

Northampton County Reporter

(USPS 395-280)

VOL. LIX

EASTON, PA May 5, 2016

NO. 18

Shawnee George, Plaintiff v. John P. Hower and Bill Anskis Co. Inc., Defendants

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4. 2016 Summer Outing

NOTICE TO THE BAR...

Northampton County Scheduling Changes

PFA Final and Contempt Hearings

PFA Final and/or Contempt cases on the Monday, Wednesday or Friday PFA Hearing Lists will be heard at 10:30 a.m. effective 4/4/16.

Problem Solving Courts

Mental Health Court will begin at 1:00 p.m. and Drug Court at 3:00 p.m. effective 4/28/16.

If you have any questions, please call the Court Administrator's Office at (610) 559-6700.

**NORTHAMPTON COUNTY BAR ASSOCIATION
2016 BAR ASSOCIATION OFFICERS**

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Northampton County Reporter
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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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Edward P. Shaughnessy, Esquire
Editor

IN MEMORIAM

Frank M. Skrapits, Esquire

Admitted to Northampton County Bar: 6/5/58 • Died: April 23, 2016
Services were held on April 27, 2016.

Memorial contributions may be sent to:

Good Shepherd School c/o Robert A. Hauke Funeral Home
327 Chestnut Street, Coplay, PA 18037.

NOTICE TO NCBA MEMBERS – BAR NEWS

Quarterly Association Meeting and Malpractice Avoidance Seminar

Thursday, May 19, 2016

12:00 p.m. @ Best Western Conference Center, Bethlehem.

Iron Pigs Game

Thursday, June 30, 2016

6:00 p.m. @ Coca Cola Park.

Summer Outing

Thursday, July 21, 2016

2016 Bench Bar Conference

October 6-8, 2016

Hyatt Regency, Chesapeake Bay Golf Resort, Spa and Marina
Cambridge, Maryland.

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?

Your 2016 President, Alyssa Lopiano-Reilly, has added the Barristers Boast to the agenda during our Association meetings. She would like to mention good news items about our members at all of the Association meetings.

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

A mother never realizes that her children are no longer children.
~ Holbrook Jackson

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**FEHR, DAVID A. a/k/a DAVID A. FEHR, SR.,** dec'd.

Late of Moore Township, Northampton County, PA
Administratrix: Eileen F. Fehr c/o Robert N. Rust, III, Esquire, 4461 Kohler Drive, Allentown, PA 18103
Attorney: Robert N. Rust, III, Esquire, 4461 Kohler Drive, Allentown, PA 18103

HASLET, C. JEANETTE a/k/a CLARA JEANETTE HASLET, dec'd.

Late of the Township of Bethlehem, Northampton County, PA
Executrix: Nancy Lou Crouse
Attorneys: McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013

KRONER, ROBERT L., dec'd.

Late of Bethlehem, Northampton County, PA

Robert L. Kroner Declaration of Trust dated August 29, 2007, as amended November 7, 2013

Trustee: Peter P. Perry, 1600 Lehigh Parkway East, 1E, Allentown, PA 18103-3097

NEWHARD, MARYANN a/k/a MARY G. NEWHARD, dec'd.

Late of Bethlehem, Northampton County, PA

Executor: Francis Mingora c/o Paul A. Florenz, Esquire, Kolb, Vasiliadis and Florenz, LLC, 60 West Broad Street, Ste. 303, Bethlehem, PA 18018-5721

Attorneys: Paul A. Florenz, Esquire, Kolb, Vasiliadis and Florenz, LLC, 60 W. Broad St., Ste. 303, Bethlehem, PA 18018-5721

SAVINO, FRANCES a/k/a FRANCES G. SAVINO, dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Co-Executors: William F. Savino and Anne F. Barracca c/o Mark P. Albright, Esquire, 403 Main Street, Hellertown, PA 18055-1721

Attorney: Mark P. Albright, Esquire, 403 Main Street, Hellertown, PA 18055-1721

SCHWEDER, MARY L., dec'd.

Late of the City of Bethlehem, Northampton County, PA
Executor: J. Michael Schweder c/o Christopher T. Spadoni, Esquire, 1413 Easton Ave., P.O. Box 522, Bethlehem, PA 18018
Attorney: Christopher T. Spadoni, Esquire, 1413 Easton Ave., P.O. Box 522, Bethlehem, PA 18018

SIMONS, ANNE MARIE, dec'd.

Late of the Borough of Bangor, Northampton County, PA

Executrix: Patricia Ackerman a/k/a Patricia L. Ackerman c/o Brian F. Achey, Esquire, Law Offices of Edward J. McKarski, 901 West Lehigh Street, Bethlehem, PA 18018

Attorneys: Brian F. Achey, Esquire, Law Offices of Edward J. McKarski, 901 West Lehigh Street, Bethlehem, PA 18018

STOUT, ASHER F. a/k/a BUD STOUT, dec'd.

Late of the Township of Forks, Northampton County, PA

Executor: James M. Stout 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

STRELECKI, DONALD, dec'd.

Late of the Borough of Northampton, Northampton County, PA

Executrix: Karol Strelecki c/o Gardner Law Office, 740 Main Street, Bethlehem, PA 18018

Attorneys: Gardner Law Office, 740 Main Street, Bethlehem, PA 18018

SUIDA, AMELIA C. a/k/a AMELIA L. SUIDA a/k/a AMELIA SUIDA, dec'd.

Late of the Borough of Hellertown, Northampton County, PA
Executor: Robert L. Yurasits, 5210 Hanoverville Road, Bethlehem, PA 18017

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

WAITKAITIS, EDWARD C., SR., dec'd.

Late of Bath, Northampton County, PA

Administrator: Nicholas M. Zanakos, Esquire, 742 North Main Street, Bethlehem, PA 18018

Attorney: Nicholas M. Zanakos, Esquire, 742 North Main Street, Bethlehem, PA 18018

SECOND PUBLICATION

BERGER, RITA I., dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Patricia Carol Uhler c/o Robert V. Littner, Esquire, Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

Attorneys: Robert V. Littner, Esquire, Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

BOOSE, JEAN M., dec'd.

Late of Bethlehem Township, Northampton County, PA

Executrix: Jean S. Williams c/o Edward H. Butz, Esquire, Lesavoy Butz & Seitz LLC, 7535 Windsor Drive, Suite 200, Allentown, PA 18195

Attorneys: Edward H. Butz, Esquire, Lesavoy Butz & Seitz LLC, 7535 Windsor Drive, Suite 200, Allentown, PA 18195

CUNNINGHAM, RICHARD J., dec'd.

Late of the City of Easton, Northampton County, PA

Executrix: Joann Cunningham c/o Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, L.L.C., 3101 Emrick Blvd., Suite 205, Bethlehem, PA 18020

**ELLIS, GEORGE M. a/k/a
GEORGE MARK ELLIS, dec'd.**

Late of Hellertown, Northampton County, PA

Executrix: Ursula M. Hoffmann
c/o Noonan & Prokup, 526
Walnut St., Allentown, PA 18101
Attorneys: Noonan & Prokup,
526 Walnut St., Allentown, PA
18101

ERBECK, EVELYN A., dec'd.

Late of the Borough of Heller-
town, Northampton County, PA
Executrix: Linda A. Servetas 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

**HAMPTON, CHARLES STEWART
a/k/a CHARLES S. HAMPTON
a/k/a CHARLES S. HAMPTON,
JR., dec'd.**

Late of the Borough of Heller-
town, Northampton County, PA
Co-Executors: Charles S.
Hampton, III and Elizabeth B.
Firth c/o Mark P. Albright,
Esquire, 403 Main Street, Heller-
town, PA 18055-1721

Attorney: Mark P. Albright,
Esquire, 403 Main Street, Heller-
town, PA 18055-1721

HOWARD, PHYLLIS B., dec'd.

Late of the Borough of Nazareth,
Northampton County, PA

Executrix: Leslie Ann Howard
c/o Daniel E. Cohen, Attorney,
Seidel, Cohen, Hof & Reid, L.L.C.,
3101 Emrick Blvd., Suite 205,
Bethlehem, PA 18020

Attorneys: Daniel E. Cohen,
Attorney, Seidel, Cohen, Hof &
Reid, L.L.C., 3101 Emrick Blvd.,
Suite 205, Bethlehem, PA 18020

**KERN, DARLENE a/k/a DARLENE
A. KERN, dec'd.**

Late of 302 Twin Brook Road,
Township of Allen, Northampton
County, PA

Executrix: Denise R. Bonstein
c/o J. William Widing, III,
Esquire, Kozloff Stoudt, 2640
Westview Drive, Wyomissing, PA
19610

Attorneys: J. William Widing, III,
Esquire, Kozloff Stoudt, 2640
Westview Drive, Wyomissing, PA
19610

KOZMA, ROSE F., dec'd.

Late of Bushkill Township,
Northampton County, PA

Executrix: Angela R. Maxwell,
683 Bowers Road, Nazareth, PA
18064-9117

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

**MARSH, ROBERT H. a/k/a
ROBERT MARSH, dec'd.**

Late of 225 Flagstone Drive,
Bethlehem, Northampton
County, PA

Executor: William F. Marsh c/o
Stuart T. Shmookler, Esquire,
Gross McGinley, LLP, 33 S. 7th
Street, P.O. Box 4060, Allentown,
PA 18105-4060

Attorneys: Stuart T. Shmookler,
Esquire, Gross McGinley, LLP,
33 S. 7th Street, P.O. Box 4060,
Allentown, PA 18105-4060

**MONTORO, PETER V. a/k/a
PETER MONTORO, dec'd.**

Late of the Borough of Wilson,
Northampton County, PA

Administratrix: Jeanette
Montoro c/o Theresa Hogan,
Esquire, Attorney-at-Law, 340
Spring Garden Street, Easton,
PA 18042

Attorney: Theresa Hogan,
Esquire, Attorney-at-Law, 340
Spring Garden Street, Easton,
PA 18042

**NEMETH, CARL W. a/k/a CARL
WILLIAM NEMETH, dec'd.**

Late of 585 Cherry Road,
Northampton, Northampton
County, PA

Executor: Robert F. Nemeth,
4267 Primrose Lane, Walnut-
port, PA 18088

Attorneys: David B. Shulman,
Esquire, Shulman & Shabbick,
1935 Center Street, Northamp-
ton, PA 18067 and Dean C. Berg,
Esquire, 1820 Main Street, Suite
10, Northampton, PA 18067

SHIVE, BARBARA A., dec'd.

Late of the City of Bethlehem,
Northampton County, PA

Co-Executrices: Cynthia A.
LaBarge and Brenda L. LaBarge
c/o Robert H. Littner, Esquire,
Littner, Deschler & Littner, 512
North New Street, Bethlehem, PA
18018

Attorneys: Robert H. Littner,
Esquire, Littner, Deschler &
Littner, 512 North New Street,
Bethlehem, PA 18018

**STRUCKO, JOHN a/k/a JOHN
CHRISTOPHER STRUCKO
a/k/a JOHN C. STRUCKO,
dec'd.**

Late of the City of Easton,
Northampton County, PA

Executrix: Ann Marie Strucko
c/o Theresa Hogan, Esquire,
Attorney-at-Law, 340 Spring
Garden Street, Easton, PA 18042
Attorney: Theresa Hogan,
Esquire, Attorney-at-Law, 340
Spring Garden Street, Easton,
PA 18042

**THOMAS, JOHN PAUL a/k/a
JOHN P. THOMAS, dec'd.**

Late of the Borough of Nazareth,
Northampton County, PA

Executrix: Judela Pearl-Thomas
c/o Brian M. Monahan, Esquire,
701 Washington Street, Easton,
PA 18042

Attorney: Brian M. Monahan,
Esquire, 701 Washington Street,
Easton, PA 18042

**VAN KLEEFF, BETTY J. a/k/a
BETTY VAN KLEEFF, dec'd.**

Late of the Township of Bushkill,
Northampton County, PA

Executor: John Van Kleeff c/o
Theodore R. Lewis, Esquire,
Lewis and Walters, 46 S. 4th
Street, P.O. Box A, Easton, PA
18044-2099

Attorneys: Theodore R. Lewis,
Esquire, Lewis and Walters, 46
S. 4th Street, P.O. Box A, Easton,
PA 18044-2099

ZRINSKI, IRENE, dec'd.

Late of the Borough of Heller-
town, Northampton County, PA

Executor: Joseph S. Zrinski 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

THIRD PUBLICATION

**ECK, JOYCE a/k/a JOYCE A.
ECK, dec'd.**

Late of the Township of
Bethlehem, Northampton
County, PA

Executrix: Pamela J. Farina c/o
Theresa Hogan, Esquire,
Attorney-at-Law, 340 Spring
Garden Street, Easton, PA 18042
Attorney: Theresa Hogan,
Esquire, Attorney-at-Law, 340

Spring Garden Street, Easton,
PA 18042

**GIAMPORCARO, FRANCIS a/k/a
FRANCIS N. GIAMPORCARO
a/k/a FRANK GIAMPORCARO,**
dec'd.

Late of Northampton, Northamp-
ton County, PA

Executor: Peter F. Giamporcario
c/o Noonan & Prokup, 526
Walnut Street, Allentown, PA
18101-2394

Attorneys: Noonan & Prokup,
526 Walnut Street, Allentown,
PA 18101-2394

**HOFFMAN, ARLENE SHIRLEY
a/k/a ARLENE S. HOFFMAN
a/k/a ARLENE HOFFMAN,**
dec'd.

Late of the Township of Williams,
Northampton County, PA

Executrix: Judith H. Pektor, 695
Hexenkopf Road, Hellertown, PA
18055

Attorney: Beth A. Knickerbocker,
Esquire, P.O. Box 1358, Easton,
PA 18044

**JENNINGS, GINA R. a/k/a GINA
JENNINGS a/k/a GINA M.
RUGGIERO,** dec'd.

Late of the Borough of Roseto,
Northampton County, PA

Administratrix: Elizabeth F.
Ruggiero c/o Chad M. DiFelice,
Esquire, 2925 William Penn
Highway, Suite 301, Easton, PA
18045-5283

Attorney: Chad M. DiFelice,
Esquire, 2925 William Penn
Highway, Suite 301, Easton, PA
18045-5283

**KATO, STEPHEN EUGENE a/k/a
STEPHEN E. KATO,** dec'd.

Late of the City of Easton,
Northampton County, PA

Executor: Thomas Joseph Shinn
c/o Theresa Hogan, Esquire,

Attorney-at-Law, 340 Spring
Garden Street, Easton, PA 18042

Attorney: Theresa Hogan,
Esquire, Attorney-at-Law, 340
Spring Garden Street, Easton,
PA 18042

KEITER, ROBERT F., dec'd.

Late of the Township of Williams,
Northampton County, PA

Executrix: Sandra L. Hulbert,
1425 Morgan Hill Road, Easton,
PA 18042

Attorney: Beth A. Knickerbocker,
Esquire, P.O. Box 1358, Easton,
PA 18044

KUNKEL, LORRAINE L., dec'd.

Late of Forks Township, North-
ampton County, PA

Executors: Alan H. Kunkel, Jr.
and Lorraine L.E. Kunkel c/o
Donald R. Keer, Esquire, 20
Brinker Drive, Doylestown, PA
18901

Attorney: Donald R. Keer,
Esquire, 20 Brinker Drive,
Doylestown, PA 18901

McINTYRE, ARLENE J., dec'd.

Late of Forks Township, North-
ampton County, PA

Co-Executors: Richard L.
McIntyre and Linda L. Zanzitis
a/k/a Linda L. Trigiani c/o Joel
M. Scheer, Esquire, Fishbone
and Scheer, 940 West Lafayette
Street, Easton, PA 18042

Attorneys: Joel M. Scheer,
Esquire, Fishbone and Scheer,
940 West Lafayette Street,
Easton, PA 18042

MILLER, LOIS G., dec'd.

Late of the Township of Palmer,
Northampton County, PA

Executrix: Jean B. Marx c/o
Steven N. Goudsouzian, Esquire,
2925 William Penn Highway,
Suite 301, Easton, PA 18045-
5283

Attorney: Steven N. Goudsouzian,
Esquire, 2925 William Penn
Highway, Suite 301, Easton, PA
18045-5283

STENLAKE, GEORGE L., dec'd.

Late of Wind Gap, Northampton
County, PA

Executrix: Cynthia K. Kern

Attorneys: Martin J. Karess,
Esquire, Law Offices of Martin J.
Karess, PC, 215 North Ninth St.,
Allentown, PA 18102

STOCK, EUGENE F., dec'd.

Late of Pen Argyl, Northampton
County, PA

Executrix: Joanne G. Snyder c/o
Joel M. Scheer, Esquire,
Fishbone and Scheer, 940 W.
Lafayette Street, Easton, PA
18042

Attorneys: Joel M. Scheer,
Esquire, Fishbone and Scheer,
940 W. Lafayette Street, Easton,
PA 18042

TARNOK, MICHAEL P., dec'd.

Late of the Township of Upper
Nazareth, Northampton County,
PA

Executor: Michael H. Tarnok c/o
Gregory R. Reed, Esquire,
Attorney-at-Law, 141 South
Broad Street, P.O. Box 299,
Nazareth, PA 18064-0299

Attorney: Gregory R. Reed,
Esquire, Attorney-at-Law, 141
South Broad Street, P.O. Box
299, Nazareth, PA 18064-0299

**CORPORATE FICTITIOUS NAME
REGISTRATION NOTICE**

NOTICE IS HEREBY GIVEN that
a Registration of Fictitious Name was
filed in the Commonwealth of Penn-
sylvania for:

MAQS EASTON

with a principal place of business at:
1350 Sullivan Trail, Suite A, Easton,
PA 18040 in Northampton County.
The entity interested in such business
is Avogadro Environmental Corpora-
tion located at this same address.
This is filed in accordance with 54 Pa.
C.S. 311.

May 5

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

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

ESTATE; Accountant

WILLIAM R. GOWDY, JR. a/k/a
WILLIAM R. GOWDY; Donald
Melchiorre, Executor

MARY JANE CLAUSER a/k/a
MARY JANE R. CLAUSER a/k/a
MARY JANE RUDLOFF CLAUSER;
Joanne C. Solt, Executrix

ANDREW J. PAVELKO, III; Wells
Fargo Bank, Guardian

WILLIAM A. RIEGEL; Pamela G.
Wolf and David W. Riegel,
Co-Executors

GRACE M. PALMER; Michele Asch
a/k/a Michelle Asch, Executrix

MARTHA LIERO; Domenic P.
Sbrocchi, Administrator dbncta

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, MAY 20, 2016 AT
9:00 A.M. IN COURTROOM #1.

Gina X. Gibbs

Clerk of Orphans' Court

May 5, 12

**NORTHAMPTON COUNTY
COURT OF COMMON PLEAS**

NOTICE OF ACTION IN
MORTGAGE FORECLOSURE
Nationstar Mortgage LLC d/b/a
Champion Mortgage Company,
Plaintiff

v.

Paul Bohan, Jr., Known Surviving
Heir of Ann Bohan, Rosemaria
Bohan, Known Surviving Heir of
Ann Bohan, Anne Marie Coombe,
Known Surviving Heir of Ann
Bohan and Unknown Surviving
Heirs of Ann Bohan,
Defendants

NUMBER: C-48-CV-2016-2296

TO: Unknown Surviving Heirs of Ann
Bohan

Premises subject to foreclosure:
905 Front Street, Hellertown, Penn-
sylvania 18055.

NOTICE

If you wish to defend, you must
enter a written appearance person-
ally or by attorney and file your
defenses or objections in writing with
the court. You are warned that if you

fail to do so the case may proceed
without you and a judgment may be
entered against you without further
notice for the relief requested by the
Plaintiff. You may lose money or
property or other rights important to
you. You should take this notice to
your lawyer at once. If you do not have
a lawyer, go to or telephone the office
set forth below. This office can provide
you with information about hiring a
lawyer. If you cannot afford to hire a
lawyer, this office may be able to
provide you with information about
agencies that may offer legal services
to eligible persons at a reduced fee or
no fee.

Lawyer Referral Service
P.O. Box 4733
Easton, PA 18043-4733
(610) 258-6333

McCABE, WEISBERG &
CONWAY, P.C.
Attorneys for Plaintiff

123 S. Broad St.
Ste. 1400
Philadelphia, PA 19109
(215) 790-1010

May 5

NOTICE OF APPLICATION FOR PRIVATE DETECTIVE LICENSE

PLEASE TAKE NOTICE THAT, Christopher S. Vasvari has made an application for a Private Detective License, pursuant to the "Pennsylvania Private Detective Act of 1953," 22 P.S. 11 et seq. A hearing is scheduled before the Northampton County Court of Common Pleas on Friday, May 13, 2016 at 9:00 a.m., in Courtroom 1 of the Northampton County Courthouse, 669 Washington St., Easton, PA 18042. Any person or persons affected by this application may appear and show cause, if any they have, why the request of the Applicant should not be granted.

Apr. 28; May 5

Paralegal Studies Focus Group

12:15 p.m., Friday, May 20
Lehigh County Bar Association
1114 Walnut Street, Allentown, PA 18102
Lunch provided

Lehigh Carbon and Northampton Community Colleges are seeking input to improve their Paralegal Studies curriculum. Both programs are American Bar Association approved.

We are seeking 15 attorneys/paralegals to participate in this 1.5 hour dialog to gain insight to be utilized in both programs.

If you are interested, contact Diane Tallarita at dtallarita@lccc.edu or 610-799-1594.



Lehigh Carbon
COMMUNITY COLLEGE



Northampton
Community College

Apr. 28; May 5, 12

**SHAWNEE GEORGE, Plaintiff v. JOHN P. HOWER and
BILL ANSKIS CO. INC., Defendants**

*Motion for Summary Judgment—Limited Tort Liability—Personal Injury—
Automobile Accident—Serious Impairment of Body Function.*

Plaintiff filed suit after sustaining injuries in an automobile accident involving Defendant. Plaintiff's injuries included a cervical strain, left knee puncture, which required two sutures, and pain in her neck, ribs, abdomen, and left knee. At the time of the accident Plaintiff was ten weeks pregnant, but her unborn child was unharmed. All of Plaintiff's symptoms resolved within two weeks from the date of the accident, but her knee pain subsisted and continues to present day, nearly four years since the accident. Specifically, Plaintiff asserted that she experiences pain when doing basic tasks, such as cleaning, playing with her children on the floor, bending, and working as a waitress.

Defendant's Motion for Summary Judgment argued that because Plaintiff was uninsured at the time of the accident, she is deemed limited tort, a fact conceded by Plaintiff. However, Defendant argued that Plaintiff's injuries were not serious enough to breach the limited tort threshold, and consequently, Plaintiff could not recover non-economic damages.

In considering similar Pennsylvania cases, the Court recognized that the crux of the case was whether Plaintiff presented sufficient evidence to show that she suffered a "serious impairment of body function." Focusing on Plaintiff's difficulty performing the tasks referenced above, the Court reasoned that reasonable minds could differ as to whether Plaintiff sustained a serious injury. Accordingly, the Court denied Defendant's Motion for Summary Judgment.

In the Court of Common Pleas of Northampton County, Pennsylvania,
Civil Division—No. CV-2014-4021

EDWARD SHAUGHNESSY, ESQUIRE, for Plaintiff.

KATHLEEN A. WALSH, ESQUIRE, for Defendant.

Order of the Court entered on March 9, 2016 by MURRAY, J.

ORDER

AND NOW, this 9th day of March, 2016, upon consideration of the Defendant's, John P. Hower's ("Defendant"), Motion for Summary Judgment and Plaintiff's, Shawnee George's ("Plaintiff"), Response and Brief Contra to Defendant's Motion for Summary Judgment, it is hereby ORDERED that Defendant's Motion for Summary Judgment is DENIED.

STATEMENT OF REASONS

I. Factual and Procedural History

The following facts are averred by Plaintiff. On May 3, 2012, at approximately 7:53 p.m., Plaintiff was operating a motor vehicle traveling north on State Highway 33 in Bethlehem Township, Northampton County, Pennsylvania when Defendant, who was operating a construction vehicle, attempted to merge in front of Plaintiff's lane of travel to enter a construction staging area in the highway median. Compl. ¶4. When Defendant attempted to do so, he caused Plaintiff to strike and collide with Defendant's

vehicle, and as a result, she suffered injuries. *Id.* At the time of the accident, Plaintiff did not have insurance on the vehicle she was operating. Pl.'s Brief Contra 1, 3.

An ambulance arrived at the scene of the accident, and Plaintiff spoke to ambulance personnel of the Bethlehem Township Volunteer Fire Company. *Id.* at 1. Plaintiff complained to the ambulance personnel of neck pain, rib pain, abdominal pain, and left knee pain. *Id.* Plaintiff was transported to St. Luke's Hospital Emergency Room for evaluation of her injuries and pregnancy. *Id.* At the time of the accident, Plaintiff was ten weeks pregnant. Plaintiff was admitted as a trauma patient and stayed overnight. *Id.* at 1-2. Plaintiff was diagnosed with a cervical strain and left knee puncture, which required two sutures. *Id.* Plaintiff was also given a neck brace, which she wore for approximately two weeks following the accident. Mot. Defs. Summ. J. Ex. B 18:20-23 [hereinafter Mot. Summ. J.].¹

Following her release from the hospital, Plaintiff visited her family doctor, who recommended physical therapy. *Id.* However, Plaintiff's medical assistance would not approve coverage of physical therapy because her injuries were related to an automobile accident, and consequently, Plaintiff did not participate in physical therapy. *Id.* On one occasion, Plaintiff also visited her OB/GYN office, who confirmed the health of her unborn child. *Id.*

Sometime following May 3, 2012, Plaintiff's father, who Plaintiff refers to as having been a "medic in the army," removed the two sutures. Mot. Summ. J. Ex. B 26:21-27:12. Attached to Defendant's Motion for Summary Judgment is a picture of the scar on Plaintiff's knee, which depicts a pink-colored scar of approximately one or one-half inch long. Mot. Summ. J. Ex. D. Pain in Plaintiff's neck, back, and rib areas all resolved within two weeks of the accident. Mot. Summ. J. Ex. B 18:2-20:14, 21:21-25. Plaintiff contends that she continues to have pain in her left knee when attempting daily tasks, such as cleaning, playing with her children on the floor, bending, and working as a waitress. *Id.*; *see also*, Compl. ¶¶10, 12-13.

Plaintiff filed her Complaint on May 1, 2014, and on August 25, 2014, Defendant filed his Answer. Defendant's Answer, *inter alia*, raised three new matters, one of which argued that Plaintiff's claims may be barred by limited tort. Answer New Matter 5. In Plaintiff's Response to Defendants' New Matter, filed on September 4, 2014, Plaintiff properly denied all Defendant's new matters.

Defendant filed his Motion for Summary Judgment on December 31, 2015. Plaintiff filed her Response to the same on January 8, 2016, and her Brief Contra to the same on February 22, 2016. Defendant's Motion for Summary Judgment argues that because Plaintiff was driving an uninsured vehicle at the time of the accident, Plaintiff is deemed to have limited tort.

¹ Exhibit B of Defendant's Motion for Summary Judgment is Plaintiff's deposition.

Mot. Summ. J. ¶¶2-4. Specifically, Defendant argues that Plaintiff's injuries are not severe enough to breach the limited tort threshold, and consequently, Plaintiff cannot recover non-economic losses. *Id.* at ¶18.

Narrowing the issue, Plaintiff's Brief Contra concedes that "[a]t the time of the accident, Plaintiff was deemed to be limited tort." Pl.'s Br. Contra 1. However, Plaintiff asserts that Plaintiff's injuries were severe enough to allow Plaintiff to recover non-economic losses.

This matter was placed on the February 23, 2016, Argument List and was submitted on brief.

II. Discussion

A. Legal Standard

After the relevant pleadings are closed, but within such time as to not unreasonably delay trial, any party may move for summary judgment. Pa. R.C.P. 1035.2(1). Summary judgment, in whole or in part, is proper "when-ever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report," and the "moving party is entitled to relief as a matter of law." Pa. R.C.P. 1035.2(1); *Reeves v. Middletown Athletic Association*, 866 A.2d 1115, 1124-25 (Pa. Super. 2004). The moving party bears the burden of proving that no genuine issues of material fact exist. *Burger v. Owens Illinois, Inc.*, 966 A.2d 611, 614 (Pa. Super. 2009). Moreover, the record is viewed in the light most favorable to the non-moving party. *New York Guardian Mortgage Corporation v. Dietzel*, 362 Pa. Super. 426, 429, 524 A.2d 951, 952 (1987). Thus, summary judgment is proper only when the uncontroverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *Burger*, supra.

B. Legal Discussion

The Motor Vehicle Financial Responsibility Law ("MVFRL") gives motorists the ability to choose a "limited tort" option "in exchange for presumably lower insurance rates." *Robinson v. Upole*, 750 A.2d 339, 341 (Pa. Super. 2000). MVFRL provides,

Under this form of insurance, you and other household members covered under this policy may seek recovery for all medical and other out-of-pocket expenses, but not for pain and suffering or other nonmonetary damages unless the injuries suffered fall within the definition of 'serious injury' as set forth in the policy or unless one of several other exceptions noted in the policy applies.

75 Pa. C.S. §1705 (1990). MVFRL defines serious injury as a "personal injury resulting in death, serious impairment of body function or permanent

serious disfigurement.” *Id.* MVFRL also specifies that the “owner of a currently registered private passenger motor vehicle who does not have financial responsibility shall be deemed to have chosen the limited tort alternative.” *Id.* In short, and in the context of recovery for non-economic damages, a person driving an uninsured vehicle is treated as if he or she selected the limited tort option.

Because the parties concede that Plaintiff suffered neither death nor a permanent serious disfigurement and this Court agrees with this concession, we only discuss “serious impairment of body function” in further detail. In making a threshold determination as to whether a plaintiff has sustained a serious impairment of body function, our Supreme Court has defined a two-part inquiry:

- a) What body function, if any, was impaired because of injuries sustained in a motor vehicle accident?
- b) Was the impairment of the body function serious?

Washington v. Baxter, 553 Pa. 434, 447, 719 A.2d 733, 740 (1998). The *Baxter* court clarified its test, holding:

The focus of these inquiries is not on the injuries themselves, but on how the injuries affected a particular body function. Generally, medical testimony will be needed to establish the existence, extent, and permanency of the impairment. ... In determining whether the impairment was serious, several factors should be considered: the extent of the impairment, the length of time the impairment lasted, the treatment required to correct the impairment, and any other relevant factors. An impairment need not be permanent to be serious.

Id. at 447-48, 719 A.2d at 740. In *Baxter*, the plaintiff was in an automobile accident, and as a result, suffered from injuries, which included a cervical strain or sprain, cuts and contusions, and a mild sprain or strain to his right foot. *Id.* at 437, 719 A.2d at 735. The plaintiff went to an emergency room where he received a prescription-strength analgesic and was discharged within a few hours. *Id.* Immediately after the accident, the plaintiff was unable to work his full-time job for four or five days and his part-time job for one to two months. *Id.* at 437-38, 719 A.2d at 735. Five months after the accident, the plaintiff began treating with a doctor who administered one injection of cortisone into the plaintiff’s foot and who stated that the plaintiff had a limited range of motion in one of the joints in the plaintiff’s right foot. *Id.* at 438, 719 A.2d at 735-36. When deposed approximately one year after the accident, the plaintiff reported that his injuries continued to cause him pain roughly every other week and that his ankle was often swollen. *Id.* at 439, 719 A.2d 736. The only aspect of his life that the plaintiff could assert was changed as a result of the accident was that he could no longer use a push lawn mower and instead, had to use a riding mower. *Id.*

In applying its own test, the *Baxter* court held that “reasonable minds could not differ on the conclusion that [the plaintiff’s] injury was not serious,” and accordingly, the court affirmed the trial court’s entry of summary judgment against the plaintiff. *Id.* at 448, 719 A.2d at 741. The court reasoned that the plaintiff did not miss a lot of work “where he was required to perform most of his work while on his feet” and that the plaintiff’s treatment was not extensive. *Id.* at 449, 719 A.2d at 741. The court recognized that the plaintiff still suffered from lingering symptoms from his injuries but found that “the injury seems to have had little or no impact on [the plaintiff’s] performance of his job functions and engagement in personal activities.” *Id.*

The *Baxter* court also entertained the plaintiff’s argument that “he has adduced sufficient evidence of a serious impairment of body function so that the issue should go to a jury.” *Id.* In rejecting the plaintiff’s argument, the court reasoned that “[t]he question to be answered is not whether [the plaintiff] has adduced sufficient evidence to show that [he] suffered any injury; rather, the question is whether [he] has shown that he has suffered a serious injury such that a body function has been seriously impaired.” *Id.* (emphasis in original).

In a similar case where the injuries were less severe than those in *Baxter*, our Superior Court affirmed a trial court’s granting of summary judgment where the plaintiff, a victim in a car accident, could not point to a substantial interference with any body function. *McGee v. Muldowney*, 750 A.2d 912, 914-15 (Pa. Super. 2000). The plaintiff asserted that his injuries did in fact substantially interfere with a body function and relied on his having to change professions from a full-time plumber to a full-time electrician to support his position. *Id.* at 914. The court reasoned that although the plaintiff established that he suffered some injuries to his back and shoulder, “he has, nonetheless, failed to establish that these injuries resulted in such substantial interference with any bodily function as to permit a conclusion that the injuries have resulted in a serious impact on his life for an extended period of time,” as evidenced by the plaintiff’s ability to remain a full-time employee without limitations.² *Id.* at 915.

Less than one year after the *Baxter* opinion was issued, our Superior Court reversed a trial court and found that it erred in determining that the plaintiff did not sustain serious bodily injury and that there was no need to go to a jury. *See Kelly v. Ziolk*, 734 A.2d 893, 900 (Pa. Super. 1999). In *Kelly*, the plaintiff was in a car accident, and consequently, suffered pain in his neck, lower back, and knees and experienced numbness in his face and toes. *Id.* at 899. The plaintiff was taken to an emergency room where he was given a soft collar for his neck and was discharged within two hours.

² The plaintiff averred that he “shuns certain lifting tasks,” but the court noted that the plaintiff’s employer was not aware of the plaintiff’s alleged limitation.

Id. Subsequently, the plaintiff engaged in various other forms of treatment, including the following: physical therapy; getting an MRI, which indicated that the plaintiff suffered from a herniated disk; taking pain medication; and voluntarily seeking and receiving back treatments from a chiropractor. *Id.* at 899-900. In total, the plaintiff missed three days of work and returned to his full work duties within a short period of time after the accident. *Id.* at 900.

At trial, the plaintiff testified as to his lingering ailments: he continued to suffer a daily “dull, achy pain” in his lower back, had knee pains approximately once a week. *Id.* at 899. The plaintiff also asserted that his back pain occurs when he sits for long periods of time or engages in physical activity; that he has difficulty sleeping; cannot run; is unable to sit or walk for more than fifteen minutes; has trouble playing with his child; and can no longer participate in certain recreational activities, such as riding his mountain bike, riding his motorcycle, and hunting. *Id.* at 899-900. Despite this, the plaintiff testified that he remains gainfully employed in his former occupation with minor limitations, such as lifting heavy objects, and that he does not receive treatment or prescriptive medications for his pain. *Id.* at 900.

The *Kelly* court recognized that the case “presents a less clear-cut picture of the seriousness of the plaintiff’s injuries than that of the plaintiffs in [*Baxter*].” *Id.* Consequently, the court reversed the trial court, reasoning that “it is only where ‘reasonable minds can not differ as to whether the plaintiff sustained a serious injury’ that the trial court should grant summary judgment.” *Id.* Given that the injuries in *Kelly* were arguably less severe than those in *Baxter*, the *Kelly* court epitomizes the essence of the *Baxter* test. That is, the focus of the inquiries is not on the seriousness of the injuries themselves but on how the injuries impair particular body functions and whether that impairment is serious.

Cases like *Baxter* and *Kelly*, which contain factual similarities but reach different conclusions, illustrate the heavily fact-based analysis courts must employ when determining whether a serious injury has been sustained. As discussed above, in coming to a conclusion about this determination, our first threshold question is whether a body function was impaired because of the injuries sustained in the car accident. Here, Plaintiff sustained injuries in the form of a cervical strain, left knee puncture, and pain in her neck, rib, abdomen, and left knee. Although most of these ailments resolved within two weeks of the accident, Plaintiff’s knee pains continue nearly four years since the accident. As a result, Plaintiff avers that she has difficulty performing basic tasks, such as cleaning, playing with her children on the floor, bending, and working as a waitress. Thus, based on the above, it is clear that there is sufficient evidence of an impairment of a body function, and Plaintiff’s impairments of body functions are greater than those in *McGee*.

However, as *Baxter* held, our final inquiry is whether Plaintiff has adduced sufficient evidence to show that Plaintiff suffered a “serious injury such that a body function has been seriously impaired.” *Baxter*, supra at 449, 719 A.2d at 741 (emphasis in original). As evidenced by the aforementioned cases, Pennsylvania courts focus on the extent and degree of the impairment of a body function. That is, the injuries in *Baxter* were arguably more severe than those in *Kelly*, but the plaintiff in *Kelly* could articulate the serious impairment. To determine whether Plaintiff’s injuries are serious enough to survive Defendant’s Summary Judgment Motion and present her case for non-economic damages to the jury, we consider the three factors set forth in *Baxter*. The extent of Plaintiff’s injuries are clearly stated above. Furthermore, although many of Plaintiff’s symptoms ceased within two weeks of the accident, after nearly four years since the accident, Plaintiff continues to suffer from knee pain, and her knee pain affects her ability to perform everyday tasks. Finally, it is unclear whether Plaintiff’s knee pain could be corrected with treatment due to her lack of insurance coverage and denial of medical assistance, and there is no evidence to the contrary.

Thus, as was true in *Kelly*, we are presented with a set of facts where reasonable minds could in fact differ as to whether Plaintiff sustained a serious injury. Accordingly, we must deny Defendant’s Motion for Summary Judgment and give Plaintiff the opportunity to present this issue to a jury.





PERIODICAL PUBLICATION

*** Dated Material. Do Not Delay. Please Deliver Before Monday, May 9, 2016**