frequented by pedestrians, without a full view of the area behind the truck, is a reckless action. Plaintiffs suggest that to do this over a period of time in various alleys and parking lots is a conscious disregard of a high probability of risk.

The problem with plaintiffs' argument is that, in the facts before us, there appears to be a question of contributory negligence. Plaintiff cut across a parking lot adjacent to an alley and in spite of the noise from the truck's engine, the speed of a large garbage truck backing up, and the unobstructed view of the parking lot and alley, plaintiff stepped into the truck's path and walked with his back to the truck. Should the defendant have anticipated, to a high degree of probability, that a pedestrian would act with such disregard for his own safety? The court thinks not.

Furthermore, most vehicles have a blind spot behind them, necessitating the use of extra caution when backing up. Failure to exercise this higher degree of caution may be negligent, but it does not constitute willful, wanton, reckless or outrageous behavior.

In summary, the defendants have not engaged in such outrageous conduct as would warrant the imposition of punitive damages. No cases were cited by either party that even remotely resemble the facts before the court. This may be a further indication that these actions simply do not rise to the level of malicious, wanton or reckless behavior.

ORDER OF COURT

April 14, 1986, defendants' demurrer to plaintiffs' count for punitive damages is sustained.

KERN, ADMRX ESTATE OF GARNER vs. CHAMBERSBURG HOSPITAL, ET AL., C.P. Franklin County Branch, No. A.D. 1984-111

*Medical Malpractice - Interrogatories - Expert Witness - Rule 4003.5*

1. The purpose of Rule 4003.5 is to avoid unfair surprise by allowing counsel to evaluate opponent's position prior to trial.

2. It is beyond the scope of discovery to require a list of all patients an expert witness treated for head trauma in the last five years.

3. An expert need not reveal all medical literature he relied on to form his opinion.

4. An expert need not reveal all cases he participated in within ten years.

*Terry S. Hyman, Esquire,* Attorney for Plaintiff
*William Martson, Esquire,* Attorney for Chambersburg Hospital
*Christopher Mattson, Esquire,* Attorney for Cumberland Valley Emergency Room Physicians
*Jeffrey D. Wright, Esquire,* Attorney for Cumberland Valley Emergency Room Physicians, et al.
*Peter J. Curry, Esquire,* Attorney for Robert Pyatt
*S. Walter, Foulkrod, Esquire,* Attorney for Robert L. Fry

OPINION AND ORDER

WALKER, J., May 27, 1986:

Douglas Garner, decedent, was riding an all-terrain vehicle when it collided with another all-terrain vehicle. He was taken to the Chambersburg Hospital for treatment and, six days after his release, Garner died of head injuries. Plaintiff, Vesta Kern, Administratrix of Garner's estate, filed suit naming the hospital and the treating physicians as defendants.

During discovery plaintiff filed interrogatories requesting information about defendants' experts. With respect to every expert defendants were to call for trial, plaintiff requested: (1) the author, title, date and name of publication of every text, treatise, article, study, paper, or other portion of the medical literature relied upon by the expert in forming his opinion or containing facts upon which the expert would rely; (2) the caption, including the court and docket number, of any case in which the expert participated within the last ten years; and (3) the number of patients each expert has treated for head trauma in the last five years. Defendants objected to these interrogatories on the basis that they exceed the permissible scope of discovery and are unduly burdensome to answer. Plaintiff filed a motion to compel the defendants to answer the interrogatories; both sides subsequently briefed and argued the issue.

Whether or not such information is discoverable is determined by Pa. R.C.P. 4003.5, which states in part:



(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(1) A party may through interrogatories require:

(a) any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify and

(b) the other party to have each expert so identified by him state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

Prior to 1978, the opinion of an opposing party's expert witness, if objected to, was non-discoverable. *See,* Pa. R.C.P. 4003.5 Explanatory Note - 1978. The obvious flaw with this was that a party had to wait until trial to discover the substance of the expert's testimony and then prepare an instantaneous rebuttal. *See, Sindler v. Goldman,* 309 Pa. Super. 7, 454 A.2d 1054 (1982).

Rule 4003.5, adopted in 1978, now permits discovery of the identity of any experts that will testify at trial, the substance of facts and opinions to which they are expected to testify, and a summary of the grounds for each opinion. An opposing expert's credentials and qualifications are also discoverable. *Philadelphia Electric Co. v. Nuclear Energy Liab. - Property Ins. A'ssn.,* 10 D.&C. 3d 340 (1979).

Beyond this, case law on Rule 4003.5 is unelucidating. This paucity of precedent is probably due to the interlocutory nature of discovery motions. The few cases cited by opposing counsel primarily serve to illustrate the broad spectrum of interpretation that the courts have given Rule 4003.5.

In *Bonk v. Block,* 12 D.&C. 3d 749 (1980), the court required disclosure of prior testimony by an expert. That case is easily distinguishable from the case at bar; in *Bonk,* the respondent failed to object to the interrogatories and had actually agreed to answer them. Here, defendant has timely and vehemently objected to plaintiff's requests.

Counsel cite two Common Pleas cases which are directly on point but, just as directly, come to opposing conclusions. *Mallinson v. Pagana,* No. 84-00497 (Lycoming County) (expert witness' prior testimony discoverable). *Benson v. Harrisburg Hospital,* 35 Cumb.

L.J. 231 (1984) (only expert's opinion, and facts upon which it is based, is discoverable under Rule 4003.5).

When exploring the parameters of Rule 4003.5, the intent of the drafters must be kept in mind. As the Superior Cour enunciated in *Sindler,* the purpose of Rule 4003.5 is to avoid unfair surprise by allowing counsel to evaluate their opponent's position in advance. A party may then, through cross-examination and countertestimony, effectively discredit their opponent and posit their own version of the case. The court will examine counsel's arguments in light of this purpose.

Plaintiff attempts to bootstrap Rule 4003.5 with Rule 4001.5, that is, any information not within the scope of Rule 4003.5 falls back into the liberal sweep Rule 4001.5. If this were true, almost any conceivable information concerning an expert witness would be discoverable. This belies the intent of Rule 4003.5 which is to *limit* Rule 4003.1.

Futhermore, the court finds it difficult to believe that the drafters intended to encourage parties to slog through a morass of prior expert testimony, and to delve into the vast pool of authorities that they have been exposed to, all for the sake of impeachment. Such and interpretation of Rule 4003.5 is unreasonable. Rule 4003.5 provides an adequate arsenal for both sides' mercenaries: the identity of their experts, their opinions, and the facts upon which their opinions are based.

Plaintiff's interrogatories are beyond the boundaries set by Rule 4003.5. Plaintiff is entitled to a list of the experts that will testify for the defense, the facts and opinions to which they are expected to testify and a summary of the grounds for each opinion. With respect to such experts, plaintiff may also discover their academic and professional qualifications. This includes a list of all educational institutions they attended, the degrees they acquired, the names of any professional organizations to which they belong, any professional awards, recognition or accreditations they have received, and a list of all published materials that they have written.

ORDER OF COURT

May 27, 1986, plaintiff's motion to compel answers to expert interrogatories goes beyond the boundaries set by Pennsylvania Rule of Civil Procedure 4003.5. Therefore, plaintiffs are entitled to the following:

A. A list of experts that will testify on behalf of the defendants;

B. The professional qualifications of expert witness:
   1. List of educational institutions attended;
   2. Degrees acquired;
   3. List of professional organizations to which they belong;
   4. Professional awards or accreditations;
   5. List of all published professional articles they have written.

C. The opinion of the expert;

D. A summary of the facts and other grounds upon which the expert relied in forming his professional opinion.

MCFADDEN V. MCFADDEN, C.P. Franklin County Branch, No. F.R. 1980-520

*Divorce - Modification of Alimony*

1. A consent order dealing with both equitable distribution and alimony may not be modified unless specifically permitted by the order.

2. Where the parties previously agreed to an amount of alimony, the foreseeable retirement of one party does not qualify as a substantial change in circumstances justifying modification.

*David C. Cleaver, Esquire,* Counsel for the Plaintiff
*Robert C. Schollaert, Esquire,* Counsel for the Defendant
*William R. Davis, Esquire,* Master

OPINION AND ORDER

WALKER, J,. May 13, 1988:

This matter is before the court on exceptions filed by both parties to the master's report which was prepared as a result of a petition by the plaintiff, David George McFadden, for modification of alimony payable to the defendant, Marjorie Marotte McFadden. The parties were divorced by decree dated October 1, 1981. Mr. McFadden remarried within the year, and on March 13, 1986, filed a petition for modification which alleged that the alimony payments should be reduced because of his upcoming retirement. Mr. McFadden subsequently retired on April 1, 1986.

The divorce decree incorporated a stipulation and agreement



entered into by the parties on October 1, 1981. This agreement provided, among other things, that "The plaintiff [David] is to pay defendant [Marjorie] alimony in the amount of $400 per month so long as she may live or until changed by order of court . . . .". Since this agreement integrates alimony and equitable distribution of the material property, the threshold question for the court is whether or not the amounty of alimony is modifiable by the court.

This question was addressed by the Pennsylvania Superior Court in *Stanley v. Stanley,* 339 Pa. Super. 118, 488 A.2d 338 (1985). The parties were divorced on September 23, 1982. Subsequently, they entered into a consent order resolving the wife's claim for equitable distribution and permanent alimony. The consent order obligated the husband to pay the wife "$300.00 per month alimony for five (5) years from January, 1983 until the wife dies, remarries or cohabitates for a period of thirty (30) days." *Id.* at 119, 488 A.2d at 338. The Superior Court affirmed the lower court decision which held that a consent decree combining alimony and equitable distribution was entered under Section 401 of the Divorce Code, not Section 501, and could only be modified for the reasons set forth in the decree. Both the Superior Court and lower court decisions were based on *Fleming v. Fleming,* 130 P.L.J. 68 (1982).

In *Fleming,* the parties were divorced in 1982, and a consent decree which combined equitable distribution and alimony was entered on April 9, 1981. This decree provided that the alimony order then effective would continue until the proceeds from the sale of the parties' house was distributed and would

> "then increase to Fourteen Thousand ($14,000) Dollars per year, payable monthly, until Plaintiff is sixty-five (65) years, then to be Twenty (20%) Percent of his gross from all sources except Social Security . . ." *Id.* at 68.

Subsequent to decree, the husband filed a petition to modify the alimony based on an alleged significant change in circumstances — the employment of the wife. *Stanley, supra,* at 121, 488 A.2d at 339.

Judge Strassburger of the Court of Common Pleas of Allegheny County, recognized that the issue presented by this case, whether a consent order for alimony may be modified, and if so, when, was an important issue of first impression in Pennsylvania, and that this issue had perplexed other jurisdictions for years.