

Northampton County Reporter

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Northampton County Reporter Digest—2007-1

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NOTICE TO THE BAR...

N.C.B.A. Annual Meeting—Thursday, January 18, 2007
Best Western, Bethlehem—registration form inside

**NORTHAMPTON COUNTY BAR ASSOCIATION
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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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Robert C. Brown, Jr., Esquire
Editor

NOTICES TO NCBA MEMBERS—BAR NEWS

INCLUDED IN THIS ISSUE:

NCBA Annual Meeting—Thursday, January 18, 2007, Best Western, Bethlehem

NCBA and PBI/CLE Calendar of Events

Northampton County Reporter—Schedule of 2007 rates

Mark Your Calendar:

Annual Association Meeting—January 18, 2007, Best Western, Bethlehem

Quarterly Association Meeting—March 15, 2007, Best Western, Bethlehem

Reception for the Court—March 30, 2007, Silver Creek Country Club

2007 Directory of Attorneys—We will begin to update the information in the Directory of Attorneys within the next few weeks. If you moved, changed contact information (telephone, email addresses, etc.) please contact the NCBA with your new information.

2007 Dues Invoices—Invoices were mailed in December. If you have not received your dues invoice please contact Stephanie at the Bar Association.

2007 NCBA Committees—Committees are in the process of reorganizing for 2007 and will begin scheduling a first meeting. Please return your Committee Preference Form so you are informed of the meetings.

Beware of the conversationalist who adds "in other words." He is merely starting afresh.—Christopher Morley, 1890-1957

ESTATE NOTICES

Notice is hereby given that in the estate of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ASHTON, VERNA L.**, dec'd.

Late of 175 W. North St., Nazareth, Northampton County, PA

Executor: R. Kline Ashton, 1246 Firethorne Dr., Easton, PA 18045

Attorney: Eric R. Shimer, Esquire, 1 Bethlehem Plz., Ste. 830, Bethlehem, PA 18018

BOK, PAULINE, dec'd.

Late of Upper Nazareth Township, Northampton County, PA

Administrator: David M. Loikits c/o Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219
Attorneys: Fitzpatrick Lentz & Bubba, P.C., 4001 Schoolhouse Lane, P.O. Box 219, Center Valley, PA 18034-0219

COLVER, GERALD E., dec'd.

Late of the Township of Palmer, Northampton County, PA
Executrix: Rita M. Colver c/o Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn

Highway, Suite 301, Easton, PA 18045-5283

Attorneys: Karl H. Kline, Esquire, Karl Kline P.C., 2925 William Penn Highway, Suite 301, Easton, PA 18045-5283

GOLDFARB, LILLIAN, dec'd.

Late of the City of Easton, Northampton County, PA
Executor: Eugene Goldfarb c/o Robert Glazer, Esquire, McLaughlin & Glazer, 800 Walnut Street, Easton, PA 18042-4381

Attorneys: Robert Glazer, Esquire, McLaughlin & Glazer, 800 Walnut Street, Easton, PA 18042-4381

HEINE, THEODORE D., dec'd.

Late of the City of Nazareth, Northampton County, PA

Executors: David L. Heine, 4126 Bayard Street, Easton, PA 18045 and Martha J. Sodl, 1172 W. Rosemont Dr., Bethlehem, PA 18018

HORVATH, MARGARET a/k/a MARGARET I. HORVATH, dec'd.

Late of Northampton, Northampton County, PA

Executor: Ronald F. Horvath c/o Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, PC, P.O. Box 20770, Lehigh Valley, PA 18002-0770

Attorneys: Timothy J. Duckworth, Esquire, Mosebach, Funt, Dayton & Duckworth, PC, P.O. Box 20770, Lehigh Valley, PA 18002-0770

HUGHES, DOROTHY M., dec'd.

Late of 1480 Teels Road, Pen Argyl, Northampton County, PA

Executrix: Judith A. Rissmiller c/o Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018, (610) 332-0390

Attorneys: Kirby G. Upright, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018, (610) 332-0390

KLEEDORFER, WILLIAM J., dec'd.

Late of the Township of Upper Mt. Bethel, Northampton County, PA

Co-Executors: Vail & Marsha Kleedorfer, 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

TEPES, CHRISTINE, dec'd.

Late of the Borough of Northampton, Northampton County, PA

Executor: Karl Tepes, Jr. c/o Frank M. Skrapits, Esquire, Affiliated with Steckel and Stopp, 2152 Main Street, Northampton, PA 18067-1211

WILDRICK, MILDRED A. a/k/a MILDRED WILDRICK, dec'd.

Late of the Township of Washington, Northampton County, PA

Administratrix: Doris J. Palmer 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

SECOND PUBLICATION

ALEXANDER, WALTER ADRIAN a/k/a WALTER A. ALEXANDER a/k/a WALTER ALEXANDER, dec'd.

Late of 536 Greenwood Avenue, Bethlehem, Northampton County, PA

Executor: Dennis W. Alexander, 3 Olde Hickory Path, Westborough, MA 01581

Attorneys: Stevens & Lee, 190 Brodhead Road, Suite 200, P.O. Box 20830, Lehigh Valley, PA 18002-0830

BEIL, PAULINE J. a/k/a PAULINE JOSEPHINE BEIL a/k/a PAULINE BEIL a/k/a PAULINE M. BEIL, dec'd.

Late of 1286 Blue Mountain Drive, Danielsville, Northampton County, PA

Personal Representatives: Josephine M. Himmelwright and Luther E. Beil c/o James A. Ritter, Esquire, 111 E. Harrison St., Suite 2, Emmaus, PA 18049-2916

Attorney: James A. Ritter, Esquire, 111 E. Harrison St., Suite 2, Emmaus, PA 18049-2916

BLITZ, PAULINE M., dec'd.

Late of the Borough of Bangor, Northampton County, PA

Executrix: Karen Bossert c/o McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013
Attorneys: McFall, Layman & Jordan, P.C., Attorneys at Law, 134 Broadway, Bangor, PA 18013

BRADOKA, JOHN a/k/a JOHN C. BRADOKA, dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executor: Scott Bradoka c/o Littner, Deschler & Littner, P.O. Box 1407, 512 N. New Street, Bethlehem, PA 18018
 Attorneys: Littner, Deschler & Littner, P.O. Box 1407, 512 N. New Street, Bethlehem, PA 18018

CHECK, HELEN M. a/k/a HELEN CHECK, dec'd.

Late of the City of Bethlehem, Northampton County, PA
 Executor: William J. Scherbak c/o Littner, Deschler & Littner, P.O. Box 1407, 512 N. New Street, Bethlehem, PA 18018
 Attorneys: Littner, Deschler & Littner, P.O. Box 1407, 512 N. New Street, Bethlehem, PA 18018

GABOR, ROBERT C., SR., dec'd.

Late of the Township of Williams, Northampton County, PA
 Executor: Robert C. Gabor, Jr. c/o Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099
 Attorneys: Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099

GRAY, CARL C., SR., dec'd.

Late of the Borough of Nazareth, Northampton County, PA
 Executrix: Jenifer G. Lowman c/o Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099

Attorneys: Thomas L. Walters, Esquire, Lewis and Walters, 46 South Fourth Street, P.O. Box A, Easton, PA 18044-2099

SCHANEBERGER, MARY E., dec'd.

Late of the Borough of Nazareth, Northampton County, PA
 Executor: Keystone Nazareth Bank and Trust Co., 1620 Pond Road, Allentown, PA 18104

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

WALTZ, ELSIE L., dec'd.

Late of the Township of Forks, Northampton County, PA
 Executrix: Julie Ann Butler 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

THIRD PUBLICATION**BREINER, ELIZABETH A. a/k/a BETTY ANN BREINER**, dec'd.

Late of the Borough of Wilson, Northampton County, PA
 Executor: Frederick C. Breiner 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

DENICOLA, IRENE E., dec'd.

Late of Bangor, Northampton County, PA

Co-Executors: Denise Grogg and Terence Grogg, 612 South Northampton Street, Bangor, PA 18013

Attorneys: Anthony J. Martino, Esquire, Zito, Martino and Karasek, 641 Market Street, Bangor, PA 18013

FORTUNE, WILLIAM D. a/k/a WILLIAM D. FORTUNE, II a/k/a WILLIAM DAVID FORTUNE, dec'd.

Late of Palmer Township, Northampton County, PA

Executor: Kenneth E. Fortune c/o Glenn T. Roth, Jr., Esquire, 740 Main Street, Bethlehem, PA 18018

Attorney: Glenn T. Roth, Jr., Esquire, 740 Main Street, Bethlehem, PA 18018

GOOD, RUTH H., dec'd.

Late of Hanover Township, Northampton County, PA

Executor: Irvin L. Good, Jr. c/o Bradford D. Wagner, Esquire, 662 Main Street, Hellertown, PA 18055-1726

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

NOWAK, WILLIAM E. a/k/a WILLIAM ELMER NOWAK, dec'd.

Late of Lower Nazareth Township, Northampton County, PA

Administrator: Walter G. Nowak, 504 Carol Lane, Bath, PA 18014

Attorneys: James A. Bartholomew, Esquire, Scoblionko, Scoblionko, Muir, Bartholomew & Melman, 40 South Fifth Street, Allentown, PA 18101

SCHULTZ, JOSEPHINE S., dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Co-Executors: Ann Marie Reese and John H. Schultz 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

NOTICES OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation pursuant to the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania, Act of December 21, 1988 (P.L. 1444, No. 177), by the following corporation:

The Name of the Corporation is:

GORDON GRILL, INC.

The Articles of Incorporation were filed on December 13, 2006.

JERRY A. SNYDER, ESQUIRE
SNYDER & WILES, P.C.

7731 Main Street
Fogelsville, PA 18051-1600

Jan. 4

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed by:

**PATRICK McIVOR
COLOR EDUCATION, INC.**

with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, under the

provisions of the Business Corporation Law of 1988.

TERENCE L. FAUL, ESQUIRE
KING, SPRY, HERMAN,
FREUND & FAUL, LLC

One West Broad Street
Suite 700
Bethlehem, PA 18018

Jan. 4

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a proposed corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 12, 1988, P.L. 1444, No. 177, as amended.

The name of the corporation is:

**SANTOS HOME
IMPROVEMENTS, INC.**

Ralph J. Bellafatto, P.C.
4480 William Penn Highway
Easton, PA 18045

Jan. 4

**NOTICE OF NONPROFIT
INCORPORATION**

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Pennsylvania Department of State on January 1, 2007 with respect to a nonprofit corporation:

**THE ISAIAH 58
COMMUNITY, INC.**

which has been incorporated under the Nonprofit Corporation Law of 1988.

Jan. 4

**LIMITED LIABILITY COMPANY
NOTICES**

NOTICE IS HEREBY GIVEN that a Certificate of Organization for a Domestic Limited Liability Company

has been filed with the Department of State of the Commonwealth of Pennsylvania, in accordance with the provisions of the Limited Liability Act of 1994.

The name of the Domestic Limited Liability Company is:

**ALL-STATE AUTO
PERFORMANCE, (ASAP), LLC**

Raymond J. DeRaymond,
Esquire
Gross, McGinley,
Labarre & Eaton, LLP
717 Washington Street
Easton, PA 18042-4386

Jan. 4

NOTICE IS HEREBY GIVEN that Notice of Certificate of Organization—Domestic Limited Liability Company was filed with the PA Dept. of State at Harrisburg, PA, for the purpose of creating a Limited Liability Company under the Limited Liability Company Law of 1994, P.L. 703, No. 106, under the name of:

The name of the LLC is:

ENH, LLC

The Certificate of Organization was filed on December 18, 2006.

NICHOLAS R. SABATINE, III,
ESQUIRE
NICHOLAS R. SABATINE, III, P.C.
16 S. Broadway
Wind Gap, PA 18091

Jan. 4

NOTICE IS HEREBY GIVEN that a Certificate of Organization has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Organization of a proposed business corporation to be organized under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, as

amended. The name of the corporation is:

EXTERMENEX PEST MANAGEMENT, LLC

The Certificate of Organization has been filed on December 13, 2006.

DAVID R. GORDON, ESQUIRE
1883 Jory Road
Pen Argyl, PA 18072

Jan. 4

NOTICE IS HEREBY GIVEN that on December 8, 2006, Certification of Organization was filed in the Department of State of the Commonwealth of Pennsylvania for:

STONE HILL STATION ROUTE 100 GP, LLC

in accordance with the provisions of the Limited Liability Act of 1994.

WENDY A. NICOLosi, ESQUIRE
BROUGHAL & DeVito, L.L.P.
38 West Market Street
Bethlehem, PA 18018

Jan. 4

JOB POSTING

Full-time and Part-time Positions available. Debtor's rights, bankruptcy and litigation. 0-5 years experience. Licensed in PA or NJ, both a plus. Salary competitive. Fax resume to (610) 252-0806 or e-mail to LeinbachLaw@yahoo.com. Can call (610) 614-1567 to leave message.

Dec. 14, 21, 28; Jan. 4

PARALEGAL

Est'd medical malpractice defense law firm seeking exp'd paralegal for Bethlehem office. Exp in litigation a plus. Send resume to: The Perry Law Firm, LLC, 531 Main St., Suite 102, Bethlehem, PA 18018 or Fax (610) 694-1120.

Dec. 28; Jan. 4

SECRETARY

Greater PA Abstract Company is seeking an experienced full-time Real Estate Secretary. Please call (610) 258-3773 or fax resume to (610) 252-8440.

Dec. 14, 21, 28; Jan. 4

NOTICE
ESTATE OF GUS MILIDES

NOTICE IS HEREBY GIVEN that, effective on January 1, 2007, parking on the lot of the Gus Milides office building at 654 Wolf Avenue, Easton, Pennsylvania, will be restricted to tenants of the building and their clients and to those with permits issued by the Estate of Gus Milides. All other vehicles will be subject to towing pursuant to 75 Pa. C.S.A. 3353. Anyone wishing to purchase a parking permit should call (610) 258-0433.

Jan. 4, 11

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NORTHAMPTON COUNTY REPORTER DIGEST—2007-1
RECENT DECISIONS OF THE COURTS OF COMMON PLEAS
OF NORTHAMPTON COUNTY

COMMONWEALTH OF PENNSYLVANIA v. DONALD SIDLER

Motor Vehicle Code—75 Pa. C.S.A. §3361- Assured Clear Distance Ahead Rule Sudden Emergency Doctrine

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2004-2396.

Summary appeal dismissing citation issued to the Defendant and reversing conviction for violating 75 Pa. C.S.A. §3361.

Michael J. Thompson, Esquire for Commonwealth.

Donald Sidler, Pro Se.

Memorandum filed on May 18, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

On May 16, 2004, Defendant, Donald Sidler, was issued a citation for violating 75 Pa. C.S.A. §3361 on April 26, 2004, after he allegedly drove at an unsafe speed while the roadway was wet, lost control of his vehicle through an intersection, and collided with a ten-ton dump truck approaching from the opposite direction. Following the collision, the officer noted in his citation that the roadway was wet due to several inches of rain that had fallen during the previous hours. The arresting officer also issued a separate citation to the Defendant for failing to heed the stop sign.

At the hearing, the sole issue before the court was whether the Commonwealth had established, beyond a reasonable doubt, that the Defendant had committed the summary offense of operating his vehicle at an unsafe speed in violation of Section 3361 of the Motor Vehicle Code. In considering this issue, the Court turned to that Section and took note of the law addressing the assured clear distance ahead rule and the sudden emergency doctrine. In applying this law to the testimonial evidence, the Court held that the Commonwealth had not proven, beyond a reasonable doubt, that the Defendant had violated Section 3361 of the Vehicle Code. The Court found that the Defendant had driven his vehicle in a reasonably prudent manner prior to coming into contact with the excessive water, a condition that was not reasonably foreseeable. Based on the facts presented by the Defendant, which the arresting officer did not dispute, the Court concluded that the excessive water that the Defendant encountered constituted a camouflaged or deceptive condition in the roadway and applied the assured clear distance rule to the instant facts.

The Court further found that the Defendant was immunized from liability on the basis of application of the sudden emergency doctrine because he was confronted with “a sudden and unexpected position of peril created in whole or in part” by the large amount of water pouring from the cistern onto the roadway near the intersection. Since the excessive amount of water that the Defendant encountered was not a foreseeable occurrence, he could not be held to the usual standard of care as a driver faced with a foreseeable event at an intersection.

Consequently, Defendant’s conviction of the summary offense of violating 75 Pa. C.S.A. 8 3361 was reversed.

COMMONWEALTH OF PENNSYLVANIA v. WAYNE F. WILLIAMS

Motor Vehicle Code—75 Pa. C.S.A. §1543(b)(1)—Actual Notice of Suspension 75 Pa. C.S.A. §1515—Notice of Change of Name or Address

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2004-3206.

Summary appeal re-imposing citation issued to the Defendant and affirming conviction for violating 75 Pa. C.S.A. §1543(b)(1).

Michael J. Thompson, Esquire for Commonwealth.

Gregory Reed, Esquire for Defendant.

Memorandum filed on May 19, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

On May 12, 2004, Defendant, Wayne F. Williams was issued a citation for operating his vehicle while his driver's license was under suspension in violation of 75 Pa. C.S.A. §1543(b)(1). The Defendant's license was originally suspended on February 21, 2003 due to several DUI-related offenses.

At trial, the sole issue before the Court was whether the Commonwealth had established, beyond a reasonable doubt, that the Defendant had actual notice of his suspension prior to driving his vehicle while his operating privilege was suspended in violation of Section 1543(b)(1) of the Motor Vehicle Code. Specifically, the Court had to determine whether there was additional evidence of notice other than the mere mailing of a notice of suspension to the address of the Defendant.

In resolving this issue, the Court noted that the Commonwealth had sufficiently established a majority of the factors set forth in *Com. v. Zimmick* for determining circumstantially, or directly, whether the Defendant had actual notice of his suspension. The record established that three separate notices of suspension had been mailed to the Defendant's current address for three separate vehicle code violations, two of which were DUI-related. None of these notices had been returned to the Department or designated "undeliverable." The Department had received the Defendant's license shortly following the mailing of an official notice of suspension arising from his previous Section 1547 violation and the Defendant had failed to produce a current license at the time of the April 18, 2005 offense. As such, the Court found that the Defendant had presumptive knowledge of his license suspension on the date of his latest offense.

The Court also took note of Section 1515 of the Motor Vehicle Code, which places the burden on all Pennsylvania drivers to notify the Department, in writing, of any change in address within 15 days thereafter. Here, the Defendant never advised the Department of any change in his address following his February 21, 2003 suspension convictions and the address maintained by the Department in regard to the Defendant was confirmed accurate at the time the three (3) notices of suspension were mailed.

Consequently, the Court found that actual notice of the Defendant's suspension had been sufficiently established and the Defendant's conviction of the summary offense of violating 75 Pa. C.S.A. §1543(b)(1) was affirmed.

COMMONWEALTH OF PENNSYLVANIA v. WARTAN GABIRYAN

Motor Vehicle Code—75 Pa. C.S.A. §3111(a)—75 Pa. C.S.A. §4107(b)(2)— Perfecting Appeal—Pa. R.Crim.P. 462

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. 2004-3406.

Verdict entered for Defendant in summary appeal proceedings, dismissing charges of violating 75 Pa. C.S.A. §3111(a) and 75 Pa. C.S.A. §4107(b)(2).

Michael J. Thompson, Esquire for Commonwealth.

Robert C. Patterson, Esquire for Defendant.

Memorandum and Judgment filed on May 24, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

Defendant, Wartan Gabiryan, was issued a citation for disregarding traffic control devices in violation of 75 Pa. C.S.A. §3111(a) and for operating a vehicle with unsafe equipment in violation of 75 Pa. C.S.A. §4107(b)(2). The specific charges involved Defendant's use of the "EZ Pass" lane with an unauthorized vehicle and operating this same vehicle with an inaccurate driver record of duty status prohibited by 67 Pa. Code §229.343. At the time of the offenses, Defendant was a resident of California and was operating a vehicle registered in the State of California.

At hearing, the arresting officer failed to appear on behalf of Commonwealth and the Commonwealth provided no explanation for his absence. Defendant's counsel asserted that the officer's failure to appear warranted a dismissal of the charges on grounds that the Commonwealth was unable to prove its case without the arresting officer's testimony.

The Defendant also failed to appear at the hearing although his counsel acknowledged that he had received timely notice of the date of the summary appeal proceedings. As such, the Commonwealth argued that the Defendant's failure to appear at his own appeal proceedings required the quashing of his appeal and reinstatement of the summary convictions. In support of its position, the Commonwealth presented the case of *Com. v. Lowe*, 698 A.2d 607 (Pa. Super.1997), *app. denied*, 550 Pa. 690, 704 A.2d 1381 (1997), for the court's review.

After considering the *Lowe* decision as applied against the current Rule 462 of the Pennsylvania Rules of Criminal Procedure, the Court held that the officer's failure to appear at the hearing to testify, without waiver by the Defendant, was fatal to the Commonwealth's case. The Court also noted that current Rule 462 imposes no dual requirement for perfection of an appeal. Defendant's appeal was thus sustained and his convictions under 75 Pa. C.S.A. §3111(a) and 75 Pa. C.S.A. §4107(b)(2) were dismissed.

BOROUGH OF NORTH CATASAUQUA, PLAINTIFF v. 623-625 CORPORATION II, AND BRIAN J. KROOPE, DEFENDANTS

Public Nuisance—Judgment Notwithstanding Verdict—Harmless Error

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C0048CV2004005419.

Order entered denying Defendants' Post-Trial Motion for Judgment Notwithstanding the Verdict.

William J. McCarthy, III, Esquire for Plaintiff.

Daniel K. McCarthy, Esquire for Defendants.

Order of Court and Opinion filed on June 14, 2005, by Michael V. Franciosa, Senior Judge.

DESCRIPTION OF DECISION

On May 17, 2005, a hearing was conducted in this matter for purposes of considering the Motion for Post-Trial Relief of Defendant, 623-625 Corporation II, and Defendant, Brian J. Kroope, requesting that this Court reverse its prior ruling and enter Judgment Notwithstanding the Verdict in Defendants' favor. Alternatively, Defendants requested that the Court modify the Order for relief with respect to the Diamond Garage property. Defendants' Post-Trial Motions followed the Court's verdict entered on February 2, 2005.

In its Verdict, the Court concluded that the condition of the Defendants' properties constituted a nuisance in fact and rendered a decision in favor of the Borough. As part of the verdict, the Court required that Defendants "remove all items located at the fenced property (Tax Parcel M4SE4C-7-1) in accordance with the Borough's Enforcement Notices within 30 days from the date of filing of this Opinion." The verdict also required that Defendants "remove all items located at the Diamond Garage property (Tax Parcel M4SE4C-4-2) in accordance with the Borough's Enforcement Notices within 30 days from the date of filing of this Opinion."

Defendants subsequently filed timely Post-Trial motions, asserting that the Court's verdict could not be sustained based on the evidence presented at the non-jury trial proceedings. Alternatively, Defendants posited that, even if the Court disagreed with the argument supporting an entry of judgment in Defendants' favor, the portion of the Court's verdict addressing the abatement procedure for the Diamond Garage property had to be modified because it exceeded the requested remedy sought by the Borough in the original Complaint.

After considering Defendants' Motion, the Court found the following: (1) the verdict was supported by the circumstantial and direct evidence presented at trial and was not based on speculation or conjecture; (2) that portion of the verdict stating that removal of all items from the Diamond Garage property was to be accomplished "in accordance with the Borough's Enforcement Notices" was harmless error; (3) the court was not limited in its remedy with respect to the Diamond Garage parcel based on evidence supporting that complete abatement of the property was required and the general prayer for relief contained in the pleadings.

**SHARON A. ZELLNER, PLAINTIFF v. CHRISTINE E. HINKE, M.D.,
COORDINATED HEALTH SYSTEMS PROFESSIONAL
PRACTICE, P.C., DEFENDANTS**

MCARE—40 P.S. §1303.512—Standard of Care Testimony—Harmless Error Doctrine

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C0048CV2001007862.

Peter J. Karoly, Esquire for Plaintiff.

Shawn P. Phillips, Esquire for Defendants.

Opinion filed on June 24, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

A Jury Trial was held to determine whether the Defendant, Christine E. Hinke, M.D. could be held liable for her purported negligence in the care and treatment of Plaintiff's back injury, and for failing to authorize a second neurosurgical evaluation of this condition. At the conclusion of trial, after full consideration of the Plaintiff's evidence presented to support her medical malpractice cause of action, the jury rendered a verdict in favor of Dr. Hinke and Coordinated Health. Plaintiff subsequently filed timely Post-trial Motions and requested a copy of the trial transcript, including pre-trial stipulations. Defendants similarly filed a timely response opposing said Motions. A hearing was subsequently held on April 14, 2005, where the parties presented their respective positions regarding these Motions and provided the Court with supporting Memorandums of Law.

In her Post-Trial Motions and supporting brief, Plaintiff asserted that a new trial was warranted for the following reasons: (1) the court erred in permitting Dr. Hinke's expert, Donlin M. Long, M.D., a neurosurgeon, to testify as to the standard of care of Dr. Hinke, a physiatrist, in treating Plaintiff, and that the admission of this testimony was not harmless error; (2) the court erred in its limiting instruction to the jury that the opinion of Plaintiff's treating physician, Dr. Daneshdoost, regarding Plaintiff's need for surgery could only be considered for the specific purpose of placing the Plaintiff and Dr. Hinke on notice that a qualified physician had expressed concerns about the Plaintiff's condition and not as evidence for the truth of the matter asserted; (3) that the court erred in permitting the defense to introduce documentary and other evidence inferring that Plaintiff's worker's compensation carrier, RSKO, failed to make a timely appointment for Plaintiff's independent medical examination in violation of a pre-trial stipulation barring any evidence of the carrier's involvement; and, (4) that the court erred in failing to sustain Plaintiff's objections regarding a line of questioning inferring that it was someone other than Dr. Hinke who failed to timely schedule Plaintiff's IME, including inferring that it was Plaintiff's fault despite a pre-trial stipulation that contributory negligence was not a theory in this matter.

After considering the evidence presented at trial, the parties' briefs and the relevant law, the Court found the following: (1) Dr. Long possessed sufficient training in the nonsurgical diagnosis and treatment of lumbar back pain and disc herniations, the type of injury at issue in this case, to present standard of care testimony as to another physician providing this type of treatment pursuant to Sections 1303.512(c), 1303.512(d) and 1303.512(e) of MCARE, and thus his standard of care testimony was admissible under relevant law; (2) the Court's limiting instruction to the jury was required due to Dr. Daneshdoost's failure to appear as a witness at trial or at a prior deposition; (3) no error occurred regarding the introduction of evidence concerning Plaintiff's worker's compensation carrier due to the limited jury instruction provided by the Court; and (4) no error occurred with respect to the line of questioning inferring that it was someone other than Dr. Hinke who failed to timely schedule Plaintiff's IME, due Plaintiff's decision to explain the extent of the carrier's involvement to the jury and the Court's limiting instruction that the issue of worker's compensation could not be considered in assessing any portion of Plaintiff's cause of action against Dr. Hinke in conjunction with other limiting instructions on this issue.

CANDACE R. MARSH, PLAINTIFF v. JAMES A. MARSH, DEFENDANT

Modification of Custody—23 Pa. C.S.A. §5303—23 Pa. C.S.A. §5310—Best Interests Standard

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 1999-C-7619

Chester A. Reybitz, Esquire for Plaintiff.

Harold J. DeWalt, Jr., Esquire for Defendant.

Order filed on August 22, 2005, by Michael V. Franciosa, Senior Judge.

DESCRIPTION OF DECISION

On July 23, 2004, Father filed a Petition for Modification requesting primary physical custody of the couples' two children. In consideration of Father's Petition, the Court ordered the Children and Youth Division of Northampton County to conduct comparative evaluations of the parties' separate residences and living circumstances. Upon completion of the home evaluations, and following several custody conferences, the matter was scheduled for a Non-Jury Trial.

After considering the evidence introduced at trial, including the preferences of the children, the Court found that the best interests of the children required that the current custody schedule be maintained during the school year, with some minor modification for increased time for the Father. However, the Court also found that it was in the best interests of the children for the Father to enjoy primary physical custody of them during the summer months, with the Mother granted full access to the children during her scheduled time off from work.

COMMONWEALTH OF PENNSYLVANIA v. RICHARD SERUGA

Discharge of Firearms—Statutory Construction—1 Pa. C.S.A. §1921(a)—1 Pa. C.S.A. §1903(a)—1 Pa. C.S.A. §1921(b)—Exceptions—Prohibited Acts—Target Requirements—Conflict of Provisions—Game and Wildlife Code—34 Pa.C.S. §2505

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, Nos. 2003-2125, 2003-1976.

Summary appeal re-imposing citations as to the Defendant and affirming conviction for violating Chapter 82 of the Code of the Township of Lower Saucon, Pennsylvania, Firearms, §82-2.

Bethany S. Zampogna, Esquire for Commonwealth.

William Craig Penglase, Esquire for Defendant.

Memorandum filed on September 15, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

On April 27, 2003, Defendant, Richard Seruga was issued several citations for violating the Lower Saucon Township Ordinance, §82-2, entitled "Discharge of Firearms Restricted," which prohibits any person, other than the owner or occupant, to discharge any firearm within 150 yards of any occupied dwelling house, residence, or other building or camp occupied by human beings without previously granted and unrevoked permission. On the above date, the Defendant, who owned property located at 3877 Beeline Drive in Lower Saucon Township, was observed shooting at a target range located on his private property but within a mere 218 feet of a neighboring residence. Defendant was thus issued citations for his alleged violation of Section 82-2 of the Lower Saucon Township Ordinance.

At trial, the sole issue before the Court was whether the Defendant was exempt from the distance requirement provided in Section 82-2 of the Township's code by virtue of the exception for the discharge of firearms by landowners contained in Section 82-4 of the code, or whether both sections of the Township's code could be interpreted so as not to be conflicting, thereby making the Defendant subject to the 150 yard distance requirement despite his status as landowner.

In interpreting the Township's provisions, the Court found that the plain language of Section 82-2 clearly states that it is unlawful to discharge any firearm within 150 yards of any dwelling house unless one is the owner or occupant of that residence or unless one receives permission from the owner of that occupied structure. The Court also noted that the plain language contained within the exceptions provision of the Township's code, Section 82-4, unambiguously states that "it shall be a violation of this chapter to fire or discharge any firearm on any land within the township except... [w]hen done by a landowner upon his land." In applying the legal definition of an exception to the facts of the instant case, and considering the principles relative to statutory construction, the Court held that even if the Defendant was exempted, as a landowner, from the general class of people in the township who may not legally discharge any firearm on any property, his exemption from this class of individuals did not render him exempt from the distance requirement set forth in Section 82-2.

Additionally, the Court found that the Defendant was subject to Section 82-2 of the Township's code on basis of application of Section 82-5, as well as supported by the relevant law, notably *Baird v. Township of New Britain*, 159 Pa.Cmwlth. 333, 633 A.2d 225 (1993), app. denied, 537 Pa. 635, 642 A.2d 488 (1994) and certain provisions under the Game and Wildlife Code. The evidence established that the Defendant had been engaged in general target practice, and not engaged in the actual process of hunting. As such, it was held that Section 82-2 was not preempted by the Game and Wildlife Code provisions and the Defendant remained subject to the distance components.

**IN RE: CONDEMNATION OF A PORTION OF PROPERTY EMINENT
DOMAIN OF DAVID C. ZIMMERLI AND ELLEN M. ZIMMERLI, IN REM
HUSBAND AND WIFE, BOROUGH OF HELLERTOWN, NORTHAMPTON
COUNTY, PENNSYLVANIA BY THE BOROUGH OF HELLERTOWN,
CONSISTING OF 54 SQUARE FEET OF PROPERTY FOR
INSTALLATION OF A TRAFFIC LIGHT**

*Eminent Domain Code—26 P.S. §1-406 et seq.—Obtaining a Right of Way—Opening
a Roadway—Statute of Limitations As to Right to Damages—De Facto Condemnation*

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C-48-CV-2005-2206.

Preliminary Objections of Condemnees sustained, in part, and denied, in part.

Robert W. Moore, Jr., Esquire for condemnees.

Donald Corriere, Esquire and Michael Corriere for condemnor.

Opinion filed on September 19, 2005 by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

Condemnees Zimmerlis contended that they were entitled to fair compensation for the purported "taking" of certain portions of their property by the Borough of Hellertown for the purpose of widening a public roadway and installing a traffic light.

The subject property abuts the southern corners of two roadways involved in the Borough's plan, Walnut Street and Main Street, and is located in the Borough of Hellertown. The present dispute arose after the Borough sent notice of its intentions to widen Walnut Street to the condemnees, alter the radius of the southwestern corner of Walnut Street and Main Street, and install a traffic light. In its notice, the Borough informed the condemnees that certain portions of their property would be affected by this construction. The Borough thereafter informed the condemnees that it was prepared to offer them compensation for the condemnation of 54 square feet of their property required for the installation of a traffic light, but offered no compensation for the "taking" of eight (8) feet of property abutting the southern portion of Walnut Street and ten (10) feet of property abutting Main Street on grounds that these specific areas were subject to rights-of-way previously acquired by the Borough.

After reviewing the parties' briefs, and considering the evidence produced at the hearing, the Court found that no valid right-of-way was obtained by the Borough with respect to that area of condemnees' property abutting the southern portion of Walnut Street through the mere enactment of Ordinance 31, the Borough never "opened" the eight (8) foot right-of-way abutting the southern portion of Walnut Street for public use within the statutory period of 21 years, and condemnees were not time-barred from asserting a cause of action for damages pertaining to the eight (8) foot right-of-way. However, the Court also held that the evidence established that the Borough had properly opened the approximate ten (10)-foot right-of-way bordering Main Street in 1957 when Ordinance 243 was enacted, and thus condemnees were time-barred from pursuing damages against the Borough arising from the construction affecting this sidewalk. Finally, the Court found that the elements of a de facto condemnation had not been established as to either area of condemnees' property.

With respect to condemnees' Preliminary Objections concerning the Borough's Declaration of Taking and Notice of Condemnation, it was held that the Declaration adequately defined the 54 square foot of condemnees' property intended for condemnation and that all of the requirements set forth in Sections 402 and 405 of the Eminent Domain Code had been sufficiently addressed. However, the Court found that the Declaration of Taking required an amendment to include the eight (8) foot right-of-way located on condemnees' property, abutting the southern portion of Walnut Street, as property intended for condemnation.

**FRANCESCA MARRA, PLAINTIFF v. LAWRENCE MARRA, SENIOR,
DEFENDANT LAWRENCE MARRA, SR., PLAINTIFF v. LAWRENCE
MARRA, JUNIOR, FRANCESCA MARRA & CMJ, INC., DEFENDANTS**

Equitable Estoppel—Laches—American Rule—42 Pa. C.S.A. §2503—Common Fund Doctrine—Charging Lien Doctrine—23 Pa. C.S.A. §3502—Liens of Marital Estate—20 Pa. C.S.A. §3392—Classification and Order of Payment of Estate Claims

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. 1988-C-961, 1989-CE-4001.

Fee Petitions of Ronald V. Santora, Esquire and Jeffrey Velander, Esquire denied.

Frank Poswistilo, Esquire for Estate of Francesca Marra and Lawrence Marra, Jr.

Ronald V. Santora, Esquire for Estate of Lawrence Marra, Sr.

Opinion and Order of Court filed on November 25, 2005 by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

These proceedings were initially commenced in 1988, when Francesca Marra and Lawrence Marra, Sr. became involved in an action for divorce and equitable distribution (case 1988-C-961). Thereafter, Lawrence Marra, Sr. filed a separate action against Lawrence Marra, Jr., LMJ, Inc., and Francesca Marra, to determine ownership of numerous properties that were allegedly transferred without Lawrence Marra, Sr.'s knowledge or consent (case 1989-CE-4001). Lawrence Marra, Sr. died on March 11, 1992 and his interests in these matters were continued by his Estate. Protracted litigation thereafter ensued and several trials were conducted before this court between 1995 and 1998. Numerous appeals were filed with the appellate courts to resolve the parties' contentions with respect to the properties and assets of Lawrence Marra, Sr. In 2005, the Court was asked to rule on issues pertaining to outstanding taxes owed on certain properties, the accountings filed by Marra, Jr. for some of these properties, and counsel fees that accrued since the inception of these cases.

The first issue pertained to taxes owed for all of the unsold properties for the interim period which were held in obedience by a prior Court Order to protect such properties from upset tax sales until these matters could be resolved. The affected properties were set forth on a "Pick List" that was originally created by the Honorable Richard D. Grifo, and which was affirmed by the Pennsylvania Superior Court. The parties agreed that taxes for these properties were due, the taxes were to be paid as part of a final Order of Court, and the proceeds of all of the sold properties were to be held in escrow. As such, no lengthy analysis of this issue was required and the Court so ordered such payments.

The next issue involved whether the accounting filed by Lawrence Marra, Junior for the post-2000 period, with respect to the unsold properties, was credible and binding on the parties. After considering the lack of any contradictory evidence to this accounting and the lengthy delay in which counsel for the Estate of Lawrence Marra, Sr. raised this assertion, the Court found the accounting to be credible.

The final matter involved the Court's disposition of significant counsel fees that accrued in these matters since their inception. The first application for fees involved the Petition for Counsel Fees filed by counsel for the Estate, seeking fees from the 4001 case on the basis of application of the common fund doctrine, or alternatively, the charging lien doctrine. The Estate asserted that the efforts of its counsel augmented the equitable distribution "pot" in the 961 matter for the benefit of all the parties due to the protracted litigation and filing of extensive appeals by the Estate. As such, counsel for the Estate posited that his fees should not be borne solely by the Estate but be shared equally by the parties in the 4001 matter.

After considering the Estate's position, the Court ruled that the Estate had not established the requisite factors required for application of either the common fund or the charging lien doctrine pursuant to relevant law. The Court found that it was not the efforts of Estate's counsel that augmented the equitable distribution "pot" for the benefit of the Francesca Marra, but, rather, rules of Court that augmented the marital properties for her benefit. As such, the Court held that the Estate must bear its own counsel fees.

The second fee application involved legal fees incurred by Jeffrey G. Velander, Esquire, an attorney who provided legal services at the direction of Attorney Malos on behalf of the Estate. Attorney Velander filed an informal petition for legal fees on September 15, 2005 as against the 4001 case, asserting that he was entitled to reim-

bursment for \$29,810.23 in fees from Francesca Marra on the same basis as counsel for the Estate. However, the Court denied these fees on identical grounds as those set forth concerning the Estate.

The fees of Frank S. Poswistilo, Esquire was also an issue of dispute between the parties. A prior Order of Court filed on December 20, 2001 granted an award of counsel fees to Francesca Marra, totaling \$177,459.32, from the marital estate in the 961 matter. The Estate asked the court to reconsider this prior ruling on the basis of Section 3392 of the Probate Code and certain case law supporting the proposition that Francesca Marra's claim for attorney's fees amounted merely to a general unsecured claim against the Estate with lesser priority as to payment than the fees of Estate's counsel and other costs of administration. However, after considering the relevant law on this issue, the Court found that such fees were recoverable from the marital estate in the 961 matter.

**RONALD L. ANGLE AND SHARON E. ANGLE, PLAINTIFFS v.
CLAYTON M. STINE, JR., AND MICHAEL STINE, DEFENDANTS**

Preliminary Injunction—Easements

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C-48-CV-2005-5515.

Order of Court entered granting Petition for Preliminary Injunction.

Gary N. Asteak, Esquire for Plaintiffs.

Dennis A. DeEsch, Esquire for Defendants.

Order of Court and Opinion filed on December 6, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

Petitioners sought preliminary relief from the court, barring Respondents' use of a farm lane over Petitioners' land for other than farm related purposes. The location of the lane and the Respondents' tract served thereby (the Stine tract) were not in dispute, and were fully described in exhibits to the Complaint. Petitioners conceded that record owners of the Stine tract, including Respondent Clayton Stine, Jr., had obtained an easement by prescription over the lane limited to farm use. Respondents did not deny that they had previously used the lane to import logging and/or construction materials to accumulated piles on the Respondents' tract. In a factually related proceeding in the Commonwealth Court, the parties agreed that an outstanding order prohibited Respondent from such conduct, and directed that Respondent remove the accumulated debris from the Stine tract. Petitioners were not parties to the Commonwealth Court case.

After consideration of the requisite elements that a party must establish in order to obtain preliminary injunction relief, the Court granted the Petition. The requisite elements that must be established include the following: (1) that the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; 2) that greater injury would result from refusing an injunction than from granting it, and, concomitantly, that issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) that a preliminary injunction will properly restore the parties to their status as it existed immediately prior to the alleged wrongful conduct; (4) that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits; (5) that the injunction it seeks is reasonably suited to abate the offending activity; and, (6) that a preliminary injunction will not adversely affect the public interest.

**JENINE M. KUNSMAN, PETITIONER v. COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING, RESPONDENT**

*Motor Vehicle Code—Reasonable Grounds Test—Out-of-Court Witness Statements—
75 Pa. C.S.A. 1547(b)(1)(ii)—Refusal to Submit to Testing*

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—No. C-48-CV-2005-4425.

Denying Appellant's appeal and affirming conviction under 75 Pa. C.S.A. §1547(b)(1)(ii)(B)(II).

George Heitzman, Esquire for Appellant.

Robert J. Kopacz, Esquire for Commonwealth, Department of Transportation.

Memorandum and Order filed on December 14, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

This matter involved an appeal of a license suspension filed by Petitioner, Jenine M. Kunsman after her alleged refusal to submit to a chemical test on May 24, 2005 in violation of Section 1547 of the Motor Vehicle Code. Petitioner filed a timely Petition for Appeal from the Order suspending her driver's license requesting a hearing de novo before the Court of Common Pleas of Northampton County. In this Petition, Petitioner asserted that there was insufficient evidence indicating that she had improperly refused to submit to a chemical test of her blood and that her suspension of license was thus illegal. After granting said Petition, the matter was listed for a full hearing before the Court.

After considering the evidence presented at trial, the Court concluded that the arresting officer had reasonable grounds for arresting Petitioner for operating her vehicle while under the influence of alcohol based on the evidence available to him on May 24, 2005. On a closely related issue, the Court found that the statement of a third party witness, made to the arresting officer at the scene, was admissible at the hearing for the limited purpose of establishing that the officer had reasonable grounds for believing that Petitioner had, in fact, driven her vehicle while in an impaired state. Finally, the Court found that the Department sufficiently proved its case against Petitioner for refusal of chemical testing under Section 1547 of the Vehicle Code.

COMMONWEALTH OF PENNSYLVANIA v. JUAN MORALES

Motor Vehicle Code—75 Pa. C.S.A. §1543—Driving While License Under Suspension—75 Pa. C.S.A. §1573—Driving With Foreign License While Under Suspension—Actual Receipt of Notice of Suspension—Actual Physical Control of Vehicle

In the Court of Common Pleas of Northampton County, Pennsylvania, Criminal Division, No. C-0048-CR-2005-00455,

Order entered partially for Defendant, reversing conviction under 75 Pa. C.S.A. §1543, and affirming conviction under 75 Pa. C.S.A. §1573.

Sandra Foster McClure, Esquire for Commonwealth.

Carlos Rodriguez, Esquire for Defendant.

Memorandum and Order filed on December 14, 2005, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

On December 17, 2004, Defendant, Juan Morales was issued a citation for operating his vehicle while his driver's license was under suspension for a DUI-related offense in violation of 75 Pa. C.S.A. §1543(b)(1), and a separate citation for driving with a foreign license while under suspension in violation of 75 Pa. C.S.A. §1573(a). The Defendant's license had been suspended in 2001, effective July, 2002, as a consequence of several DUI-related offenses.

At appeal before the Court, Defendant contended that he was entitled to relief on two grounds. First, Defendant sought acquittal on the basis of the ruling in *Com. v. Gamble*, 376 Pa. Super. 590, 546 A.2d 681 (1988), where Superior Court held that the Commonwealth's failure to demonstrate that the defendant had received actual notice of his driver's license suspension for refusal to take a breath test precluded a conviction under Section 1543(b) of the Vehicle Code. *Com v. Gamble*, 546 A.2d 683. Defendant contended that due to the Defendant's changes in address, there was no indication that the Defendant had ever received the original notice of suspension from PennDOT. Second, Defendant argued that the Commonwealth failed to establish that the Defendant had operated the vehicle, or otherwise exercised actual physical control over the vehicle, and noted that another licensed individual drove the vehicle away following the encounter with the officer.

After reviewing the evidence as against the relevant law, the Court held that the Commonwealth had not established that the Defendant had actually driven the vehicle, or otherwise exercised actual physical control over the vehicle, as required to sustain a conviction for driving while license is under suspension under 75 Pa.C.S. §1543(b)(1). The court noted that although it entertained a high suspicion that Defendant had been in physical control of the car, the testimony of Officer Elias omitted any reference to the condition of the car when he approached Defendant and left out numerous details relied upon by appellate courts to support a conclusion of physical control as that term is included in the statute. Consequently, the court found that the facts of this case did not establish, directly or circumstantially, that the Defendant had driven the vehicle, or exercised actual physical control over the vehicle, prior to the stop.

However, the Court held that the evidence clearly supported affirming the Defendant's conviction for violating 75 Pa. C.S.A. §1573(a). Defendant was ordered to pay a fine in the amount of \$250.00, plus court costs, payable within 30 days.

**MATTHEW T. KESSACK v. COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION BUREAU OF DRIVER LICENSING**

Motor Vehicle Code—75 Pa. C.S.A. §1547—Refusal to Submit To Chemical Testing—Reasonable Grounds Test—Admissibility of Third Party Statements—Operation and/or Actual Physical Control of Vehicle

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C0048-CV-2005-4728.

Vacating suspension based on violation of 75 Pa. C.S.A. §1547(b)(1)(i), and appeal sustained.

Christopher Spadoni, Esquire for Plaintiff.

Robert Kopacz, Esquire for Commonwealth, Department of Transportation.

Order filed on January 4, 2006, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

This matter involved an appeal of a license suspension filed by Petitioner, Matthew T. Kessack, which arose from Petitioner's refusal to submit to a chemical test of his blood on June 12, 2005 in violation of the implied consent provisions set forth in Section 1547 of the Motor Vehicle Code. In his petition, Petitioner asserted that insufficient evidence existed to support the arresting officer's own observations and information provided to him by an on-scene witness that Petitioner drove, or was in actual physical control over the vehicle at the time of the offense. Petitioner argued that the witness' incriminating identification of the Petitioner and his vehicle, as related on the stand by the arresting officer, was inadmissible hearsay. Petitioner further asserted that the witness' positive identification of the Petitioner was not reliable, based on facts showing that his vehicle was found, following the incident, in an unoccupied and parked state at Petitioner's place of business, his corroborated testimony that he had not operated the vehicle at the time in question, and the presence of a dog in the car in the lot indicating that the witness' information regarding two occupants was subject to question.

After considering the evidence as against the relevant law, the Court held that such evidence failed to establish by a preponderance, directly or circumstantially, that the officer had probable cause to arrest the Petitioner for driving, or exercising actual physical control over the vehicle while in an impaired state. The Department's failure to produce the on-scene witness to testify was fatal based on the conflicting evidence presented to the court.

**MARYBETH ELTRINGHAM AND DONEGAL INSURANCE COMPANIES,
PLAINTIFFS v. NYONBELEE A. KARNGA AND
DIEHWREDII KARNGA, DEFENDANTS**

Compensatory Damages—Delay Damages

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C-48-CV-2005-2744.

Order of Court entered for Plaintiff, permitting damages.

William Exaros, Esquire for Plaintiff.

Nyonbelee A. Karnga, Pro Se.

Order of Court filed on February 9, 2006, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

Plaintiff, Marybeth Eltringham, requested that the Court grant her compensatory damages for past medical expenses and delay damages arising from a motor vehicle accident with Defendant, Nyonbelee Karnga. Plaintiff submitted medical bills in support of her claims. Defendant failed to file any responsive brief opposing the imposition of damages.

After considering the evidence provided at hearing as against the law regarding damages, the Court found the Defendants negligent and entered a verdict for the Plaintiff and against the Defendants in the amount of \$35,000.00.

**LEISER'S RENTALS, INC., PLAINTIFF v. RICHARD MARIANO
A/K/A COUSINS RENTAL, DEFENDANT**

15 Pa. C.S.A. §1303—Corporate Name—15 Pa. C.S.A. §1526—Liability of Shareholders—Piercing the Corporate Veil

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C-48-CV-2005-3183

Alfred S. Pierce, Esquire for Plaintiff.

Renee L. Ferretti, Esquire for Defendant.

Statement of Reasons filed on February 13, 2006, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

A Non-Jury Trial was considered for purposes of considering Plaintiff's claim for rental payments due for equipment previously rented to the Defendant. The following issues were before the Court at trial: 1) whether the Defendant properly comply with Section 1303(1) of Pennsylvania Corporation Law and other relevant law in his dealings with Leiser's Rentals, Inc.; and 2) whether the evidence support imposing personal liability upon Richard Mariano, the sole shareholder of Cousins Rental, Inc., for the outstanding debt of rental equipment owed to Leiser's Rentals, Inc., or was the corporate entity solely liable for this debt.

After considering the documentary evidence and testimony provided by the parties, the Court found that the Defendant had properly complied with Section 1303 of Pennsylvania Corporation Law and found insufficient evidence supporting the imposition of personal liability upon the Defendant. The Court noted that one instance of commingling of funds by the Defendant did not rise to the level of substantial intermingling required to support a finding of fraud. Finally, no other evidence was produced by the Plaintiff to establishing any improper use of the corporate form by the Defendant. As such, the Court held that the Plaintiff, Leiser's Rentals, Inc., was limited to pursuing its outstanding debt against its lessee, Cousins Rental, Inc., and that personal liability could not be imposed for this debt against the individual, Richard Mariano.

IN RE: WILLIAM S. KOJEK

Probates, Estates & Fiduciaries Code—20 Pa. C.S.A. §5604, 5611, 5521(a)—Appointment of Disinterested Guardian

In the Court of Common Pleas of Northampton County, Pennsylvania, Orphans' Court, No. C-48-CV-2005-0804 O.C.

Ellen Kingsley, Esquire Appointed co-guardian.

Robert Glazer, Esquire Appointed co-guardian

Opinion filed on March 15, 2006 by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

This matter was before the Court for hearing on the Petition of Lucille Kavas of August 17, 2005, to adjudicate William S. Kojek incapacitated and for the appointment of a permanent plenary guardian of the person and estate of William Kojek. Mr. Kojek is an adult individual found by the Court on Ms. Kavas's original petition for emergency appointment to be incapacitated in its temporary order of July 25, 2005, appointing Ellen Kingsley, Esquire and Lucy Kavas as temporary co-guardians. There was no dispute concerning Mr. Kojek's inability to care for his person or estate then or at the present time. Ms. Kavas's appointment as temporary co-guardian was terminated on September 20, 2005, leaving Ms. Kingsley as the sole remaining temporary guardian.

At the hearing, Ms. Debbie Buskirk argued that she should be appointed guardian under Mr. Kojek's express language in a 2004 durable power of attorney naming her attorney in fact, with a direction that she be appointed guardian in event of his incapacitation. Beneficiaries under prior testamentary documents executed as late as 2002 argued against her appointment as permanent guardian on the basis of conflict of interest, undue influence while a short term paid in-home caretaker of Mr. Kojek at the time of the execution of the power of attorney, and as a named beneficiary under Mr. Kojek's 2004 will. The parties agreed that copies of all the testamentary documents were made part of the record in these proceedings. Additionally, there was no dispute as to the authenticity of additional documents including the 2004 power of attorney, and inter vivos trust documents already received in the record.

The only issue before the Court was whether a permanent guardian should be appointed, and who qualified for that appointment. The record was replete with information to support a finding that Mr. Kojek was permanently incapacitated and unable to care for his own personal, medical or financial needs. The proceedings at the earlier hearing and findings in the emergency appointment were incorporated into the current record by reference. The remaining dispute was whether Ms. Buskirk, or some disinterested third party, should serve as permanent plenary guardian.

After considering the relevant law addressing the prerequisites for the appointment of a guardian, the Court found that it was precluded from appointing Ms. Buskirk as guardian based on evidence that she was a testamentary beneficiary of Mr. Kojek's estate and thus held interests adverse to Mr. Kojek. Disinterested guardians were thus appointed for both the person and estate of William Kojek.

**RYAN S. DELGROSSO ET AL., PETITIONERS v. COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING, RESPONDENT**

*Motor Vehicle Code—75 Pa. C.S.A. §6323—Reports by Courts—75 Pa. C.S.A. §1516—
Duty to Maintain Suitable Records*

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Nos. C-48-CV-2006-385, C-48-CV-2006-002, C-48-CV-2005-9449, C-48-CV-2006-245.

Sustaining Petitioners' appeals and reversing convictions for post-1995 third degree misdemeanor violations for leaving the scene of an accident.

Gregorio W. Paglianite, Esquire for Petitioners.

Robert C. Kopacz, Esquire for Commonwealth, Department of Transportation.

Memorandum filed on April 12, 2006, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

The specific issue before the Court was as follows: Whether the interests of justice required vacation of the operating privilege suspensions due to appellants inclusion in a group of approximately 1300 licensees, each of whose years-earlier conviction for post-1995 third degree misdemeanor violations for leaving the scene of an accident were not reported by the AOPC to PennDOT until November 2005, purportedly due to a delay of the court's administrative offices to notify the department of the convictions?

These matters involved four cases where many years passed from the time of conviction of leaving the scene of an accident, and Petitioners' receipt of notice of the

Pennsylvania Department of Transportation (“PennDOT”) that the driving privileges of each of the offenders had been administratively suspended as required by the Motor Vehicle Code. Each of the appellants testified to significant changes of responsibilities, obligations, and necessity for driving privileges which had occurred long after the convictions. All were licensed drivers, and the records presented did not reveal any lapse in their licensing privileges after the offenses. They were all licensed drivers known to PennDOT over the entire period between the date of their convictions and the notice in November, 2005 from the Administrative Office of the Pennsylvania Courts (“AOPC”) of the convictions. Appellants claimed prejudice because their life tracks took turns which would have otherwise been delayed or not have occurred had the notices more closely touched the time of convictions.

Conversely, the department defended that it was timely in noticing the appellants because it assumed no obligation beyond administering the suspensions upon receipt of notices from AOPC .

After considering the evidence as against the relevant law, most notably the decision of *Rea v. Com., Dept. of Transp., Bureau of Driver Licensing*, 132 Pa. Commonwealth Ct. 145, 572 A.2d 236 (1990), the Court held that the Petitioners’ appeals must be sustained and reversed their prior convictions.

ELEANORA PERELLI, PLAINTIFF v. HUGO SARACENI, DEFENDANT

42 C.S.A. §1726—Bill of Costs—Rule N.217B—Taxation of Bill of Costs and Appeal—Rule N. 217A—Costs

In the Court of Common Pleas of Northampton County, Pennsylvania, Civil Division—Law, No. C0048CV20005849.

Edward P. Shaughnessy, Esquire for Plaintiff.

James F. Swartz, Esquire for Defendant.

Bill of Costs Memorandum filed on May 16, 2006, by James C. Hogan, Senior Judge.

DESCRIPTION OF DECISION

Plaintiff filed a timely Bill of Costs following a Trial and Jury Verdict rendered on October 19, 2004 in her favor, requesting that Defendant, Hugo Saraceni be taxed with the following costs: (1) Filing fees paid to the Court in the amount of \$121.50; (2) Service fees in the amount of \$58.00; (3) Court reporter fees for deposition transcripts totaling \$355.20; and, (4) Videographer fees totaling \$1,095.00. In opposition thereto, Defendant filed Exceptions to Plaintiff’s Bill of Costs.

After considering Section 1726 of the Judicial Code, Northampton County Local Rules 217A and 217B, and other relevant law, the Court held that the requested costs were not recoverable as against the Defendant. The filing fees and service fees constituted record costs already attributable to the Defendant. The remaining costs were not recoverable absent an agreement between the parties for these costs.

JANUARY 2007 COURT CALENDAR

| MON | TUE | WED | THU | FRI |
|---|----------------------------|--------------------------------|--|---------------------------------------|
| 1 New Year's Day | 2 Juvenile Argument | 3 Status DRS | 4 Juvenile DRS ARD/ Summaries | 5 Misc. Hearings |
| 8 Juvenile Criminal | 9 Criminal | 10 Civil Call Criminal | 11 Juvenile Arraignments Criminal | 12 Misc. Hearings |
| 15 Martin Luther King Day (Observed) | 16 Juvenile Non-Jury | 17 Non-Jury Civil Call | 18 Non-Jury | 19 Misc. Hearings |
| 22 Juvenile Civil | 23 Civil | 24 Civil | 25 Juvenile Arraignments Civil | 26 Mics. Hearings O.C. Audit |
| 29 Juvenile Fines & Costs | 30 Argument Status | 31 DRS ARD/ Summaries | | |