IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

GEORGE SEGRAVES and JOAN SEGRAVES	:	
Plaintiffs	:	NO: 09-02270
vs.	:	
BETTY STEINBACHER	:	CIVIL ACTION
Defendant	:	
AND	:	
LANCE THOMAS and SUSAN THOMAS	:	
Additional Defendants	:	

O P I N I O N

On October 30, 2009 the Plaintiffs filed a Complaint alleging Negligence, Negligent Infliction of Emotional Distress, and Loss of Consortium arising from a fall on property located at 1115 West Mountain Avenue, South Williamsport, Pennsylvania. At the time of the fall, the residence was owned by the Defendant, Betty Steinbacher, and occupied by Lance and Susan Thomas. The Plaintiffs are the parents of Susan Thomas, and at the time of the fall were visiting their daughter and her family on Christmas day. A Complaint to Join Additional Defendants, Lance and Susan Thomas, was filed by Defendant, Betty Steinbacher, on December 30, 2009.

On October 6, 2010 the Defendant, Betty Steinbacher, filed a Motion for Summary Judgment. The issue presented is whether the Plaintiffs have met their burden of proving sufficient evidence exists to permit a jury to find that there is a

causal connection between the alleged negligence of the Defendant and the Plaintiff's fall. The Defendant contends that summary judgment should be granted because the Plaintiffs have failed to eliminate all other possible causes of Plaintiff's fall. The Defendant specifically asserts that given Mr. Segraves "health issues, it is certainly possible that Mr. Segraves' fall was a result of something other than the condition of the steps." The Defendant relies upon Utain v. Crum Creek Construction Co., 35 D & C4th 408 (1996), *affirmed* 706 A.2d 1267 (Pa.Super. 1997).

In Utain, *supra*, the trial court stated:

> Plaintiffs' first argument seems to be: (1) defendant failed to follow OSHA regulations; (2) Utain fell through the hole in the first floor; therefore (3) the failure to follow OSHA regulations must have caused him to fall. One cannot argue with the first two propositions, but the third does not necessarily follow. There could be other explanations for the fall besides the failure to follow OSHA regulations – someone else, even Utain himself, could have removed the covering. We do not know what happened. Plaintiffs have not proven 'causation-in-fact,' that is, 'the mechanical sequence of events' leading to his injuries…**The difficulty again, however, is that plaintiffs have not eliminated other possible sources of blame.** It is as reasonable to suppose that the fall was due to Utain's own conduct, or perhaps even the conduct of a third person, as it is to conclude that defendants' conduct caused it. Therefore, section 328D does not apply. Id. at 413-4. (Emphasis added).

Defendant's brief accordingly asserts that, "as it is possible that Mr. Segraves fall was a result of something other than the condition of the steps" the Plaintiffs have failed to meet their burden of proof.

Plaintiffs' response is two-fold. Plaintiffs first assert that there is an abundance of evidence from which a jury could conclude that Defendant's negligence caused Mr. Segrave's injuries. Plaintiffs additionally argue that the Defendant's Motion for Summary Judgment is based upon cases with distinguishable facts and incorrect statements of Pennsylvania law. The Plaintiffs contend that circumstantial

evidence is sufficient to establish a prima facia case and that a plaintiff need not exclude all other possible causes of injury to a plaintiff in order to recover for harm suffered. Plaintiffs primarily rely upon Smith v. Bell Telephone Company of Pennsylvania, 153 A.2d 477 (Pa. 1959) and Bethay v. Philadelphia Housing Authority, 413 A.2d 710 (Pa.Super. 1979).

In Smith, *supra*, the trial court granted a compulsory non-suit against Smith who claimed that Bell Telephone caused a sewer lateral to back-up and flood his basement. In evaluating the standard used by the lower court in granting the non-suit, the Pennsylvania Supreme Court stated:

> In support of the judgment of the nonsuit the court below applied the standard that where plaintiff's case is based upon circumstantial evidence and inferences to be drawn therefrom, such evidence must be so conclusive as to exclude any other reasonable inference inconsistent therewith, and that plaintiff did not produce such evidence. Indeed he did not, but did he have to? Id. at 479.

Following a review of a variety of inconsistent formulas for the evaluation of circumstantial evidence, the Supreme Court reversed the trial court's judgment, and held:

> **The formula that 'the circumstances must be so strong as to preclude the possibility of injury in any other way and provide as the only reasonable inference to the conclusion plaintiff advances' is not a correct statement of the rule to be applied by the judge** on deciding a motion for either a nonsuit or binding instructions. If that were the rule what would be the province of the jury? **In no case where there was more than one reasonable inference would the jury be permitted to decide. Insofar as this rule is stated in our cases it is disapproved**.
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> We have said many times that the jury may not be permitted to reach its verdict merely on the basis of speculation or conjecture, but that there must be evidence upon which logically its conclusion be based……Clearly this does not mean that the jury may not draw inferences based upon all the evidence and the jurors' own knowledge and experiences, for that is, of course, the very

> heart of the jury's function. It means only that the evidence presented must be such that by reasoning from it, without resort to prejudice or guess, a jury can reach the conclusion sought by the plaintiff, and **not that that conclusion must be the *only* one which logically can be reached. It is not necessary, under Pennsylvania law, that every fact or circumstance point unerringly to liability, it is enough that there be sufficient facts for the jury to say reasonably that the preponderance favors liability.** The judge cannot say as a matter of law which are facts and which are not unless they are admitted or the evidence is inherently incredible. Also, it is beyond the power of the court to say whether two or more reasonable inferences are 'equal.' True enough the trial judge has to do something like this in deciding a motion for a new trial based on the weight of the evidence but no such rule governs him in deciding whether a case is submissible to the jury. The facts are for the jury in any case whether based upon direct or circumstantial evidence where a reasonable conclusion can be arrived at which would place liability on the defendant. It is the duty of the plaintiff to produce substantial evidence which, if believed, warrants the verdict he seeks. **The right of a litigant to have the jury pass upon the facts is not to be foreclosed just because the judge believes that a reasonable man might properly find either way. A substantial part of the right to trial by jury is taken away when judges withdraw close cases from the jury.** Id. at 479-80. (Emphasis added).

In Bethay, *supra*, the decedent, a 10-year-old boy was found lying at the bottom of an elevator shaft in a housing authority project. There were no eyewitnesses to the accident, however, a maintenance man testified that on the day in question he had received information of children playing on top of the elevator. He went to the building, pushed the elevator button and immediately heard something fall into the shaft. Upon hearing moans from the bottom of the shaft, he sent for the manager and together they maneuvered the elevator upward and saw the deceased in the bottom of the shaft. Following a jury verdict in favor of the plaintiffs, the defendant appealed contending that the trial court erred in failing to grants its motion for judgment n.o.v. In affirming the trial court's denial of defendant's motion, the Superior Court held:

> While there was no eye witness to the accident, appellant concedes that a prima facie case may be established by circumstantial evidence. *Smith v. Bell Telephone Company of Penna.*, 397 Pa. 134, 153 A.2d 477 (1959). Nor need the plaintiff's evidence be such as excludes the possibility that defendant was

> not negligent. **The rule as enunciated in *Smith* is that it is sufficient if plaintiff produces evidence which properly may be found by the jury to justify an inference that the defendant's negligence was the proximate cause of the accident** because such evidence outweighs even though it does not exclude any inference that the defendant was not negligent or that his negligence was not the proximate cause of the accident.
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> Here the testimony of appellant's own witness, Bruce, who was its employee, justifies the inference that the accident was caused by the employe[e]'s act of pushing the elevator button which set in motion the elevator, despite the fact he had been informed that children were playing on top of the elevator. Immediately thereafter he heard something fall and heard moans coming from the bottom of the shaft. Thus there is convincing circumstantial evidence that decedent met his death by falling from the top of the elevator, so set in motion by Bruce. Id. at 713-4. (Emphasis added).

In the case at bar, the Plaintiff, George Segraves, fell down the exterior steps at premises owned by Defendant, Betty Steinbacher. Although Mr. Segraves has no recollection of the fall, or what caused his fall, his wife, who was an eyewitness to the fall, testified during her deposition that Mr. Segraves "lost his balance" and then fell over the wall. No handrail was present and according to the Plaintiffs' expert witness, varied riser heights existed in the staircase from one tread to another. Mrs. Segraves testified that she previously lost her balance while walking down the same staircase.

Although the Defendant speculates that the Plaintiff was dizzy or tripped, the Pennsylvania Supreme Court in Smith, *supra*, held that a plaintiff need not eliminate all other possible causes of his injury, but must merely set forth "sufficient facts for the jury to say reasonably that the preponderance favors liability."

Although Utain, *supra*, does appear to stand for the proposition that a plaintiff relying on circumstantial evidence to provide causation must eliminate all other possible causes for his harm, this ruling appears to be contrary to the Supreme

Court's ruling in Smith, *supra*. Moreover, the facts of Utain are easily distinguishable from those presented in the present action.

In Utain, *supra*, a contractor went to a house under construction to take some measurements for steps to be constructed. Mr. Utain testified that he remembered walking through the front door and the next thing anyone could testify to was that he was lying on the concrete floor in the basement badly injured. Mr. Utain presented evidence that the hole through which he presumably fell had been covered by blue styrofoam in violation of federal safety regulations and standards. While Utain had no evidence regarding how the fall occurred, in the case at bar, Joan Segraves observed her husband lose his balance on the steps. Mrs. Segraves testified that she had lost her balance on the steps before and did not know why. There is expert testimony that the staircase risers are varying heights. Based on these facts a jury could likely infer that both Joan and George Segraves lost their balance due to the varying height risers. Moreover, Mrs. Segraves also testified that her husband had his hand on the wall immediately prior to his fall. The Plaintiffs aver that the presence of a handrail or barrier could have prevented the fall and the lack of a handrail constituted negligence.

Summary judgment is appropriate only in those cases where the record clearly demonstrates that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Stimmler v. Chestnut Hill Hospital, 981 A.2d 145, 153 (Pa. 2009), *citing* Atcovitz v. Gulph Mills Tennis Club, Inc., 812 A.2d 1218, 1221-22 (Pa. 2002). The party bringing the motion has the burden of proving

that no genuine issue of fact exists. Penn Center House, Inc. v. Hoffman, 553 A.2d 900, 903 (Pa. 1989).

As this Court believes that sufficient facts exist for a jury to say reasonably that the preponderance favors liability, Defendant's Motion for Summary Judgment is DENIED.

The Defendant has additionally filed a Motion in Limine to preclude the expert testimony of Richard Hughes in two respects. Defendant contends in Count I of her Motion in Limine that Richard Hughes' opinion should be excluded because there is no factual basis for his conclusion that George Seagraves' fall was caused by a lack of a handrail or a differential in riser heights. Specifically, the Defendant asserts that since Plaintiffs' expert has failed to "eliminate numerous other possibilities for the cause of George Segraves' fall,' his opinions as to causation are speculative and lack factual basis. For the reasons set forth above, Count I of Defendant's Motion in Limine is DENIED.

Count II of Defendant's Motion in Limine seeks to preclude any testimony by the Plaintiffs' expert, Richard Hughes, involving "human factors." The objectionable testimony is as follows:

> **Discussion**
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> Humans have two fields of view, peripheral and primary. The primary field of view is approximately a 15 degree angle from the pupil while the peripheral is approximately a 45 degree angle. A person's primary field of view is always focused on their point of destination or most probable danger such as another pedestrian or a moving car. Only when a person is ambulating faster than their comfort level do they look down at their feet. Such is the scenario when a person is running or jogging, and it is not customary for them.
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> To attract a person's primary field of view into their peripheral it takes an exciter color (red, orange, yellow, white stripe), a color contrast or a visual

> cue such as a handrail. That is why stop signs and fire equipment as well as exit signs are red. People also have an iconic memory which registers short term important events and then erases them from memory.
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> Quite often when a person trips or falls over an object the first thought one may have is that he was not watching where he was walking. This statement is almost instinctive, yet due to extensive research on human behavior, building codes and standards have been established which warn of such trivial details which upon first glance appear obvious and innocent. Research has shown that dimensional uniformity of steps in excess of 3/8 inch is a known tripping hazard. Hundreds of people get seriously hurt in this country every year on such an innocuous detail. Therefore the building codes and standards warn of such defects. Bad results do not necessarily mean bad behavior. Otherwise, we could remove banisters from staircases, seat belts from cars and smoke detectors from homes. The building code does not design and dictate for 99.9% of the activity but rather that remote chance that occurs, like safety glass in the front door of a school that millions of kids will safely open, but we design it for the one who goes through it.

The Defendant contends that as Mr. Hughes is a professional engineer and not a behavioral scientist, his opinions as they relate to behavioral tendencies or human factors should be excluded. This Court agrees. Accordingly, Count II of Defendant's Motion in Limine is GRANTED, without prejudice.[1]

O R D E R

AND NOW, this 23rd day of November, 2010, Defendant, Betty Steinbacher's Motion for Summary Judgment is hereby DENIED. Defendant, Betty Steinbacher's Motion in Limine is GRANTED in part, and DENIED, in part. Count I or Defendant's Motion to Preclude Testimony for Lack of a Factual Basis is hereby

[1] This ruling was based upon the Curriculum Vitae of Mr. Hughes. This Court would reconsider this issue at the time of trial if Plaintiffs' counsel provides additional information regarding the qualifications of Mr. Hughes to testify regarding human factors. Any supplemental information in this regard should be exchanged and submitted by Mr. Zicolello ten (10) days prior to trial.

DENIED. Count II or Defendant's Motion to Preclude Testimony Regarding "Human Factors" is GRANTED, without prejudice, and the Plaintiffs' expert witness, Richard Hughes is precluded from offering any testimony related to "human factors," which specifically includes any testimony that relates to the opinions expressed in the "Discussion" section of the Hughes report, which is cited above.

BY THE COURT,

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Richard A. Gray, J.

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