Book Volume 789, Page 459, conveyed to Mark A. Lawyer and Penny Lawyer, his wife.

IMPROVED with a one-story frame siding dwelling house containing seven rooms, one bath and a partial basement. The property has a septic system and spring water. There is also one outbuilding. The street address of the property is 8497 Fort McCord Road, Chambersburg, Pennsylvania.

BEING sold as the property of Mark A. Lawyer and Penny A. Lawyer, his wife, Writ No. AD 1985-122.

SALE NO. 10
Writ No. AD 1985-216 Civil 1985
Judg. No. AD 1985-216 Civil 1985
Valley Bank and Trust Company
—vs—
D. Michael Grove and
Carolyn Jean Grove
Atty: Robert C. Schollaert

ALL THAT CERTAIN following described real estate lying and being situated in Montgomery Township, Franklin County, Pennsylvania, more particularly bonded and described as follows, to wit:

BEGINNING at a railroad spike in the centerline of Township Route 321, known as Burkholder Road and running thence by lands of Douglas E. Grove and Jessie E. Grove, his wife, North twenty (20) degrees seven (7) minutes East, five hundred sixty-nine and fifty hundredths (569.50) feet to an iron pin; thence by same, South sixty-nine (69) degrees fifty-three (53) minutes East, four hundred (400) feet to an iron pin; thence by same, South twenty (20) degrees seven (7) minutes West, five hundred sixty-nine and fifty hundredths (569.50) feet to an iron spike in the centerline of the aforesaid Township Road; thence in the centerline of said Township Road, North sixty-nine (69) degrees fifty-three (53) minutes West, four hundred (400) feet to a spike, the place of beginning. CONTAINING 5.229 acres, more or less, as surveyed April 13, 1977 by Arrowood, Incorporated, the aforesaid plan being reviewed by the Franklin County Planning Commission April 18, 1977, and approved by the Board of Supervisors of Montgomery Township April 19, 1977.

BEING the same real estate which Douglas E. Grove and Jessie E. Grove, his wife, by their deed dated May 13, 1977, and recorded in Franklin County, Pennsylvania in Deed Book Volume 742, Page 176, conveyed to D. Michael Grove and Carolyn Jean Grove, his wife.

IMPROVED with a one-story brick rancher containing six rooms, two baths and a full basement. The property has a well and septic system. The street address of the property is 8393 Royer Road, Mercersburg, Pennsylvania.

BEING sold as the property of D. Michael Grove and Carolyn Jean Grove, Writ No. AD 1985-216.

LEGAL NOTICES, cont.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs, whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, December 23, 1985 at 4:00 P.M., E.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, December 27, 1985 at 1:00 P.M., E.S.T. in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA

11-15, 11-22, 11-29

On the damage issue, which the jury never reached and therefore doesn't require consideration in this opinion, we nevertheless note that it is claimed we improperly limited testimony concerning Donna's earliest musical training. We permitted testimony about her recent training, and this is the testimony that was relevant and related to the case in hand. The introduction of evidence is within the discretion of the trial court. *Wolfe v. Pickell,* 204 Pa. Super. 541, 544, 205A.2d 634, 635 (1964). Remoteness of evidence is a factor to be considered. *Whistler Sportswear, Inc. v. Rullo,* 289 Pa. Super. 230, 242, 433 A.2d 40, 46 (1981).

Finally it is argued that the verdict was so contrary to the evidence and illogical as to shock one's sense of justice, because (1) the evidence was clear that Donna was injured and that she had medical expenses, (2) that Michael could not be contributorily negligent and (3) the jury did not find the nonuse of seat belts should result in reduction of damages.

The first of these contentions is answered when we note again the jury apparently did not reach the damage phase. The jury's verdict as to Michael can be understood if they regarded Donna's negligence as being the cause of his injuries and, as to the third, the seat belt and other negligence issues have been discussed.

It would not be proper to presume that the verdict was based upon erroneous conclusions. Even if we assumed arguendo that we would have arrived at a different conclusion, that alone would not be sufficient for a new trial unless the verdict actually shocked our sense of justice. *Bertab, Inc. v. Fox,* supra, 79, 620, *Buck v. Scott Township,* supra, 694-5, which it did not.

ORDER OF COURT

February 8, 1985, the plaintiffs' motions for a new trial are denied.

MILLER V. CHAMBERSBURG HOSPITAL, C.P. Franklin County Branch, A.D. 1984-192

Malpractice - Punitive damages

1. A complaint seeking punitive damages in a tort action is legally insufficient if it merely avers that defendant's acts were outrageous or done with reckless indifference.

2. The factual circumstances which make conduct outrageous or which give rise to an indifference as to defendant's state of mind must be pleaded.

Mark A. Corchin, Esquire, Counsel for plaintiffs

Dennis J. Bonetti, Esquire, Counsel for Defendant/Williams

OPINION AND ORDER

Keller, J., March 4, 1985:

The plaintiffs' complaint was filed on September 4, 1984, and served on the above-named defendants. On October 1, 1984 defendant Edward D. Williams' preliminary objection in the nature of a motion to strike, for a more specific pleading and a demurrer was filed. On October 9, 1984 the plaintiffs' amended complaint was filed. Preliminary objections to the amended complaint in the nature of a demurrer to Count III and a motion for a more specific pleading as to Paragraphs 15 and 17 were filed by defendant Williams on November 5, 1984.

Count I of the amended complaint alleges inter alia that defendant/Williams is a licensed practicing physician who held himself out to be a specialist in the field of radiology and interpreted plaintiff Harold D. Miller's pelvic cat-scan taken on January 14, 1983; that the x-rays and their interpretation were inadequate for the proper diagnosis of plaintiff's condition; that the misreading led to the negligent and improper discharge of said plaintiff; that as a direct result of the negligence, carelessness, recklessness, and wilful and wanton disregard of all of the defendant-doctors and/or hospital the said plaintiff suffered serious and permanent damage, and in paragraph 17 alleged the negligence, carelessness, recklessness and wilful and wanton behavior of the defendant/Williams and/or his agents, etc. consisted of generalized statements in eight subparagraphs. In Count III the plaintiffs incorporate paragraphs 1 through 19 and claim punitive damages against each defendant for failing to provide plaintiff/Harold Miller adequate examinations, diagnoses and use of diagnostic modalities and for the lack of due care, negligence and wanton misconduct of the defendants which demonstrated an indifference for said plaintiff's physical and mental well-being deviant from the appropriate standard of care as to constitute outrageous conduct.

Defendant/Williams' demurrer to Count III asserts plaintiffs have failed to allege the material facts necessary to justify a claim for punitive damages.

Paragraph 15 of the complaint alleges:

> As a direct result of the negligence, carelessness, recklessness and willful and wanton disregard of all of the defendant-doctors, as well as any agents, servants and/or employees or those who appear to be the agents, servants and/or employees of the defendant-doctors and/or defendant Chambersburg Hospital, Harold D. Miller suffered serious and permanent damage as a result of the spread of cancer of such sufficient scope and debilitation so as to cause him to be incapacitated and the defendants have compromised his life and survival by their respective acts of negligence and wantonness.

Paragraph 17 of the complaint alleges inter alia:

> The negligence, carelessness, recklessness and willful and wanton behavior of the defendant, Dr. Edward D. Williams, and/or his agents, servants, employees and/or associates or those who appear to be his agents, servants, employees and/or associates, consisted of the following:

Defendant/Williams' motion for a more specific pleading objects to the lack of specificity of the language:

> ". . . agents, servants, and/or employees or those who appear to be the agents, servants and/or employees . . . "

Defendant/Williams' preliminary objections were listed for argument at the scheduled December 6, 1984 argument court. Briefs were exchanged and filed with the Court Administrator. Counsel for the defendant appeared and his oral argument was heard. Counsel for the plaintiffs advised the Court Administrator that he had a previously scheduled trial in another jurisdiction which made it impossible for him to participate in oral argument but he would not request a continuance of the argument and would rely on his brief and the record.

This matter is now ripe for disposition.

For the future guidance of counsel it should be understood our Local Rules provide for oral arguments to permit the Court to question counsel on the contents of their briefs, and to assure the

Court it fully comprehends the contentions of the parties. The judge assigned to the case may, if he sees fit, agree to dispose of the matter on briefs alone. In the case at bar, counsel for the plaintiffs should have requested a continuance if neither he nor anyone from his office could attend the scheduled argument. The Court could then have determined whether to continue the matter or hear the controversy on briefs.

The defendant contends that plaintiffs are not entitled to recover punitive damages because they have failed to allege the material facts in their complaint establishing that defendants' actions were outrageous, badly motivated or recklessly indifferent.

We find defendants' contention correct. It is well settled in Pennsylvania that a complaint for punitive damages in a tort action is legally insufficient if it merely avers that defendants' acts were outrageous or done with reckless indifference to the rights of the plaintiff. The factual circumstances which make conduct outrageous or which give rise to an indifference as to defendant's state of mind must be pleaded. *Witchey v. Lisi,* 17 D&C 3d 131 (1980). When the allegations of a complaint in trespass detail the negligent conduct of a defendant, the right to punitive damages cannot be established by merely alleging that the conduct was wanton, reckless or grossly negligent. The complaint must allege facts which indicate the manner in which the defendant knew or had reason to know that his conduct involved such a high degree of probability that substantial harm to others would result. *Van Ingen v. Wentz*, 70 D&C 2d 555 (1975); *McLeod v. Properties Advisor, Inc.,* 62 Del. Co. 346 (1975).

In the case at bar, the plaintiffs generally alleged in Count III a lack of due care, negligence and wanton misconduct on the part of all defendants, including Williams, which demonstrated an indifference to plaintiffs' physical and mental well-being that deviated from the appropriate standard of care so much that it constituted outrageous conduct entitling them to punitive damages. However, the factual allegations of the complaint do not establish that defendant/Williams' conduct was willful, wanton or demonstrated a reckless indifference to the plaintiff's physical and mental well-being. Therefore, plaintiffs have failed to plead the material facts leading to the conclusion that defendant/Williams' conduct was outrageous. We consequently conclude we must sustain defendant/Williams' preliminary objection in the nature of a demurrer to Count III of the amended complaint.

BAR NEWS ITEM AND EDITORIAL

The dinner on November 21, 1985, at Holiday Inn, Chambersburg, hosted by the Franklin County Bar Association, in honor of President Judge George C. Eppinger of the 39th Judicial District of Pennsylvania was a great success. Present were over 165 persons, among them many other Judges. The Bar was also well represented. Other professions, friends and associates of the honored guest were there. There was a proclamation from Governor Thornburgh and a resolution from each of the houses of the Pennsylvania Legislature. Our own Court of Common Pleas and, of course, our Bar Association, presented their resolution. The speeches and brief entertainment were well presented, and the dinner was delightful. Other details will have to be gleaned from the larger publications of our area, because we want to use the rest of our own small available space to say something else.

It was Judge Eppinger's Order of June 2, 1977, that put our Journal into operation. His advice, cooperative and helpful attitude, and his judicial opinion contributions, ever since, have helped us succeed. The Judge believes in conservation of printed pages, and is very humble about things like receiving compliments. So, we'll just close, here, with "Thanks, Judge. You've been a great friend to this publication!"

BAR NEWS ITEM

Daniel W. (Dan) Long, Esq., was admitted to practice before the Courts of Franklin County, Pennsylvania, on November 25, 1935. He is still actively engaged in law practice, some fifty years later. We congratulate Dan on this golden anniversary, and we wish him many more years of the kind of able and thorough advocacy, garnished with the spirit of friendliness and cheer, that we all know him for.

On the motion for a more specific pleading defendant/Williams argues that he will be severely prejudiced if he is required to answer the vague, agency allegations contained in paragraphs 15 and 17 of the amended complaint. He contends that paragraphs 15 and 17 should be stricken unless the complaint is further amended to identify the purported agents, servants and/or employees of Dr. Williams.

The defendant paints with too broad a brush. The well-recognized rule in Pennsylvania is that plaintiffs are not required to specifically plead matters about which the opposing party has greater knowledge. *J. Reisman & Sons, Inc. v. Snyder Potato Chips,* 31 Som. 77 (1975); *Lawrence v. WBRE-TV, Inc.,* 62 Luz. L. Reg. 189 (1982); *Regal Advertising Ass'n. v. Taft Broadcasting Co.,* 59 Luz. L. Reg. 45 (1968). A complaint is sufficiently specific if it provides the adverse party with enough facts to enable him to frame a proper answer and prepare a defense. *Commonwealth ex. rel. Milk Marketing Board v. Sunnybrook Dairies, Inc.,* 29 Pa. Cmwlth. 210, 370 A. 2d 765 (1977); *Philadelphia County Intermediate Unit No. 26 v. Commonwealth Department of Education,* 60 Pa. Cmwlth. 546, 432 A. 2d 1121 (1981).

In the case at bar, the identity of defendant/Williams' agents, servants and/or employees is peculiarly within his knowledge. It would impose a substantial inconvenience upon the plaintiffs and undoubtedly require them to incur unnecessary expense to plead facts known to defendant/Williams.

Therefore, we conclude the plaintiffs will not be required to plead more specifically the identity of the defendant/Williams' "agents, servants, employees and/or associates".

However, we are persuaded the clauses in paragraphs 15 and 17 which allege "or those who appear to be his agents, servants, employees and/or associates" must be essentially meaningless to defendant/Williams, for there is no possible way he could know the identity of "those who appear to be . . ." Therefore, this defendant will be prejudiced if the plaintiffs are not required to plead that agency with more specificity.

ORDER OF COURT

NOW, this 4th day of March 1985, defendant/Williams' preliminary objections in the nature of:

1. A demurrer to Count III is sustained.

2. A motion for a more specific pleading as to paragraphs 15 and 17 is granted as to those clauses of the paragraphs alleging agency as to "those who appear to be . . ."

The plaintiffs are granted leave to file an amended complaint pursuant to this Opinion and Order within twenty (20) days of this Order.

SHAW ESTATE V. SLAYTON, ET AL., NO. 2*, C.P. Franklin County Branch, A.D. 1983-172

Mortgage Payments - Defeasible Life Estate - Declaratory Judgment

1. Where a testator provides for a defeasible life estate and it is impossible to determine the happening of the event that will defeat it, the life tenant takes the property subject to any agreements which the testator made during his lifetime for the payment of the principal and interest on the mortgage.

2. Since some principal payments inure to the benefit of the remaindermen, such sums paid by the life tenant shall be a lien on the property against the remaindermen for their proportionate part of the sums paid.

3. The amount of the life tenant's lien against the remaindermen can only be determined upon termination of the life tenancy where a defeasible life estate is involved.

David C. Cleaver, Esquire, Counsel for plaintiff

William H. Kaye, Esquire, Counsel for defendant, Patricia A. Slayton

Denis M. Diloreto, Esquire, Counsel for additional defendants

ADJUDICATION AND DECREE NISI

EPPINGER, P.J. March 6, 1985:

* Editor's Note: Earlier report is 6 Franklin 231 (1984).