

**BENNETT, BRICKLIN & SALTZBURG LLC**  
**INTRAOFFICE MEMO**

**Subject:** Summary of Cases Reported in Law Weekly of July 20, 2009

**Date:** July 24, 2009

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**Pa. Practice - Requiring Settling Defendants to Participate  
in Trial**

Gustine Union Town Association Ltd. v. Anthony Crane Rental, C.P. Allegheny County, opinion by Wettick, J. (PICS No. 09-1123).

Prior to trial of a case involving a number of defendants, one of the defendants settled with the plaintiff with a pro rata joint tortfeasor release. The settling defendant filed a motion to amend its answer and new matter to plead the release and also moved to be excused from having to sit through the trial. The second motion was opposed by several of the non-settling defendants. Two of the reasons given for requiring the settling defendant to attend the trial were: (1) that it had expert knowledge on certain parts of the case; and (2) that the jury should not be confronted with an “empty chair.”

Judge Wettick held that there was no case law requiring a settling defendant or its attorney to participate in the trial or even to be present, and granted the motion of the settling defendant.

Judge Wettick further noted that forcing a settling defendant to be represented throughout a trial could make the case more confusing for a jury and that the non-settling defendants could still pursue their claims for contribution against the settling defendant, as its name would remain on the verdict slip. (Of course, any successful claims for contribution would be limited by the provisions of the pro rata joint tortfeasor release.)

**Pa. Practice - Issue of Whether a Settling Defendant’s Name Should  
Be on the Verdict Sheet**

Hrycza v. West Penn Allegheny Health System, Pa. Super. Court, opinion by Donohue, J., filed July 1, 2009 (PICS No. 09-1113).

In a medical malpractice action, several of the defendants settled and their names were omitted from the verdict slip. After the plaintiff secured a verdict against the remaining defendants, they appealed, arguing that the exclusion of the other defendants from the verdict slip denied their rights to have liability apportioned among the various defendants.

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The Superior Court denied the appeal, finding that since there was no *prima facie* evidence of negligence put on against the settling defendants, they were properly excluded from the verdict slip.

JPF/mee