instruction and comment, ensure that juries understand the proper role of such evidence at trial." Id.

This is where Plaintiff hangs his hat in this case. Plaintiff claims that the trial court "erred in not providing an assumption of the risk charge (or any alternative charge) to address either the consent or the risk evidence that was admitted." Appellant's Br. at 48. Plaintiff even goes so far as to argue that "a strong legal rationale" exists for providing a jury charge any time risk evidence is admitted at trial[.]" Id. at 52.

This is, however, also where Plaintiff's argument falls apart, both in terms of what occurred in this case and in terms of whether the question presented is one of substantial public importance. Pa.R.A.P. 1114(b)(4). Simply, the jury instruction that Plaintiff sought here goes far beyond a basic statement of the law. It is a factually inaccurate representation of the facts, is unnecessarily prejudicial, and is nonsensical. Specifically, Plaintiff requested the following:

> You have heard conflicting testimony as to whether Dr. Gedela advised JerriLynne Kirksey and Robert Kirksey of the risk of rash. It is for you to decide the credibility of such testimony. However, even though there is such a dispute in the testimony, even if you were to credit the testimony of Dr. Gedela, and not Mrs. Kirksey, there is no defense in this case of assumption of the risk.

(R. 002733a). This is not the type of "instruction and comment" envisioned in this Honorable Court's decision in Mitchell.

Broken down into its parts, Plaintiff's proposed jury instruction conveys the following points:

(1) There was "conflicting testimony" about whether Dr. Gedela advised the patient and his mother of the risk of rash;

(2) Dr. Gedela's testimony is somehow involved in this conflict, ***despite that Dr. Gedela never testified about discussing risks with either the patient or his mother*** (R. 001106a-001270a);

(3) The jury must decide between the credibility of Dr. Gedela's ***non-existent*** testimony and the testimony of the patient's mother; and

(4) Even if the jury finds Dr. Gedela's ***non-existent*** testimony on the issue to be credible, "there is no defense in this case of assumption of the risk."

Plaintiff's proposed jury instruction misrepresents the testimony offered at trial, in that it wrongly represents that Dr. Gedela testified about discussions regarding the potential risk of rash. It is both disingenuous and overly-complicated, in that it asks the jury to make a credibility determination on "conflicting testimony,"

yet then pronounces that the jury's decision on that conflict is essentially meaningless. This fool's errand would represent a clear message to the jury, delivered from the lips of the trial judge, that Dr. Gedela should not be believed. Plaintiff never offered a more sensical or less prejudicial version and this Honorable Court should not craft one for him now.

If ever there were an instance for an appeal to be dismissed as having been improvidently granted, this is it. Plaintiff's proposed jury instruction, which was never filed yet serves as the entire basis for his appeal, is a disaster. It was rightly discarded by both the trial court and the Superior Court of Pennsylvania and is ill-suited to serve as the vehicle for a broader, statewide holding to build upon the legacy of both Brady and Mitchell.

Plaintiff's appeal must be dismissed as having been improvidently granted.

III. Plaintiff's proposed jury instruction, if read to the jury, would have improperly and prejudicially impugned Dr. Gedela's credibility.

Plaintiff's proposed jury instruction is also improper because it inescapably and prejudicially sets up Dr. Gedela for failure. Again, Plaintiff requested the following instruction:

> You have heard conflicting testimony as to whether Dr. Gedela advised JerriLynne Kirksey and Robert Kirksey of the risk of rash. It is for you to decide the credibility of such testimony. However, even though there is such a dispute in the testimony, even if you were to credit the testimony of Dr. Gedela, and not

> Mrs. Kirksey, there is no defense in this case of assumption of the risk.

(R. 002733a). The discussion of "conflicting testimony" in Plaintiff's proposed jury instruction is unnecessary to convey the concepts espoused in Brady and Mitchell regarding evidence of consent and risks and complications. This is especially true considering that Dr. Gedela never testified about discussing risks with either the patient or his mother. (R. 001106a-001270a). The proposed instruction would leave jurors wondering whether they missed a segment of Dr. Gedela's testimony or, worse yet, give them the impression that they are not permitted to credit Dr. Gedela's testimony. As a result, it seems that the mention of "conflicting testimony" exists only to prejudicially set up Dr. Gedela for failure.

Given that the trial judge would have been the one to read the proposed jury instruction to the jurors, it would have been tantamount to the trial judge himself improperly opining on Dr. Gedela's credibility. This would have been an abuse of discretion and the trial judge here was right to have declined.

The prejudicial nature of Plaintiff's proposed jury instruction illustrates vividly, again, why Plaintiff's appeal must be dismissed as having been improvidently granted.

IV. Even putting aside the significant flaws of Plaintiff's proposed jury instruction, an instruction on "assumption of the risk" was unwarranted by the evidence presented at trial.

While Plaintiff seeks to portray all testimony and evidence pertaining to Dr. Gedela's discussions with the patient and his mother as "consent" evidence that irreversibly "taints the milk," Plaintiff fails to acknowledge that there are legitimate, relevant, and proper reasons for eliciting such testimony.[1]

In Brady, the very case that Plaintiff relies most heavily on, this Honorable Court acknowledged the "multifaceted" nature of consent evidence: ***"it is important to recognize that such information is multifaceted: it reflects the doctor's awareness of possible complications, the fact that the doctor discussed them with the patient,*** and the patient's decision to go forward with treatment notwithstanding the risks." Brady, 111 A.3d at 1161 (emphasis added). The first two types of information, bolded above, are what's relevant here. Dr. Gedela's well-documented discussion with the patient and his mother about the risk of developing a rash upon taking Lamictal showed that: (1) Dr. Gedela himself was aware of the risks of the medication; and (2) Dr. Gedela complied with the standard of care in informing the patient and his mother about those risks.

[1] Evidence is relevant if it has "any tendency to make a fact [of consequence] more or less probable than it would be without the evidence." Pa.R.Evid. 401.

Importantly, although this Honorable Court's decision in Brady held that consent evidence is "generally irrelevant" in medical malpractice cases, it specifically declined to adopt a bright-line approach that would automatically deem such evidence irrelevant. The court explained, "we decline to endorse the Superior Court's broad pronouncement to the degree it may be construed to hold that all aspects of informed-consent information are always 'irrelevant in a medical malpractice case.'" Brady, 111 A.3d at 1162. Rather, "***the threshold for relevance is low*** due to the liberal 'any tendency' prerequisite" of Pennsylvania Rule of Evidence 401. Id. (emphasis added).

Here, Plaintiff's own expert, William A. DeBassio, M.D., acknowledged in his videotaped deposition for use at trial that the standard of care, set forth within the Lamictal manufacturer's dosing guidelines, required Dr. Gedela to tell the patient and his mother about the potential risks and complications of taking Lamictal.[2] (R. 002650a). This type of consent evidence was explicitly contemplated in this Honorable Court's decision in Brady: "Some of this information may be relevant to the question of negligence if, for example, the standard of care requires that the doctor discuss certain risks with the patient." Brady, 111 A.3d at 1161 (*citing* Viera

[2] To prevail on a claim of medical malpractice, a plaintiff must prove that the defendant's treatment fell below the appropriate standard of care. *See, e.g.*, Toogood v. Rogal, 824 A.2d 1140, 1145 (Pa. 2003) ("[M]edical malpractice can be broadly defined as the unwarranted departure from generally accepted standards of medical practice resulting in injury to a patient[.]").

v. Cohen, 927 A.2d 843, 868–69 (Conn. 2007) (finding that a trial court reasonably admitted evidence of informed consent where the applicable standard of care obligated the doctor to discuss particular risks)).

Similarly, Plaintiff fails to demonstrate in any meaningful way that the defense ever mounted a defense based on either consent or assumption of the risk. As a result, the entirety of Plaintiff's argument is fiction. For example, Plaintiff's counsel claims that the defense's opening statement inappropriately waded into a "consent" defense. In the trial transcript, the opening statement for the defense spans thirty-five pages. (R. 00750a-85a). Plaintiff cites to just five innocuous, isolated remarks within those thirty-five pages to claim that the defense inappropriately relied upon "consent" evidence and, worse yet, fails to meaningfully discuss or even quote those passages in his Brief. (Appellant's Br. at 35-36, citing R. 764a-65a, 768-70a, 773a, 766a, and 784a). Similarly, throughout the 925 pages of the trial transcript (R. 00605a-001530a), Plaintiff cites to just a handful of pages to support his entire mischaracterization of the defense's case. Id. (citing R. 1231-2a, 1323a, 1340a, 1352a, 1431-35a, 1437a, 1445a, 1447a, and 1549a).

Simply throwing naked citations to the trial transcript onto the written page, without meaningful analysis, must result in waiver. *See* Pa.R.A.P. 2119; *see also* Commonwealth v. Jezzi, 208 A.3d 1105, 1110 (Pa. Super. 2019) ("If a deficient brief hinders this Court's ability to address any issue on review, we shall consider the issue

waived.") (*citing* Commonwealth v. Gould, 912 A.2d 869, 873 (Pa. Super. 2006)); Commonwealth v. Hardy, 918 A.2d 766, 771 (Pa. Super. 2007) ("[I]t is an appellant's duty to present arguments that are sufficiently developed for our review. The brief must support the claims with pertinent discussion, with references to the record and with citations to legal authorities. … This Court will not act as counsel and will not develop arguments on behalf of an appellant."). Waiver, in turn, must result in this appeal being dismissed as having been improvidently granted.

As a final example of why Plaintiff's appeal does not deserve this Honorable Court's attention, Appellant claims in his Brief that: "The jury should never have heard anything at all about a rash or any other consent evidence. And, when it did, a corrective charge should have been given." (Appellant's Br. at 36). Plaintiff, however, did not request a corrective charge. Following the defense's opening statement, Plaintiff failed to make any objection, or even any mention, of the above-quoted remarks, despite having made other objections at that time. (R. 00785a-91a). Plaintiff did not request an admonishment of counsel, a curative instruction, or a mistrial. Id. Plaintiff should not be permitted to claim prejudice now when he did not claim prejudice then.

Plaintiff's appeal must be dismissed as having been improvidently granted.

CONCLUSION

For all of the foregoing reasons, *Amici Curiae*, the Pennsylvania Orthopaedic Society, the Hospital and Healthsystem Association of Pennsylvania, and the Pennsylvania Coalition for Civil Justice Reform, respectfully request that this Honorable Court dismiss this appeal as having been ***improvidently granted*** pursuant to Supreme Court Internal Operating Procedures, § 3(C)(3).

Michael K. Feeney, Esquire
PA I.D. #88530

MATIS BAUM O'CONNOR
912 Fort Duquesne Blvd.
Pittsburgh, PA 15222
(412) 338-4750

Counsel for Amici Curiae, the Pennsylvania Orthopaedic Society, the Hospital and Healthsystem Association of Pennsylvania, and the Pennsylvania Coalition for Civil Justice Reform

CERTIFICATION OF COMPLIANCE

Pursuant to Pennsylvania Rule of Appellate Procedure 2135(d), I hereby certify that this Brief of *Amici Curiae* complies with the word count limits of Pennsylvania Rules of Appellate Procedure 531(b)(3).

I further certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Michael K. Feeney, Esquire
PA I.D. #88530

MATIS BAUM O'CONNOR
912 Fort Duquesne Blvd.
Pittsburgh, PA 15222
(412) 338-4750

PROOF OF SERVICE

Pursuant to Pennsylvania Rule of Appellate Procedure 121(d), I hereby certify that two (2) copies of this Brief of *Amici Curiae* were served upon the following counsel of record via U.S. Mail, first class, postage pre-paid, on this 16th day of October, 2020.

Jason A. Archinaco, Esq.
Michael A. O'Leary, Esq.
The Archinaco Firm, LLC
1100 Liberty Avenue, Suite C6
Pittsburgh, PA 15222

(counsel for Appellant, Robert Kirksey, Jr.)

George P. Kachulis, Esq.
Sally A. Frick, Esq.
Steven L. Ettinger, Esq.
Dickie McCamey & Chilcote, P.C.
2 PPG Place, Suite 400
Pittsburgh, PA 15222

(counsel for Appellees, Children's Hospital of Pittsburgh of UPMC, University of Pittsburgh Physicians, and Satyanarayana Gedela, M.D.)

Michael K. Feeney, Esquire
PA I.D. #88530

MATIS BAUM O'CONNOR
912 Fort Duquesne Blvd.
Pittsburgh, PA 15222
(412) 338-4750