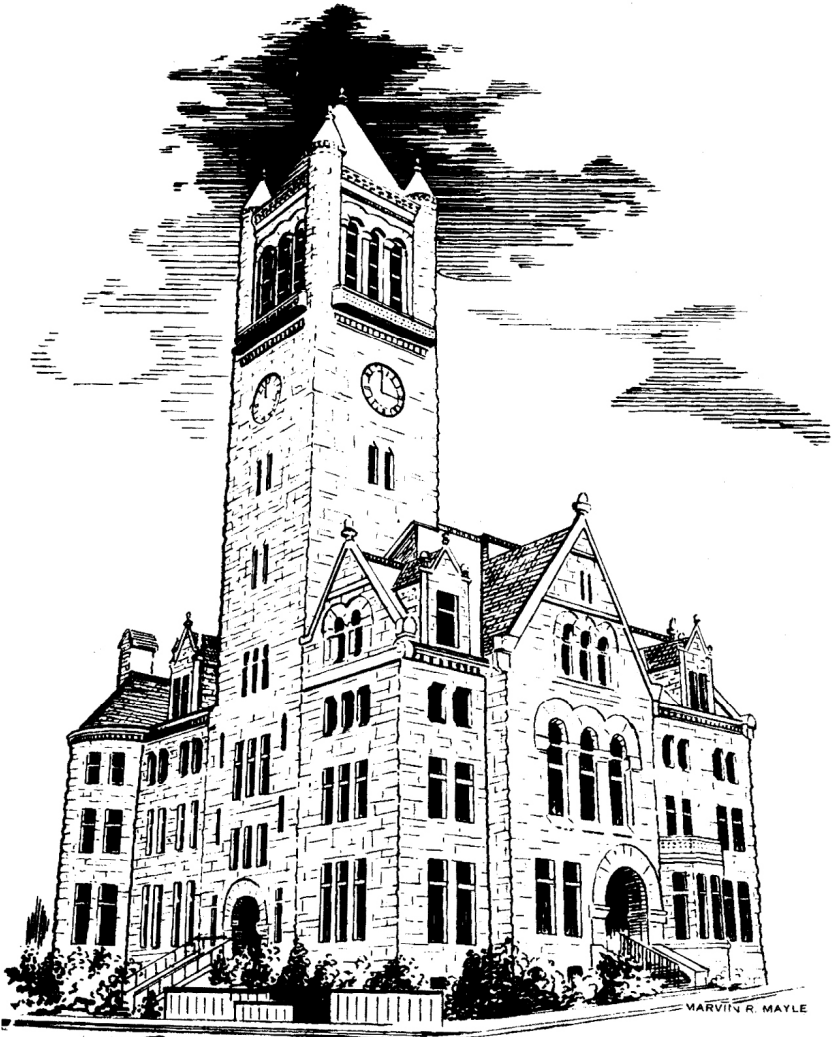


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

EDWARD A. FORSYTHE, late of Washington Township, Fayette County, PA ⁽³⁾

Executrix: Debbie S. Deluca
109 Trestle Lane
Scottdale, PA 15683
c/o 231 South Main Street, Suite 402
Greensburg, PA 15601
Attorney: Marilyn M. Gaut

MARTHA L. HOOVER, a/k/a MARTHA LOUISE HOOVER, late of Dunbar Township, Fayette County, PA ⁽³⁾

Personal Representative: John E. Meyers, Jr.
c/o Watson Mundorff Brooks & Sepic
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

RICHARD W. JENEY, late of Bullskin Township, Fayette County, PA ⁽³⁾

Executrix: Margaret Zylka House
c/o 815 A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

ROBERT L. JONES, late of South Union Township, Fayette County, PA ⁽³⁾

Executrix: Linda Sue Valusek
c/o Fitzsimmons and Barclay
55 East Main Street, Suite 102
Uniontown, PA 15401
Attorney: James N. Fitzsimmons

SYLVESTER M. MUNCZENSKI, late of Luzerne Township, Fayette County, PA ⁽³⁾

Executor: Ronald Munczenski
c/o 815 A Memorial Boulevard
Connellsville, PA 15425
Attorney: Margaret Zylka House

PATRICIA A. OPEL, late of McClellandtown, Fayette County, PA ⁽³⁾

Administratrix: Bonnie Caldwell
c/o DeHaas Law, LLC
51 East South Street
Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

SHIRLEY ORBASH, a/k/a SHIRLEY A. ORBASH, late of Luzerne Township, Fayette County, PA ⁽³⁾

Personal Representative: Sherry L. Orbash
a/k/a Sherry L. Kasievich
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

PHILLIP A. THOMAS, a/k/a PHILLIP ABRAHAM THOMAS, late of Redstone Township, Fayette County, PA ⁽³⁾

Personal Representative: Phillip G. Thomas
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

CAROLYN STEINBAUGH, a/k/a CAROLYN SUE STEINBAUGH, late of North Union Township, Fayette County, PA ⁽³⁾

Executor: Clifford Charles Nance, III
436 Airway Inn Road
Uniontown, PA 15401
c/o Newcomer Law Office
4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Ewing D. Newcomer

Second Publication

**OLIVE PATRICIA REESE MURRAY
HUMBERSON HARFORD, a/k/a
PATRICIA O. HARFORD**, late of South
Union Township, Fayette County, PA ⁽²⁾
Executor: Joseph H. Humberson
1077 Township Drive
Uniontown, PA 15401
c/o 437 Grant Street, Suite 915
Pittsburgh, PA 15219
Attorney: Robert A. Crisanti

GARRETT HOOSE, late of Perryopolis,
Fayette County, PA ⁽²⁾
Administrator: Maria Hoose
206 Constitution Street
Perryopolis, PA 15473
c/o Mansmann & Moore, LLP
304 Ross Street, Suite 600
Pittsburgh, PA 15219
Attorney: Francis M. Moore

ROBERT HUGHES, late of Brownsville,
Fayette County, PA ⁽²⁾
Executor: William Hughes
2937 Moorings Parkway
Snellville, GA 30030
c/o 411 Washington Avenue
Charleroi, PA 15022
Attorney: Thomas P. Agrafiotis

MARY LOU KOPACKO, late of Menallen
Township, Fayette County, PA ⁽²⁾
Executrix: Lu Ann Prah
c/o John & John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

**TERRY L. WILLIAMS, a/k/a TERRY
LYNN WILLIAMS**, late of Uniontown, Fayette
County, PA ⁽²⁾
Co-Administrators: Cory Williams and
James Williams
c/o PO Box 622
Smithfield, PA 15478
Attorney: Charity Grimm Krupa

First Publication

**ESTHER EDITH CORRADO, a/k/a
ESTHER E. CORRADO**, late of Uniontown,
Fayette County, PA ⁽¹⁾
Personal Representative:
William L. Dorotinsky
c/o 2 West Main Street, Suite 110
Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

**WILLIAM KOLLAR, a/k/a WILLIAM J.
KOLLAR**, late of South Union Township,
Fayette County, PA ⁽¹⁾
Administrator: Katherine Kollar
59 7th. Street
Uniontown, PA 15401
c/o Houston Harbaugh, P.C.
Three Gateway Center
401 Liberty Avenue, 22nd Floor
Pittsburgh, PA 15222-1005
Attorney: Heidi Rai Stewart

**EILEEN O'TOOLE, a/k/a EILEEN H.
O'TOOLE**, late of Fayette City, Fayette
County, PA ⁽¹⁾
Co-Executors: Daniel L. O'Toole and
Maureen A. O'Toole
1087 Creek Road
Smithton, PA 15479 and
100 Virginia Drive
New Stanton, PA 15672
c/o 123 South Second Street
West Newton, PA 15089
Attorney: Zachary I. Meshor

**MICHAEL J. POPSON, a/k/a MICHAEL
JEFFERY POPSON**, late of German
Township, Fayette County, PA ⁽¹⁾
Administrator: Steven R. Popson
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

JEANNE M. RYAN, late of Wharton Township, Fayette County, PA (1)

Personal Representative:

Gwendolyn Renae Friend
c/o George & George, LLP
92 East Main Street
Uniontown, PA 15401
Attorney: Joseph M. George

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 1369 OF 2018 G.D.
PRES. JUDGE JOHN F. WAGNER, JR.

ADVERTISEMENT NOTICE

**STEVEN SCOTT BOWER AND LEIGH
ANN BOWER, His Wife,**

Plaintiffs,

vs.

**LESTER K. WARD, His Successors and/or
Assigns Generally,
Defendant.**

TO: LESTER K. WARD, His Successors
and/or Assigns Generally,

Take notice that on June 29, 2018, the Plaintiffs, above mentioned, by and through their attorneys, Davis & Davis, filed their Complaint averring that they are the owner of the following described parcel of real estate. Said Complaint being filed in Quiet Title.

Said property being situate at 499 Stuckslager Road, Jefferson Township, Fayette County, Pennsylvania, designated as Tax Map No.: 17-10-0048. Containing approximately 5 acres more or less, sold at tax sale and contained in that deed from the Fayette County Tax Claim Bureau dated December 7, 2011, and recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania, in Record Book Volume 3172, page 50.

The within named Defendant appeared to have an interest in said premises which creates a cloud upon Plaintiffs' title, whereupon the Plaintiffs have filed their Complaint as aforesaid asking the Court to enter a Decree terminating

all rights that the Defendant may have in said premises and decree that they have the full and free use and occupancy of said premises, released and forever discharged of any right, lien title or interest of said Defendant herein.

The service of this Complaint by publication is made pursuant to an Order of Court dated July 3, 2018, and filed at the above number and term.

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO
YOUR LAWYER AT ONCE. IF YOU DO
NOT HAVE A LAWYER OR CANNOT
AFFORD ONE, GO TO OR TELEPHONE THE
OFFICE SET FORTH BELOW TO FIND OUT
WHERE YOU CAN GET LEGAL HELP.**

PENNSYLVANIA LAWYER REFERRAL
100 SOUTH STREET
P.O. BOX 186
HARRISBURG, PA 17108
1-800-692-7375

IN THE COURT OF COMMON PLEAS OF
 FAYETTE COUNTY, PENNSYLVANIA
 CIVIL ACTION - LAW
ACTION TO QUIET TITLE
 No. 1163 of 2018 G.D.
 JUDGE JOSEPH GEORGE

**JACKIE WILHELM, EXECUTRIX FOR
 THE ESTATE OF STEPHEN UTLAK,**

Plaintiff,

v.

**JOE VIHER and DOROTHY VIHER,
 husband and wife, their successors, heirs,
 personal representatives, and assigns,
 generally.**

Defendants.

TO: JOE VIHER and DOROTHY VIHER,
 their heirs, successors and assigns, generally,

You are hereby notified that Jackie Wilhelm, Executrix for the Estate of Stephen Utlak, has filed a complaint at the above number and term in the above-mentioned court in an action to quiet title wherein it is alleged that he is the owner in possession of that certain lot of land situate in North Union Township, Fayette County, Pennsylvania having a mailing address of 113 Poplar Street, Lemont Furnace, Pennsylvania, 15456.

Title to the above described property was conveyed to Joe Viher and Dorothy Viher, his wife by a deed from H.C. Frick Coke Company, being recorded at the Recorder of Deeds Office at Deed Book 560, Page 409.

Said complaint sets forth that the plaintiff is the owner in fee simple of the above-described premises. The complaint was filed for the purpose of barring all of your right, title, and interest, or claim in and to all or a portion of said premises.

NOTICE

You are hereby notified that you have been sued in court. If you wish to defend against the claim set forth in the complaint and in the within advertisement, you must take action within twenty (20) days after the last advertisement of this notice by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claim set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may entered against you by the court without further notice or any money claimed in the complaint, or for any other claim or relief requested by the plaintiff. You

may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GOT TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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P.O. BOX 186

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1-800-932-0311

By Jason F. Adams, Esq.
 Adams & Adams
 55 E. Church Street
 Uniontown, PA 15401
 (724) 437-2711

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

STACEY MAYER and GREGORY	:	
MAYER, Her husband,	:	
Plaintiffs,	:	
v.	:	
DERRY CONSTRUCTION CO., INC.,	:	
DONEGAL CONSTRUCTION	:	
CORPORATION AND COMMONWEALTH	:	
OF PENNSYLVANIA, DEPARTMENT	:	
OF TRANSPORTATION,	:	No. 431 of 2013, G.D.
Defendants.	:	Judge Steve P. Leskinen

OPINION AND ORDER

LESKINEN, J.

June 11, 2018

AND NOW, this 11th day of June, 2018, upon consideration of the Motion for Summary Judgment prepared by Defendant Pennsylvania Department of Transportation, (hereinafter "PennDOT"), it is hereby ORDERED and DECREED that the Motion is DENIED.

BACKGROUND

This lawsuit originated from a single vehicle crash, on October 9, 2011, involving a motorcycle driven by Stacey Mayer (hereinafter "Plaintiff ") traveling in the westbound lane of State Route 40 in Fayette County, Pennsylvania. Plaintiff claims that the injuries she suffered as a result of the crash can be attributed to the negligence of the named Defendants.

On or about March 24, 2011, PennDOT entered into a contract with Derry Construction Co., Inc. (hereinafter "Derry") under which Derry agreed to improve sections of State Route 40. PennDOT contracted Derry to do work consisting of "milling, superpave asphalt courses, pavement marking and other marking and other miscellaneous construction on [State Route 40 in Fayette County, Pennsylvania]." Derry later subcontracted the milling work to Donegal Construction Co. (Hereinafter "Donegal"). Defendants began the milling project at some point before October 9, 2011.

At the location of the accident there is a sharp right-hand curve which restricts the sight distance for motorists negotiating the turn. According to the record, in the light most favorable to Plaintiff, there was an uneven, irregular and poorly constructed transition, seam or joint between the milled portion of roadway and the existing pavement on the sharp right-hand curve. Plaintiff further alleges that loose gravel and milling material were present on the roadway as a result of the construction project.

Plaintiff lost control of her motorcycle while trying to negotiate the curve in the roadway. Plaintiff attributes her crash to the alleged uneven and irregular discontinuity of the road's pavement as well as loose gravel and milling residue that resulted from the construction work. Plaintiff was thrown from her motorcycle and sustained numerous injuries.

PennDOT avers that they are not liable to Plaintiff because of sovereign immunity; PennDOT claims that the record does not show that they are liable under a common law theory of negligence to Plaintiff and even if they were negligent, Plaintiff has not alleged the negligence is excepted from the sovereign immunity bar under the "real estate exception". 42 Pa.C.S.A. 8522(b)(4). PennDOT claims that they did not retain the requisite control over the general contractor, Derry, and did not instruct them on how to perform the milling work.

However, deposition testimony from Steven Matko, a superintendent/estimator for Derry provides that PennDOT determined where the milling project would end. Mr. Matko also testified that PennDOT, at some point during the project, changed that location and decided to continue paving farther down the road than originally planned which resulted in the milling ending on the curve where visibility was limited.

DISCUSSION

Summary judgment may be granted only in those cases in which the record clearly shows that no genuine issue of any material fact exists and that the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035.2; *Coleman v. Coleman*, 663 A.2d 741 (Pa.Super. 1995). The moving party has the burden of proving that no genuine issue of material fact exists. *Rush v. Philadelphia Newspapers, Inc.*, 732 A.2d 648, 650 (Pa.Super. 1999). In determining whether to grant summary judgment, the trial court must view the record in the light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party. *Potter v. Herman*, 762 A.2d 1116 (Pa. Super. 2000). In sum, summary judgment is appropriate only when the facts are so clear that reasonable minds cannot differ. *Rauch*, 783 A.2d at 821 (citations omitted).

1. Whether Plaintiffs have established PennDOT's liability under a common law theory of negligence

In order for a claimant to establish that the protection of sovereign immunity does not apply to a governmental entity, they must first show that the alleged damages arose out of a negligent act under which the common law or a statute would permit recovery if the injury were caused by someone who was not protected by sovereign immunity. *Dean v. Commonwealth Department of Transportation*, 751 A.2d 1130, 1132 (Pa. 2000). A claimant must then establish that the cause of action falls into one of the enumerated exceptions to sovereign immunity under the statute. 42 Pa.C.S.A. § 8522 (b).

As a general rule, a property owner who employs a general contractor is not liable for the contractor's negligent act or omissions. *Beil v. Telesis Construction Inc.*, 11 A.3d 456,466 (Pa. 2011). A property owner is subject to liability for the negligence of an independent contractor when the owner retains control over the manner in which the work is done. *Id.* The property owner must exercise control with respect to the operational details or manner by which the independent contractor completes the work. *Id.* at 470.

The control necessary to implicate liability can be shown by a claimant in two ways; "first a plaintiff may point to contractual provisions giving the premises owner control over the manner, method, and operative details of the work" or "the plaintiff may demonstrate that the land owner exercised actual control over the work". *Id.* at 470. In general, the question of how much retained control is necessary to result in a property owner becoming liable is a question for the finder of fact; however, if the evidence fail to establish the requisite retained control, the determination of liability may be made is a matter of law. *Id.*

In the instant case, PennDOT claims that there is no evidence that they exercised control over the operational details of the milling work. Deposition testimony from Steven Matko, a superintendent/estimator for Derry, provides that PennDOT determined where the milling project would end and that PennDOT, at some point during the project, changed that location and decided to continue paving farther down the road than originally planned.

Plaintiff claims that the cause of her accident was, at least in part, due to the location where the milling project ended. Steven Matko's deposition testimony provides a basis for a jury to find that PennDOT exercised exclusive control over where the milling project ended. Therefore, there is a material question of fact present as to whether or not PennDOT maintained enough control over the independent contractor with respect to the operational details or manner by which they completed the work. A jury could determine that a common law theory of negligence exists against PennDOT.

2. Whether PennDOT's alleged negligence is excepted under the real estate exception to the Commonwealth's sovereign immunity

The relevant exceptions to the sovereign immunity statute are as follows:

The General Assembly, pursuant to section 11 of Article I of the Constitution of Pennsylvania, does hereby waive, in the instances set forth in subsection (b) only and only to the extent set forth in this subchapter and within the limits set forth in section 8528 (relating to limitations on damages), sovereign immunity as a bar to an action against Commonwealth parties, for damages arising out of a negligent act where the damages would be recoverable under the common law or a statute creating a cause of action if the injury were caused by a person not having available the defense of sovereign immunity.

The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

Commonwealth real estate, highways and sidewalks.--A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph (5).

42 Pa.C.S.A. § 8522(b)(4).

This statute has been interpreted to mean that a dangerous condition must derive from, originate from or have as its source the Commonwealth realty. *Snyder v; Harmon*, 562 A.2d 307, 311 (Pa. 1989).

In the instant case, Plaintiff avers that her injuries and damages from those injuries were caused by a vertical drop-off that existed on the road at the point where PennDOT determined the milling project would end and from loose materials on the roadway. The vertical drop and loose materials were an artificial condition on a highway that was under the jurisdiction of PennDOT. A jury could determine that the vertical drop-off and/or loose materials were a dangerous condition, if they do, PennDOT could be liable for Plaintiffs injuries and damages under the real estate exception to sovereign immunity. Therefore, summary judgment is not proper because the fact finder could determine that PennDOT is liable for the alleged dangerous condition on State Route 40.

ORDER

AND NOW, this 11th day of June, 2018, upon consideration of the Motion for Summary Judgment prepared by Defendant, Pennsylvania Department of Transportation, it is hereby ORDERED and DECREED that the Motion is DENIED.

BY THE COURT:
LESKINEN, J.

ATTEST:
Nina Capuzzi Frankhouser
Prothonotary

D'Andrea Collision Investigation and Reconstruction LLC**D'Andrea Collision Investigation and
Reconstruction LLC**

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Contacts:

Phone (724) 438-2161

Cell (724) 984-3908

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Joseph D'Andrea
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