

IN THE CIRCUIT COURT OF BROOKE COUNTY, WEST VIRGINIA**Keith West and Susan West,****Plaintiffs,**

vs.

CAN 06-C-61 (Judge Mazzone)**West Virginia Department of
Transportation, Division of Highways, et al.,****Defendants.****ORDER**

On the 30th day of May, 2008, came the parties, by counsel, pursuant to the Defendant's Renewed Motion for the Entry of a Judgment as a Matter of Law or, Alternatively, Motion for the Entry of an Order Granting a New Trial; and Motion for Entry of an Order Modifying or Altering the Judgment," as well as Plaintiff's Motion to Compel.

Whereupon the Court proceeded to consider all briefs and memoranda submitted by the parties, as well as oral argument. After considering the same, the Court does hereby FIND and ORDER as follows:

1. **Defendant's Renewed Motion for the Entry of a Judgment as a Matter of Law or, Alternatively, Motion for the Entry of an Order Granting a New Trial** - DENIED. The Court will not alter any previous rulings, nor does it find any basis in the record for a new trial. The record clearly supported the jury findings, as well as all of the court's rulings, whether the same occurred during pre-trial, during trial or post-trial. The trial record clearly indicated negligence on the part of of the defendant and perhaps enough for a finding of gross negligence.

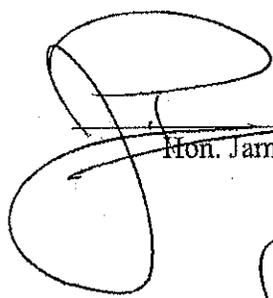
2. **Defendant's Motion for Entry of an Order Modifying or Altering the Judgment**

– DEFERRED. On the basis of the record presently before the court, it appears that there may be insurance which may apply to the payment of some or all of the Judgment in this case. As such, before the court can make any final determination on this issue, the court hereby ORDERS the parties to undertake such discovery as is necessary to determine the full extent of insurance which may apply to the payment of any and/or all of the Judgment in this case. See below for further Order on this issue.

3. **Plaintiff's Motion to Compel – GRANTED.** The Court finds that the language in the Judgment Order regarding discovery may have been ambiguous enough to support the defendant's contention that it did not have to answer the discovery already propounded by the plaintiffs prior to the new trial motion hearing. However, Court further finds that the discovery already propounded by the plaintiffs is necessary to the determination of additional insurance coverage and, therefore, the Court hereby ORDERS defendant to answer plaintiff's Requests for Admissions, Interrogatories and Requests for Production within thirty (30) days. Any objections that the defendant may have to the requests are preserved. Furthermore, the defendant is directed to produce to the plaintiff within that time period the insurance policy of Zurich and the umbrella policy with American, which were the subject of the Certificate of Liability Insurance on the record and presented to the court for the hearing.

The Clerk is ORDERED and directed to provide certified copies of this ORDER to all counsel of record.

ENTERED on the 24th day of June, 2008.

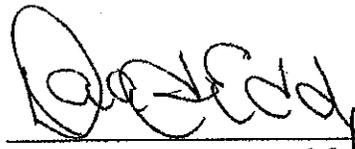


Hon. James P. Mazzone, Judge

Approved:



Jason A. Cuomo, Esq., counsel for plaintiffs



Dana Eddy, Esq., counsel for defendant

Shirley Jack, Deputy
Clerk of Court
County of Essex, Massachusetts
Essex Superior Court
Essex County, Massachusetts
Essex Superior Court
Essex County, Massachusetts

By: *Shirley Jack, Deputy*