

Northampton County Reporter

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VOL. LIX

EASTON, PA April 6, 2017

NO. 66

Nigel Thompson, Plaintiff v. Chianne C. Fox, Defendant

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NOTICE TO THE BAR...

Clerk of Court – Civil – New rules to file pleadings

See page 12.

* * * * *

Northampton County Formal Arraignment Changes

Please be advised that the arraignments scheduled for **June 8, 2017** have been cancelled.

Additionally, arraignments on **Thursday, July 20, 2017** have been moved to **Wednesday, July 19, 2017**.

If you have any questions, please call the Court Administrator's Office at 610-829-6700.

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The Northampton County Reporter will be published every Thursday by the Northampton County Bar Association, 155 South Ninth St., Easton, PA 18042-4399. All legal notices relating to the business of the county, are required by rule of Court, to be published in this Journal. All legal notices must be submitted in typewritten form and are published exactly as submitted by the advertiser. Neither the Law Reporter nor the printer will assume any responsibility to edit, make spelling corrections, eliminate errors in grammar or make any changes to content.

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NOTICE TO NCBA MEMBERS – BAR NEWS

Office of the Clerk of Court – Civil/Prothonotary, County of Northampton
New rules for filing pleadings. See page 12.

Quarterly Association Meeting and Malpractice Avoidance Seminar
Thursday, May 18, 2017
Registration form inside.

Barristers Boast

Have you received an honor or award for community work? Do you have a new grandchild? Have you heard good news about one of your NCBA colleagues that should be shared?

Good news items about fellow members should be sent to:
marybeth@norcobar.org.

Wine and cheese are ageless companions, like aspirin and aches, or June and moon, or good people and noble ventures. ~ *M.F.K. Fisher*

ESTATE AND TRUST NOTICES

Notice is hereby given that, in the estates of the decedents set forth below, the Register of Wills has granted letters testamentary or of administration to the persons named. Notice is also hereby given of the existence of the trusts of the deceased settlors set forth below for whom no personal representatives have been appointed within 90 days of death. All persons having claims or demands against said estates or trusts are requested to make known the same, and all persons indebted to said estates or trusts are requested to make payment, without delay, to the executors or administrators or trustees or to their attorneys named below.

FIRST PUBLICATION**BANDZI, SIMON C., JR.,** dec'd.

Late of 743 Washington Street, Walnutport, Northampton County, PA

Executrix: Karen L. Bandzi, 743 Washington Street, Walnutport, PA 18088

Attorneys: Joshua D. Shulman, Esquire, Shulman & Shabbick, 1935 Center Street, Northampton, PA 18067

BARRETT, CATHERINE D., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Carol Barrett c/o Ellen M. Kraft, Esquire, 4510 Bath Pike, Suite 201, Bethlehem, PA 18017-9265

Attorney: Ellen M. Kraft, Esquire, 4510 Bath Pike, Suite 201, Bethlehem, PA 18017-9265

BEAULIEU, MAE K., dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executrix: Sherry L. Hunt, 139 Hilltop Rd., Saylorsburg, PA 18353

BOGGS, MARJORIE G., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Branch Banking and Trust Company, Attn.: Sally A. Kocis, Personal Trust Specialist, 645 Hamilton Street, Suite 900, Allentown, PA 18101

Attorney: James J. Holzinger, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

DALLY, ALFRED S., JR., dec'd.

Late of the Borough of Pen Argyl, Northampton County, PA

Administratrix c.t.a.: Jane E. Dally c/o David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

Attorney: David J. Ceraul, Esquire, 22 Market Street, P.O. Box 19, Bangor, PA 18013-0019

FLECKENSTEIN, WILLIAM O., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executors: Anne F. Pistell, 88 Whitney Ridge Terrace, North Haven, CT 06473-4362 and Christopher J. Teasdale, 11 Dinner Pot Road, Califon, NJ 07830-3030

Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064-2083

HAHN, RICHARD G., dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Administrator: Thomas J. Hahn c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

Attorney: Bradford D. Wagner,
Esquire, 662 Main Street, Heller-
town, PA 18055-1726

**HEIMBACH, CLARENCE a/k/a
CLARENCE T. HEIMBACH,**
dec'd.

Late of the Township of Lehigh,
Northampton County, PA

Executrix: Cheryl Ann Strohl
a/k/a Cheryl Christman c/o Lori
Gardiner Kreglow, Esquire, 18
East Market Street, P.O. Box
1961, Bethlehem, PA 18016-
1961

Attorney: Lori Gardiner Kreglow,
Esquire, 18 East Market Street,
P.O. Box 1961, Bethlehem, PA
18016-1961

KOCHER, HAROLD L., dec'd.

Late of Chapman Quarries,
Northampton County, PA

Executrix: Gizella H. Kocher
Attorneys: Peters, Moritz, Peischl,
Zulick, Landes & Brienza, LLP,
1 South Main Street, Nazareth,
PA 18064-2083

LEN, NICHOLAS G., dec'd.

Late of Bethlehem, Northampton
County, PA

Executrix: Connie J. Len c/o Law
Office of Michael Prokup, 2030
W. Tilghman Street, Suite 201,
Allentown, PA 18101

Attorneys: Law Office of Michael
Prokup, 2030 W. Tilghman
Street, Suite 201, Allentown, PA
18101

PIPERATO, ELVIRA, dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executor: Joseph J. Piperato, III
Attorneys: Joseph J. Piperato, III,
Esquire, Piperato Law Office,
LLC, 3894 Courtney Street, Suite
105, Bethlehem, PA 18017

SUPRYS, LEO D., dec'd.

Late of the Township of Plain-
field, Northampton County, PA
Executrix: Sister Judith Ann
Suprys, F.M.A. c/o David J.
Ceraul, Esquire, 22 Market
Street, P.O. Box 19, Bangor, PA
18013-0019

Attorney: David J. Ceraul,
Esquire, 22 Market Street, P.O.
Box 19, Bangor, PA 18013-0019

TOCKASH, THERESA H., dec'd.

Late of Plainfield Township,
Northampton County, PA

The Theresa H. Tockash Irrevo-
cable Trust, dated January 8,
2014

Executrix/Trustee: Renee R.
Madea c/o Robert C. Brown, Jr.,
Esquire, Fox, Oldt & Brown, 940
West Lafayette Street, Suite 100,
Easton, PA 18042-1412

Attorneys: Robert C. Brown, Jr.,
Esquire, Fox, Oldt & Brown, 940
West Lafayette Street, Suite 100,
Easton, PA 18042-1412

YENCHO, CATHERINE, dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Executor: Richard R. Dancho
c/o Kevin F. Danyi, Esquire,
Danyi Law Offices, P.C., 133 East
Broad Street, Bethlehem, PA
18018

Attorneys: Kevin F. Danyi,
Esquire, Danyi Law Offices, P.C.,
133 East Broad Street,
Bethlehem, PA 18018

YOUNG, ROBERT J., dec'd.

Late of the Township of Palmer,
Northampton County, PA

Co-Executors: Carol Y. Hines
and Joseph R. Young c/o Robert
C. Brown, Jr., Esquire, Fox, Oldt
& Brown, 940 West Lafayette
Street, Suite 100, Easton, PA
18042-1412

Attorneys: Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 West Lafayette Street, Suite 100, Easton, PA 18042-1412

SECOND PUBLICATION

ANDES, ANNE, dec'd.

Late of Lower Nazareth Township, Northampton County, PA
Executrix: Nancy Andes Drabble, 3416 Willow Oak Road, Charlotte, NC 28209

BALTZ, SARAH L., dec'd.

Late of the Borough of Nazareth, Northampton County, PA
Executrix: Hilda Mae Parsons a/k/a Hilda M. Parsons c/o Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064
Attorneys: Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

DECTIS, FRANCES A. a/k/a FRANCES DECTIS, dec'd.

Late of Bethlehem, Northampton County, PA
Executors: Peter N. Dectis, 5946 Armstrong Street, Orefield, PA 18069 and Sandra F. Sterns, 2091 Hopewell Road, Bethlehem, PA 18017
Attorneys: Keith R. Pavlack, Esquire, Pavlack Law Offices, P.C., 1415 Blakeslee Blvd. Dr. E., Leighton, PA 18235

FEDDOCK, STEPHEN, dec'd.

Late of Bath, Northampton County, PA
Executors: Lynn Billings, 417 Eve Court, Bath, PA 18014 and Diane Kattner, 6 Spruce Terrace, Nesquehoning, PA 18240
Attorneys: James R. Nanovic, Esquire, Nanovic Law Offices, 57 Broadway, P.O. Box 359, Jim Thorpe, PA 18229-0359

GODEK, DOMINIC S., dec'd.

Late of the Township of Bushkill, Northampton County, PA
Executor: Chester S. Godek
Attorney: Nicholas R. Sabatine, III, Esquire, 16 S. Broadway, Suite 1, Wind Gap, PA 18091

HICKS, SHIRLEY T., dec'd.

Late of the Township of Bushkill, Northampton County, PA
Administrator: Billy R. Hicks, 553 Fehr Road, Nazareth, PA 18064
Attorney: James J. Holzinger, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

LaBUZ, LAWRENCE L., dec'd.

Late of 3800 Cinnamon Drive, Danielsville, Northampton County, PA
Executor: Thomas J. LaBuz c/o Alvin J. Luschas, Esquire, Law Offices of Derr, Pursel, Luschas & Naparsteck, LLP, 120 W. Main Street, Bloomsburg, PA 17815
Attorneys: Alvin J. Luschas, Esquire, Law Offices of Derr, Pursel, Luschas & Naparsteck, LLP, 120 West Main Street, Bloomsburg, PA 17815

LUTTON, BERTRAM L., dec'd.

Late of Bethlehem, Northampton County, PA
Administrator: Mr. Mark J. Lutton
Attorneys: John D. Lychak, Esquire, Law Offices of John D. Lychak, P.C., 60 W. Broad Street, Suite 98, Bethlehem, PA 18018

McCURDY, WILLIAM R., dec'd.

Late of the Borough of Nazareth, Northampton County, PA
Executrix: Mrs. Janet W. Gruninger c/o Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown,

940 West Lafayette Street, Suite 100, Easton, PA 18042-1412
Attorneys: Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 West Lafayette Street, Suite 100, Easton, PA 18042-1412

NERINO, ROBERT a/k/a ROBERT T. NERINO, dec'd.

Late of the Borough of Bangor, Northampton County, PA
Administratrix: Ms. Jean Nerino-Leigh, 42 Bryant Drive, Perkasio, PA 18944

PETSKUS, RONALD A., dec'd.

Late of the Township of East Allen, Northampton County, PA
Executrix: Christine A. Hoser, 3400 W. Walker Road, Walnuthport, PA 18088
Attorney: Daniel G. Spengler, Esquire, 110 East Main Street, Bath, PA 18014

SHIRLEY, DANIEL WILLIAM, dec'd.

Late of the City of Bethlehem, Northampton County, PA
Administratrix: Gail E. Shirley c/o Vaughn A. Terrinoni, Esquire, 3976 Township Line Road, Bethlehem, PA 18020
Attorney: Vaughn A. Terrinoni, Esquire, 3976 Township Line Road, Bethlehem, PA 18020

STEUER, GEORGE H., SR., dec'd.

Late of the Township of Lower Mount Bethel, Northampton County, PA
Executrix: Deanne Marie Miller, 4812 Miller Road, Bangor, PA 18013
Attorneys: Ronold J. Karasek, Esquire, Karasek Law Offices, L.L.C., 641 Market Street, Bangor, PA 18013

STRATZ, IRENE D., dec'd.

Late of Bethlehem, Northampton County, PA

Co-Executors: Irene C. Stratz and Stephen J. Stratz c/o Noonan Law Office, 526 Walnut St., Allentown, PA 18101
Attorneys: Noonan Law Office, 526 Walnut St., Allentown, PA 18101

WEISEL, MILDRED T. a/k/a MILDRED THERESA WEISEL, dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executor: Cecil D. Hughes
Attorneys: Gladys E. Wiles, Esquire, Snyder & Wiles, P.C., 7731 Main Street, Fogelsville, PA 18051

THIRD PUBLICATION

BRUMBAUGH, FRANK S., dec'd.

Late of Pen Argyl, Northampton County, PA
Personal Representatives: Wells Fargo Bank, N.A. and Martha A. Brumbaugh c/o Kirby G. Upright, Esquire, One West Broad Street, Suite 700, Bethlehem, PA 18018
Attorney: Kirby G. Upright, Esquire, One West Broad Street, Suite 700, Bethlehem, PA 18018

GODSHALK, CHARLOTTE A., dec'd.

Late of the City of Wind Gap, Northampton County, PA
Executor: Larry M. Matthews, 221 Melissa Drive, Easton, PA 18045
Attorneys: Robert A. Nitchkey, Jr., Esquire, Hemstreet, Nitchkey & Freidl, 730 Washington Street, Easton, PA 18042

HUMMEL, GERARD G., dec'd.

Late of Bethlehem, Northampton County, PA
Executrix: Marian L. Hummel c/o Constantine M. Vasiliadis, Esquire, Kolb, Vasiliadis and

Florenz, LLC, 60 W. Broad Street, Suite 303, Bethlehem, PA 18018-5721

Attorneys: Constantine M. Vasiliadis, Esquire, Kolb, Vasiliadis and Florenz, LLC, 60 W. Broad Street, Suite 303, Bethlehem, PA 18018-5721

NAJMI, MOOSA A. a/k/a MOOSA NAJMI, dec'd.

Late of the City of Bethlehem, Northampton County, PA

Co-Executors: Batoul Najmi and Christiane Yates c/o Steven B. Molder, Esquire, 904 Lehigh St., Easton, PA 18042

Attorney: Steven B. Molder, Esquire, 904 Lehigh St., Easton, PA 18042

OWENS, THERESA M., dec'd.

Late of the Borough of Northampton, Northampton County, PA
Executrix: Grace L. Johnson c/o Gail Weiner Shearer, Esquire, 70 E. Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

Attorney: Gail Weiner Shearer, Esquire, 70 E. Broad Street, P.O. Box 1426, Bethlehem, PA 18016-1426

SMITH, JACK D. a/k/a JACK DAVID SMITH, dec'd.

Late of North Catasauqua, Northampton County, PA

Executor: George W. Smith c/o Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

Attorney: Jeffrey F. Hussar, Esquire, 946 Third Street, Whitehall, PA 18052

SNYDER, GERALD C., dec'd.

Late of Bethlehem, Northampton County, PA

Administrator: Allen C. Snyder c/o R. Nicholas Nanovic, Esquire,

Norris, McLaughlin & Marcus, P.A., 515 W. Hamilton St., Suite 502, Allentown, PA 18101

Attorneys: R. Nicholas Nanovic, Esquire, Norris, McLaughlin & Marcus, P.A., 515 W. Hamilton St., Suite 502, Allentown, PA 18101

ZIMMERMAN, WILLIAM R., dec'd.

Late of the Borough of West Easton, Northampton County, PA

Executrix: Debra-Sue Zimmerman c/o Ellen M. Kraft, Esquire, 4510 Bath Pike, Suite 201, Bethlehem, PA 18017

Attorney: Ellen M. Kraft, Esquire, 4510 Bath Pike, Suite 201, Bethlehem, PA 18017

NOTICE OF NONPROFIT INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation—Nonprofit were filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on February 17, 2017, with a proposed non-profit corporation form pursuant to the provisions of the Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as amended. The name of the nonprofit corporation is:

AMERICAN LEGION POST #899

David B. Shulman, Esquire
Shulman & Shabbick
1935 Center Street
Northampton, PA 18067

Apr. 6

IN THE NORTHAMPTON COUNTY COURT OF COMMON PLEAS ORPHANS' COURT DIVISION

The following Executors, Administrators, Guardians & Trustees have filed Accounts in the Office of the Orphans' Court:

ESTATE; Accountant
GRACE LOPRETE; Christina
Davis, formerly Christina Hartley,
Executrix

AUDIT NOTICE

All parties interested are notified that an audit list will be made up of all Accounts and the said list will be called for audit at the Northampton County Government Center, Easton, PA on: FRIDAY, APRIL 21, 2017 AT 9:00 A.M. IN COURTROOM #1.

Gina X. Gibbs
Clerk of Orphans' Court
Apr. 6, 13

**IN THE COURT OF COMMON
PLEAS OF LANCASTER
COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION**

TERMINATION OF PARENTAL
RIGHTS OF "Jay Taylor"

IN RE: BABY BOY HILTON, a Minor

NO. 2017-0498

TO: "Jay Taylor"

You are hereby notified that a Petition to Involuntary Termination of Parental Rights has been filed against you, asking the Court to terminate all rights you have to your child(ren), Baby Boy Hilton (born December 26, 2016). The Court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 6 (Orphans' Courtroom), on the Third Floor of the Lancaster County Courthouse, situate at 50 North Duke Street, Lancaster, Pennsylvania, said hearing to be held on May 11, 2017 at 10:00 o'clock a.m. If you do not appear at this hearing, the court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child(ren). You are warned that even if you fail to appear at the scheduled hearing, the hearing

will go on without you, and your rights to your child may be ended by the Court without your being present.

You are also notified that following the hearing to consider ending your rights to your children, an adoption hearing may be held, as a result of which the Court may decree that an adoption take place whereby your child(ren) shall be adopted by another and all parental rights with respect to the child(ren) shall be placed in another.

YOU HAVE THE RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator
Court Administrator's Office
Lancaster County Courthouse
50 North Duke Street
Lancaster, PA 17602
Telephone No. (717) 299-8041

Apr. 6, 13

ATTORNEY

Thomas, Thomas & Hafer LLP is seeking a hard-working, ambitious general liability attorney with 2-5 years' experience for its Lehigh Valley, PA office. Candidate must be dedicated, responsible and detail oriented. Admission to PA and NJ Bar required. Candidates should also have strong interpersonal, organizational, and litigation skills. Competitive salary and benefits and great opportunity for income growth. A tremendous opportunity to join a strong firm, grow a client base, and engage in challenging work. Send resume and cover letter to: resume@tthlaw.com.

Apr. 6

ATTORNEY POSITION

Winegar, Wilhelm, Glynn & Roemersma is seeking an associate with 0-3 years' experience. The position is for a litigation attorney in the areas of Social Security, Employment and Workers' Compensation. Candidate must be hard working and have the ability to work independently in a fast-paced environment. Applicant must be licensed in both New Jersey and Pennsylvania. We offer a competitive salary, with health insurance and 401k/profit share benefits. Please send your resume, writing sample and references to Dennis Winegar, Managing Partner, winegar@wwgrlaw.com.

Mar. 30; Apr. 6

LEGAL ASSISTANT

City of Bethlehem Law Bureau seeks full-time paralegal with broad experience, capabilities and organizational skills to provide support to solicitor staff. Primary task is answering Right to Know Law requests. Tasks also include clerical duties, correspondence, contracts preparation, insurance claims processing and special projects as assigned. Experience with municipal government law and PA Right to Know Law preferred. Send resumes to City of Bethlehem Law Bureau, 10 East Church Street, Bethlehem, PA 18018 or e-mail to CBartera@bethlehem-pa.gov. Submission deadline April 14, 2017.

Mar. 16, 23, 30; Apr. 6



HOLLY RUGGIERO
CLERK OF COURT-CIVIL
PROTHONOTARY

COUNTY OF NORTHAMPTON

OFFICE OF THE CLERK OF COURT – CIVIL/PROTHONOTARY

NORTHAMPTON COUNTY GOVERNMENT CENTER
669 WASHINGTON STREET
EASTON, PENNSYLVANIA 18042-7498
Telephone: 610-829-6457
Telephone: 610-829-6698 {PFA Office}

NOTICE TO ALL ATTORNEYS AND/OR INDIVIDUALS FILING IN NORTHAMPTON COUNTY

Effective **March 1, 2017** the Civil Division of Northampton County is utilizing a new software program and scanning has been implemented for all pleadings.

Please **DO NOT** staple pleadings or use any type of backers.

Thank you.

Mar. 30; Apr. 6

NIGEL THOMPSON, Plaintiff v. CHIANNE C. FOX, Defendant*Automobile Accident—Punitive Damages—Recklessness—Texting—Cell Phone—Negligence.*

Plaintiff filed suit against Defendant after the parties were involved in an automobile accident. Plaintiff alleged one count of negligence and styled his request for punitive damages as a separate count. Plaintiff averred, *inter alia*, that Defendant was speeding, under the influence of alcohol and controlled substances, and using her cell phone to talk and/or send text messages at the time her vehicle collided into the back of Plaintiff's vehicle.

Defendant filed Preliminary Objections, challenging (1) Plaintiff's separate cause of action for punitive damages and (2) Plaintiff's allegations of recklessness and request for punitive damages. The Court recognized that punitive damages cannot stand as an independent cause of action but considered whether the request for punitive damages was legally sufficient. The Court concluded that Plaintiff's request for punitive damages was legally sufficient, albeit inartfully labeled as a separate count.

In considering Defendant's second Preliminary Objection, the Court reasoned that the allegations regarding cell phone use while driving paired with allegations of driving under the influence of alcohol and controlled substances and speeding presented the "additional indicia of recklessness" to constitute a basis of pleading punitive damages. In so finding, the Court overruled the balance of Defendant's Preliminary Objections.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—No. CV-2016-6136.

TODD S. MILLER, ESQUIRE, for Plaintiff.

CARLA E. CONNOR, ESQUIRE, for Defendant.

Order of the Court entered on February 22, 2017 by MURRAY, J.

ORDER

AND NOW, this 22nd day of February, 2017, upon consideration of the Preliminary Objections and Memorandum of Law in Support of the same filed by Defendant, Chianne C. Fox ("Defendant"), and the Complaint, Memorandum of Law in Opposition to the Preliminary Objections, and Answer to Preliminary Objections filed by Plaintiff, Nigel Thompson ("Plaintiff"), it is hereby ORDERED that Defendant's Preliminary Objections are OVERRULED.

*STATEMENT OF REASONS**I. Factual and Procedural History*

The following facts are stated as averred by Plaintiff. On October 24, 2014, at approximately 12:21 a.m., Plaintiff was driving his vehicle west on State Highway, Route 22 ("Route 22"), in the right lane of travel. Compl. ¶3. At this time, Defendant was also driving west on Route 22 in the right lane of travel in a vehicle behind Plaintiff's vehicle. *Id.* at ¶4. Without warning, Defendant's vehicle struck the rear of Plaintiff's vehicle,

causing Plaintiff's vehicle to spin counterclockwise and strike the median of the southbound shoulder of Route 22. *Id.* at ¶5. As a result of the collision, Plaintiff suffered physical and emotional injuries and financial loss and expects to expend additional sums of money to further treat those injuries. *Id.* at ¶¶10-16.

Plaintiff filed his Complaint on July 13, 2016, alleging two counts: negligence (Count I) and punitive damages (Count II). In his Complaint, Plaintiff avers that at the time of the vehicular accident, Defendant was, *inter alia*, driving at a speed in excess of fifty-five miles per hour, under the influence of alcohol or controlled substance, and while talking or texting on a cellular or other portable device. *Id.* at ¶9. Plaintiff further avers that the aforementioned conduct qualifies as outrageous and reckless conduct, warranting punitive damages. *Id.* at ¶19. Defendant filed Preliminary Objections to Plaintiff's Complaint and Memorandum of Law in Support of the same on September 28, 2016. Plaintiff filed his Answer and Memorandum of Law in Opposition to the Preliminary Objections on October 7, 2016. This matter was placed on the January 24, 2017 Argument List and was submitted on brief.

II. Discussion

A. Legal Standard

A court may properly grant preliminary objections when the pleadings are legally insufficient for one or more of the reasons enumerated in Rule 1028 of the Pennsylvania Rules of Civil Procedure. In ruling on preliminary objections, "we will consider as true all well-pleaded facts and inferences reasonably deducible therefrom, but not conclusions of law, argumentative allegations or opinions." *Erie County League of Women Voters v. Commonwealth, Department of Environmental Resources*, 106 Pa. Commonwealth Ct. 369, 370-71, 525 A.2d 1290, 1291 (1987). In considering a preliminary objection that seeks the dismissal of a cause of action, a court must only sustain such a preliminary objection "in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief." *Feingold v. Hendrzak*, 15 A.3d 937, 941 (Pa. Super. 2011).

A demurrer tests the legal sufficiency of the evidence. Pa. R.C.P. 1028(a)(4). A preliminary objection in the nature of a demurrer "is deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom." *Penn Title Insurance Company v. Deshler*, 661 A.2d 481, 482-83 (Pa. Commw. 1995). "In determining whether to sustain a demurrer, the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion." *Id.* at 483. Further, "[i]f any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections." *Feingold*, *supra*.

B. Preliminary Objection in the Nature of a Demurrer to Count II of Plaintiff's Complaint

Defendant's first Preliminary Objection objects to Plaintiff's Count II, which is labeled, "Punitive Damages," on the basis that punitive damages cannot stand as an independent cause of action. On this general proposition, this Court, as well as Plaintiff, agrees. Punitive damages "are an element of damages arising out of the initial cause of action." *Kirkbride v. Lisbon Contractors, Inc.*, 521 Pa. 97, 101, 555 A.2d 800, 802 (1989). Accordingly, in cases where the "initial cause of action" is dismissed, "the punitive damages which are incident to actual damages cannot stand." *Id.*; see *Nix v. Temple University of the Commonwealth System of Higher Education*, 408 Pa. Super. 369, 380, 596 A.2d 1132, 1138 (1991) (Affirming the dismissal of a count for punitive damages where all other counts in the complaint were dismissed). Nonetheless, Plaintiff insists that his Count II should not be dismissed because his request for punitive damages is merely "an element of damages of the underlying cause of action for negligence" and is otherwise legally sufficient. Pl.'s Answer ¶9.

Where a plaintiff styles his request for punitive damages as a separate count but those punitive damages are incidental to another pled cause of action, dismissal of the separate punitive damages count need not be automatic. See *McPoyle v. Mast Excavating, Inc.*, 34 D. & C.5th 297 at *1 (Pa. Com. Pl. Nov. 13, 2013) (Reasoning "no purpose would be served by requiring Plaintiff to file an amended complaint to plead punitive damages as an element of damages"); *Tower Investments Inc. v. Rawle & Henderson LLP*, 2 D. & C.5th 537 (Pa. Com. Pl. Mar. 3, 2008); *Brueckner v. Stewart*, 82 D. & C.4th 454, 460 (Pa. Com. Pl. December 20, 2006) (Holding "that no useful purpose would be served by requiring plaintiffs to file an amended complaint, and plaintiffs claim for punitive damages shall be addressed at trial as an element of damages relevant to" the plaintiff's other counts). The appropriate inquiry to a stand-alone punitive damages count is to determine whether the punitive damages are, in the context of the underlying cause of action, pled with legal sufficiency. *Id.* In effect, the separate punitive damages count is treated as an element of the related cause of action.

Based upon our discussion below, we find that Plaintiff's request for punitive damages is legally sufficient and no useful purpose would be served to require Plaintiff to file an Amended Complaint. Thus, we overrule Defendant's first Preliminary Objection.¹

¹ This ruling should not be construed to suggest that the punitive damages count is a separate cause of action from Plaintiff's Count I, but rather, that the, perhaps, inartful request for punitive damages survives Defendant's demurrer. Plaintiff's claim for punitive damages shall be addressed at trial as an element of Plaintiff's Count I.

C. Motion to Strike References to Willful and Wanton Conduct in Plaintiff's Complaint

Defendant's second Preliminary Objection moves to strike Plaintiff's allegations of Defendant's willful and wanton conduct. Defendant argues that Plaintiff's allegations—namely, those relating to Defendant purportedly driving under the influence of alcohol or controlled substances and while talking or texting on a cellular device—do not warrant punitive damages.

Pennsylvania has adopted the rule of punitive damages as set forth in the Restatement of Torts, which provides, "Punitive damages are damages other than compensatory or nominal damages awarded against a person to punish him for his outrageous conduct." See *Focht v. Rabada*, 217 Pa. Super. 35, 38, 268 A.2d 157, 159 (1970) quoting Restatement of Torts §908(1). In *Hutchison ex rel. Hutchison v. Luddy*, 582 Pa. 114, 870 A.2d 766 (2005), our Supreme Court summarized the standard governing the award of punitive damages:

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. ... As the name suggests, punitive damages are penal in nature and are proper only in cases where the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct. ... The purpose of punitive damages is to punish a tortfeasor for outrageous conduct and to deter him or others like him from similar conduct. ... Additionally, this Court has stressed that, when assessing the propriety of the imposition of punitive damages, '[t]he state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious.'

Id. at 121-22, 870 A.2d at 770-71 (internal citations omitted).

Given the relatively recent advent of widespread cell phone use, there remain few cases that deal the particular facts presented in the matter before this Court. See *Pietrulewicz v. Gil*, 39 D. & C.5th 332 at *2 (Pa. Com. Pl. June 6, 2014) (In as recent as 2014, one trial court opined, "In Pennsylvania, there is a paucity of case law regarding the question of whether cell phone usage while driving may give rise to allegations of reckless misconduct and a claim for punitive damages."). In *Xander v. Kiss*, a case from Northampton County, the trial court summarized the plaintiff's averments as follows: "the Defendant simply lost control of his vehicle while speaking on his cellular telephone, causing a motor vehicle accident ... " No. CV-2010-11945, 2012 WL 168326 (Pa. Com. Pl. Jan. 11, 2012). The court concluded that "no such additional indicia of recklessness" was present to permit punitive damages. *Id.* The court's decision hinged on the lack of

“additional indicators of gross negligence or reckless disregard for the rights of others.” *Id.*; see also, *Pietrulewicz*, supra at *3 (Reasoning that the allegation that defendant “was talking on her cell phone and slowly moved into a lane of oncoming traffic at an intersection where she was required to yield. ... failed to set forth additional allegations of erratic driving”). In *Piester v. Hickey*, the court reasoned that “Plaintiffs allege only that [the defendant] ‘looked at his cell phone just before driving into the rear of [the plaintiff’s] car.’” No. CV-2011-4720, 2012 WL 935789 at *4 (E.D. Pa. Mar. 20, 2012). The court heavily relied on *Xander* in finding that the aforementioned averment was insufficient to support a claim for outrageous behavior sufficient to establish recklessness or evil motive. *Id.*

There are fewer related cases that address texting while driving. In *Kondash v. Latimer*, a Lackawanna County trial court judge overruled the defendant’s preliminary objection to strike the plaintiff’s allegations of the defendant’s texting and cell phone use while driving. No. CV-2009-8622 (Pa. Com. Pl. Nov. 19, 2012). The court held “we are ruling that it is possible that a jury may be called on [to] consider whether communicating on a PDA [a personal digital assistant, or other cellular device] while driving is a wanton and reckless act.” *Rockwell v. Knott*, 32 D. & C.5th 157 at *6 (Pa. Com. Pl. Aug. 13, 2013) quoting *Kondash*, supra.

Although texting or talking on a cellular device while driving may distract a driver, this conduct alone may not constitute recklessness. However, such conduct combined with excessive speed and driving while under the influence of alcohol and/or controlled substances could reasonably be regarded as reckless. Here, Plaintiff alleges that Defendant was talking or texting on a cellular device while traveling at over fifty-five miles per hour and under the influence of alcohol or controlled substances. Taken together, these “additional” allegations of recklessness constitute a basis for pleading punitive damages. In light of Plaintiff’s texting allegations read in conjunction with Plaintiff’s other allegations, we find that Plaintiff’s allegations are sufficient to survive Defendant’s demurrer.



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A lawyer helps her get one.

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