

# Northampton County Reporter

(USPS 395-280)

VOL. LVI

EASTON, PA May 5, 2011

NO. 70

**Erin Beck and Dale J. Beck, Jr., Husband and Wife, and Kelly Demeuse and Richard Demeuse, Husband and Wife, Plaintiffs v. John Lightcap, Geppert Bros., Inc. a/k/a Geppert Bros. and Wallace Putkowski, Defendants**

**Capital One Bank (USA), N.A., Plaintiff v. Mark Brandstetter, Defendant**

**William F. Zalewski, Plaintiff v. Alliance Energy Corporation, Defendant**

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Firm Announcement .....	15	Notices of Incorporation .....	8
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### **INSERT:** Blue: 1. "Special Needs Trust—A Primer"

2. 2011 Calendar
3. Walk for a Healthy Community
4. PBI/CLE Seminars—NCBA Office, June—September 2011
- Cream: 1. "Elder Law Traps: Guide for the General Practitioner"
2. Quarterly Association Meeting
3. "Dealing with the Internal Revenue Service"
4. Philadelphia Phillies vs. New York Mets

### **NOTICE TO THE BAR...**

Quarterly Association Meeting & Malpractice Avoidance Seminar—  
Thursday, May 19, 2011. Registration form inside.

**NORTHAMPTON COUNTY BAR ASSOCIATION  
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***Northampton County Reporter***

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Deborah J. Flanagan . . . . . Attorney Referral

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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

### **NOTICE TO NCBA MEMBERS – BAR NEWS**

#### **Walk for a Healthy Community**

The YLD will be participating in the Walk for a Healthy Community. If you are interested in helping one of 23 local community organizations and, if you like to take a nice walk on a Saturday morning in downtown Bethlehem, consider joining the young lawyers in support of this event. Contact Karley Biggs if you need more information. [karleybiggs@gmail.com](mailto:karleybiggs@gmail.com)

Register online: [www.walkforahealthycommunity.org](http://www.walkforahealthycommunity.org)

Friends, family, strollers, dogs—all are welcome!

#### **Mark Your Calendars**

Quarterly Association Meeting—Thursday, May 19, 2011.

Malpractice Avoidance Seminar @ Best Western.

Registration form inside.

Summer Outing—Thursday, July 21, 2011.

“Real Fact”—India has more English speakers than the United States.

**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****COFFIN, WILLIAM P.,** dec'd.

Late of the Township of Williams, Northampton County, PA  
Executrix: Margaret J. Coffin, 35 Riverview Drive, Easton, PA 18042

Attorneys: Daniel E. Cohen, Attorney, Seidel, Cohen, Hof & Reid, LLC, 3101 Emrick Boulevard, Suite 205, Bethlehem, PA 18020

**HEIN, JAMES R.,** dec'd.

Late of the Township of Lower Saucon, Northampton County, PA

Executor: Douglas James Hein 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

**HRITZ, LAURA M.,** dec'd.

Late of the Borough of Freemansburg, Northampton County, PA  
Executor: Michael G. Hritz 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

**KALE, DOROTHY M. a/k/a DOROTHY MARY KALE,** dec'd.

Late of Bethlehem Township, Northampton County, PA

Executor: Alan L. Kale c/o Gregory E. Grim, Esquire, Grim, Biehn & Thatcher, 104 South Sixth Street, P.O. Box 215, Perkasie, PA 18944

Attorneys: Gregory E. Grim, Esquire, Grim, Biehn & Thatcher, 104 South Sixth Street, P.O. Box 215, Perkasie, PA 18944

**McCARTHY, ROBERT P.,** dec'd.

Late of the Township of Hanover, Northampton County, PA

Executrix: Cynthia S. McCarthy c/o Harry Newman, Esquire, Harry Newman & Associates, P.C., 3897 Adler Place, Suite 180C, Bethlehem, PA 18017

Attorneys: Harry Newman, Esquire, Harry Newman & Associates, P.C., 3897 Adler Place, Suite 180C, Bethlehem, PA 18017

**RONNEBERG, ELIZABETH a/k/a ELIZABETH ANN RONNEBERG a/k/a ELIZABETH A. RONNEBERG,** dec'd.

Late of the Township of Bethlehem, Northampton County, PA  
Administratrix C.T.A.: Jane R. Ronneberg c/o Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

Attorneys: Littner, Deschler & Littner, 512 North New Street, Bethlehem, PA 18018

**SEAROCK, JANE L.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Betty J. Reczek c/o Mary Ann Snell, Esquire, 3400 Bath Pike, Suite 311, Bethlehem, PA 18017

Attorney: Mary Ann Snell, Esquire, 3400 Bath Pike, Suite 311, Bethlehem, PA 18017

**SMITH, RUTH E. a/k/a RUTH SMITH, dec'd.**

Late of the Township of Bethlehem, Northampton County, PA  
Executrix: Ruth D. Smith c/o John J. Bartos, Esquire, 100 Brodhead Road, Suite 130, Bethlehem, PA 18017

Attorney: John J. Bartos, Esquire, 100 Brodhead Road, Suite 130, Bethlehem, PA 18017

**TOMBLER, MARGARET A. a/k/a MARGARET TOMBLER, dec'd.**

Late of Williams Township, Northampton County, PA  
Executrix: Karen L. Drake 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

**WEAVER, RUTH M. a/k/a RUTH WEAVER, dec'd.**

Late of Wilson Borough, Northampton County, PA  
Executor: Edwin Weaver, III c/o Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045  
Attorney: Ralph J. Bellafatto, Esquire, 4480 William Penn Highway, Easton, PA 18045

**SECOND PUBLICATION**

**BURLEY, MARY E., dec'd.**

Late of the Borough of Wilson, Northampton County, PA  
Co-Executrices: Barbara Walters, 2804 Jefferson Street, Bethlehem, PA 18020 and Edith Knauss, 46 Country Club Road West, Northampton, PA 18067

Attorney: Louis S. Minotti, Jr., Esquire, 44 North Second Street, P.O. Box 468, Easton, PA 18044

**FULCINITI, JACK a/k/a JACK JOHN FULCINITI a/k/a JACK J. FULCINITI, JR. a/k/a JOHN FULCINITI, dec'd.**

Late of the Township of Forks, Northampton County, PA  
Administratrix: Mary Jane Piersa 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

**KUNTZ, FAY E., dec'd.**

Late of Walnutport, Northampton County, PA  
Executor: Ronald Kuntz, 824 Williams Avenue, Walnutport, PA 18088  
Attorneys: David B. Shulman, Esquire, Shulman & Shabbick, 1935 Center Street, Northampton, PA 18067

**LASH, FREDERICK W., dec'd.**

Late of Northampton County, PA  
Executor: Frederick Lash, Jr., 1921 Alexander Road, Macungie, PA 18062  
Attorney: Karl J. Maehrer, Esquire, P.O. Box 264, Trexlertown, PA 18087

**MARKS, JOSEPH, dec'd.**

Late of the City of Easton, Northampton County, PA  
Executor: Matthew J. Marks c/o Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042  
Attorneys: Raymond J. DeRaymond, Esquire, Gross McGinley, LLP, 717 Washington Street, Easton, PA 18042

**McGOULDRICK, MILDRED ANNIE a/k/a MILDRED A. McGOULDRICK**, dec'd.

Late of Bethlehem Township, Northampton County, PA

Executrix: Denise Ferlino c/o Samuel R. Kasick, Esquire, 523 W. Linden St., Allentown, PA 18101-1415

Attorney: Samuel R. Kasick, Esquire, 523 W. Linden St., Allentown, PA 18101-1415

**McNEAL, EDGAR C., JR.**, dec'd.

Late of Bethlehem, Northampton County, PA

Personal Representative: Brian McNeal c/o Avery E. Smith, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

Attorneys: Avery E. Smith, Esquire, King Spry Herman Freund & Faul LLC, One West Broad Street, Suite 700, Bethlehem, PA 18018

**NAGEL, MARY R.**, dec'd.

Late of Nazareth, Northampton County, PA

Administrator: Lewis P. Nagel, Nazareth, PA 18064

Attorneys: James G. Murphy, Esquire, Murphy & Murphy, P.C., 106 N. Franklin St., Suite 2, P.O. Box 97, Pen Argyl, PA 18072

**NOONAN, RICHARD J.**, dec'd.

Late of Easton, Northampton County, PA

Executrix: Yvonne T. Noonan c/o Warren J. Kauffman, Esquire, White and Williams, LLP, One Liberty Pl., 1650 Market St., Ste. 1800, Philadelphia, PA 19103

Attorneys: Warren J. Kauffman, Esquire, White and Williams LLP,

One Liberty Pl., 1650 Market St., Ste. 1800, Philadelphia, PA 19103

**PARR, GLADYS K.**, dec'd.

Late of the City of Easton, Northampton County, PA

Administratrix: Sharron K. Parr 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

**PROPAWICH, WILLIAM, JR.**, dec'd.

Late of Nazareth, Northampton County, PA

Administrator: Thomas J. Calnan, III, 7811 Sweetwood Dr., Macungie, PA 18062

Attorney: Robert Pandaleon, Esquire, 821 East 4th St., Bethlehem, PA 18015

**SAWCHUK, HELEN**, dec'd.

Late of the City of Easton, Northampton County, PA

Executor: Daniel J. Magocs, 249 E. Macada Road, Bethlehem, PA 18017

**SMITH, LILLIAN E.**, dec'd.

Late of Palmer Township, Northampton County, PA

Executrix: Lisa Vanbuskirk, 6230 Sullivan Trail, Nazareth, PA 18064-9395

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

**SYSKO, JANINA A. a/k/a JENNIE A. SYSKO a/k/a JENNY A. SYSKO**, dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executrix: Rita J. Jones c/o Joseph J. Piperato, III, Esquire, Benner & Piperato, 2005 City Line Road, Suite 106, Bethlehem, PA 18017

Attorneys: Joseph J. Piperato, III, Esquire, Benner & Piperato, 2005 City Line Road, Suite 106, Bethlehem, PA 18017

**WETZEL, DOROTHY H.,** dec'd.

Late of Freemansburg, Northampton County, PA

Executor: Frank A. Wetzel, 743 East Fairview Street, Bethlehem, PA 18018

Attorney: Daniel P. Sabetti, Esquire, 224 West Broad Street, Bethlehem, PA 18018

**THIRD PUBLICATION**

**BENDER, CLAYTON,** dec'd.

Late of Borough of Nazareth, Northampton County, PA

Administrator: Brian J. Taylor, Esquire, Law Offices of Peter G. Angelos, P.C., 60 W. Broad St., Suite 200, Bethlehem, PA 18018

Attorneys: Brian J. Taylor, Esquire, Law Offices of Peter G. Angelos, P.C., 60 W. Broad St., Suite 200, Bethlehem, PA 18018

**CHRISTIAN, ROSE D.,** dec'd.

Late of the City of Nazareth, Northampton County, PA

Executors: Peter Christian and Walter Schumacher 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

**GERENCSE, CAROL,** dec'd.

Late of the Township of Bethlehem, Northampton County, PA

Executor: Joseph M. Gerencser, Jr. c/o Douglas Jon Tkacik, Esquire, 18 East Market Street, Post Office Box 30, Bethlehem, PA 18016-0030

Attorney: Douglas Jon Tkacik, Esquire, 18 East Market Street, Post Office Box 30, Bethlehem, PA 18016-0030

**HAVLICSEK, DOROTHY H.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Linda L. Jankowich 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

**LILLY, WARREN L.,** dec'd.

Late of Upper Nazareth Township, Northampton County, PA  
Co-Executors: Linda J. Hahn, 538 Schoeneck Ave., Nazareth, PA 18064 and Clyde W. Lilly, 7 Leslie Ave., Conklin, NY 13748

**MORDHORST, ALBERT,** dec'd.

Late of the City of Easton, Northampton County, PA

Executrix: Marion Rauber, 816 Stones Crossing Road, Easton, PA 18045

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

**SAUERWINE, DOROTHY E.,** dec'd.

Late of the Township of Washington, Northampton County, PA  
Executor: William C. Cassebaum 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

**SCHROETTNER, WILLIAM R.,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executrix: Sherri Ann Brunner, 510 Bradley Street, Bethlehem, PA 18015

Attorneys: Richard S. Luse, Esquire, Reybitz and Luse, 316 West Broad Street, Bethlehem, PA 18018

**SEIDENBERGER, DAVID C.,** dec'd.

Late of Bethlehem, Northampton County, PA

Executrix: Rosalind D. Seidenberger c/o Fox Tobey, P.C., 1834 Pennsylvania Avenue, Hanover Township, Allentown, PA 18109  
Attorneys: Fox Tobey, P.C., 1834 Pennsylvania Avenue, Hanover Township, Allentown, PA 18109

**STATHOS, CHRISTINE,** dec'd.

Late of the City of Bethlehem, Northampton County, PA

Executor: Thomas C. Stathos c/o Kevin F. Danyi, Esquire, JD, LLM, Danyi Law Offices, P.C., 133 East Broad Street, Bethlehem, PA 18018

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

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**TRUST NOTICE**

NOTICE IS 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 trusts are requested to make known the same, and all persons indebted to said trusts are requested to make payment, without

delay, to the trustees or to their attorneys named below.

**MATTHEWS, JAMES,** dec'd.

Late of Palmer Township, Northampton County, PA

Trustee: Marilyn Matthews, 2643 Woodlawn Avenue, Easton, PA 18045

Attorney: Brett B. Weinstein, Esquire, 705 W. DeKalb Pike, King of Prussia, PA 19406

May 5, 12, 19

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**NOTICES OF INCORPORATION**

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, on April 7, 2011, for the purpose of obtaining a Certificate of Incorporation 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 (15 Pa. C.S. §1306).

The name of the proposed corporation is:

**ADVANCED WASTE SOLUTIONS, INC.**

Steven N. Goudsouzian, LLC  
2925 William Penn Highway  
Suite 301  
Easton, PA 18045-5283  
(610) 253-9171

May 5

NOTICE IS HEREBY GIVEN that Articles of Incorporation—Nonprofit have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating a nonprofit corporation under the Pennsylvania Nonprofit Corporation Law of 1988, as amended.

The name of the nonprofit corporation is:

**ENCO UNITED SOCCER CLUB**



The effective date of incorporation is May 1, 2011.

The purpose of the nonprofit corporation is to promote and develop an interest in soccer among young people by sponsoring, organizing and operating competitive and developmental soccer teams, to teach youth about the sport of soccer and to help the development of soccer skills through active participation on a competitive youth soccer team.

ROBERT C. BROWN, JR.,  
ESQUIRE

940 West Lafayette Street  
Suite 100  
Easton, PA 18042

May 5

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, on April 14, 2011, for the purpose of obtaining a Certificate of Incorporation of a proposed business-stock 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 proposed corporation is:

**EVDEM, INC.**

Sara J. Hogan, Esquire  
18 E. Market Street  
P.O. Box 30  
Bethlehem, PA 18016  
(610) 882-3006

May 5

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 Law of 1988,

15 Pa. C.S. Section 1101. The name of the corporation is:

**FREEDOM COMMERCIAL  
CLEANING, INC.**

May 5

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on February 3, 2011, 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 business corporation to be organized under the 1988 Pennsylvania Business Corporation Law of the Commonwealth of Pennsylvania. The name of the corporation is:

**GAB & MUCKS PROPERTIES, INC.**

The registered office is at: 3250 Easton Avenue, Bethlehem, Northampton County, Pennsylvania 18020. The purpose of the corporation is: to purchase, own, lease and sell real estate and all other lawful business in the Commonwealth of Pennsylvania and elsewhere for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

STEVE C. NICHOLAS, ESQUIRE  
NICHOLAS LAW OFFICES, P.C.  
2215 Forest Hills Drive  
Suite 37  
Harrisburg, PA 17112-1099  
(717) 540-7746

May 5

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on February 3, 2011 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 business corporation to be organized under the 1988 Pennsylvania Business Corporation Law of the

Commonwealth of Pennsylvania. The name of the corporation is:

**GAB & MUCKS PUBS, INC.**

The registered office is at: 3259 Easton Avenue, Bethlehem, Northampton County, Pennsylvania 18020. The purpose of the corporation is: To conduct a licensed restaurant business and all other lawful business in the Commonwealth of Pennsylvania and elsewhere for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

STEVE C. NICHOLAS, ESQUIRE  
NICHOLAS LAW OFFICES, P.C.  
2215 Forest Hills Drive  
Suite 37  
Harrisburg, PA 17112-1099  
(717) 540-7746

May 5

**LIMITED LIABILITY COMPANY  
NOTICES**

NOTICE IS HEREBY GIVEN that a Certificate of Organization—Domestic Limited Liability Company has been filed with the Department of State for the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Organization under the provisions of Title 15, Corporations and Unincorporated Associations at 15 Pa. C.S.A. 8901, et seq., approved December 7, 1994, P.L. 703, No. 106(4).

The name of the Domestic Limited Liability Company is:

**BAKED BY JUST ME, L.L.C.**

The Certificate of Organization was filed on March 30, 2011.

ANTHONY J. MARTINO, ESQUIRE  
MARTINO, KARASEK, MARTINO  
AND LOPIANO-REILLY, LLP  
641 Market Street  
Bangor, PA 18013

May 5

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, at Harrisburg, Pennsylvania, for the purposes of obtaining a Certificate of Organization of a proposed domestic limited liability company to be organized under the provisions of the Pennsylvania Limited Liability Company Law of 1994, 15 Pa. C.S. §8901, et seq., and any successor statute, as amended from time to time.

The name of the limited liability company is:

**RIISING SUN RANCH, LLC**

Alfred S. Pierce, Esquire  
Pierce & Dally, LLC  
124 Belvidere Street  
Nazareth, PA 18064

May 5

**COURT OF COMMON PLEAS OF  
NORTHAMPTON COUNTY  
CIVIL DIVISION—LAW**

COUNTRY CLASSICS AT  
MORGAN HILL CONDOMINIUM  
ASSOCIATION INC.,  
150 Club House Dr.,  
Easton, PA 18042,

Plaintffs

vs.

RICK MAKKAWY a/k/a TARIQ ALI,  
121 Bethpage Terrace,  
Easton, PA 18042,

Defendant

**NO. C-48-CV-2010-14140**

Plaintiff, Country Classics at Morgan Hill Condominium Association, Inc., by its counsel, Hamburg, Rubin, Mullin, Maxwell and Lupin, P.C., has filed a Complaint against Defendant, Rick Makkawy aka Tariq Ali, for the collection of unpaid condominium association assessment fees.

**NOTICE**

If you wish to defend, you must enter a written appearance personally 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 PAPER 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 REFERENCE SERVICE  
OF THE NORTHAMPTON  
COUNTY BAR ASSOCIATION  
151 South Ninth Street  
Easton, PA 18042  
(610) 258-6333

May 5

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW  
CAPITAL ONE BANK**

**PLAINTIFF**

v.

**RICHARD C HOFFELD  
DEFENDANT**

**DOCKET NO.: 2008 09666**  
CAPITAL ONE BANK HAS FILED  
AN ACTION AGAINST YOU FOR DE-  
FAULT OF AN ACCOUNT STATED.  
THERE IS AN OUTSTANDING BAL-

ANCE DUE IN THE AMOUNT OF  
\$2,571.02, PLUS INTEREST AND  
COSTS.

To: Richard C Hoffeld, 666 Bark Drive  
Rear Apt., Walnutport PA 18088

**NOTICE**

YOU HAVE BEEN SUED IN  
COURT. If you wish to defend, you  
must enter a written appearance  
personally or by an attorney and file  
your defenses or objections in writing  
with the Court. You are warned that  
if you fail to do so within twenty(20)  
days from the date of publication of  
this Notice, the case may proceed  
without you and a judgment may be  
entered against you without further  
notice for the relief requested by the  
Plaintiff(s). You may lose money or  
property or other rights important to  
you.

YOU SHOULD TAKE THIS NO-  
TICE TO YOUR LAWYER AT ONCE.  
IF YOU DO NOT HAVE A LAWYER,  
OR CANNOT AFFORD ONE, GO TO  
OR TELEPHONE THE OFFICE SET  
FORTH BELOW TO FIND OUT  
WHERE YOU CAN GET LEGAL  
HELP.

IF YOU CANNOT AFFORD TO  
HIRE A LAWYER, THIS OFFICE MAY  
BE ABLE TO PROVIDE YOU WITH  
INFORMATION ABOUT AGENCIES  
THAT MAY OFFER LEGAL SERVIC-  
ES TO ELIGIBLE PERSONS AT A  
REDUCED FEE OR NO FEE.

Lawyer Referral Service—  
ARIS (Northampton Co.)  
155 South 9th Street  
Easton PA 18042  
610-258-6333

GREGG L. MORRIS, ESQUIRE  
213 East Main Street  
Carnegie, PA 15106  
412-429-7675

THIS COMMUNICATION IS FROM  
A DEBT COLLECTOR. THIS IS AN  
ATTEMPT TO COLLECT ON A DEBT,

AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

May 5

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

CAPITAL ONE BANK  
PLAINTIFF

v.

RONALD ERNEY  
DEFENDANT

**DOCKET NO.: 2008 12830**

CAPITAL ONE BANK HAS FILED AN ACTION AGAINST YOU FOR DEFAULT OF AN ACCOUNT STATED. THERE IS AN OUTSTANDING BALANCE DUE IN THE AMOUNT OF \$3,242.62, PLUS INTEREST AND COSTS.

To: Ronald Erney, 729 1/2 S Main Street, Bangor PA 18013

**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend, you must enter a written appearance personally or by an attorney and file your defenses or objections in writing with the Court. You are warned that if you fail to do so within twenty(20) days from the date of publication of this Notice, the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff(s). You may lose money or property or other rights important to you.

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May 5

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

Northampton Area School District  
vs.

Anthony D. Farole

**NO. C-48-CV-2010-8280**

NOTICE IS HEREBY GIVEN that the above was named as Defendant in a civil action instituted by plaintiff. This is an action to recover delinquent real estate taxes for the year 2009 for the property located at 950 Accent Court, Lehigh Township, Pennsylvania, Tax Parcel J2 11 15B-3A-1. A tax claim in the amount of \$5,880.59 was filed on or about August 3, 2010, for this claim and a Writ of Scire Facias was filed.

You are hereby notified to plead to the writ in this case, on or before 20 days from the date of this publication or a Judgment will be entered.

If you wish to defend, you must enter a written appearance personally 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 without further notice for the relief requested by the plaintiff. You may lose property or other rights important to you.

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Apr. 21, 28; May 5

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

City of Bethlehem

vs.

Barbara Ann Houser,  
Administratrix of the Estate of  
Donald A. Houser, Deceased

**NO. C-48-CV-2009-6982**

NOTICE IS HEREBY GIVEN that the above was named as Defendant in a civil action instituted by plaintiff. This is an action to recover delinquent real estate taxes for the year 2008, for the property located at 1422 Wood Street, Bethlehem, Pennsylvania, Tax Parcel N6SE3A 15 16. A tax claim in the amount of \$1,025.76 was filed on or about July 8, 2009 for this claim and a Writ of Scire Facias was filed.

You are hereby notified to plead to the writ in this case, on or before 20 days from the date of this publication or a Judgment will be entered.

If you wish to defend, you must enter a written appearance personally 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 without further notice for the relief requested by the plaintiff. You may lose property or other rights important to you.

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Apr. 21, 28; May 5

**IN THE COURT OF COMMON  
PLEAS OF NORTHAMPTON  
COUNTY, PENNSYLVANIA  
CIVIL ACTION—LAW**

City of Easton

vs.

Hindraj L. Balani

**NO. C-48-CV-2008-1220**

NOTICE IS HEREBY GIVEN that the above was named as Defendant in a civil action instituted by plaintiff. This is an action to recover delinquent water, sewer and trash fees for the years 2006-2007, for the property located at 675 Pine, Easton, Pennsylvania, Tax Parcel No. L9SE1B 24 5A. A municipal claim in the amount of \$1,031.58 was filed on or about February 4, 2008 for this claim and a Writ of Scire Facias was filed.

You are hereby notified to plead to the writ in this case, on or before 20 days from the date of this publication or a Judgment will be entered.

If you wish to defend, you must enter a written appearance personally 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 without further notice for the relief requested by the plaintiff. You may lose property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

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Apr. 21, 28; May 5

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Apr. 28; May 5





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**ERIN BECK and DALE J. BECK, JR., Husband and Wife, and  
KELLY DEMEUSE and RICHARD DEMEUSE, Husband and  
Wife, Plaintiffs v. JOHN LIGHTCAP, GEPPERT BROS., INC. a/k/a  
GEPPERT BROS. and WALLACE PUTKOWSKI, Defendants**

*Preliminary Objections—Amended Pleadings—Vicarious Liability—Lack of Specificity—Demurrer—Punitive Damages.*

Court grants Defendants' motion to strike one paragraph of Plaintiffs' amended complaint by agreement of the parties and dismisses the remaining preliminary objections. Defendants first moved to strike claims of vicarious liability in the amended complaint because Defendants argued they were not raised in the original complaint and Plaintiffs did not seek leave of court or Defendants' permission before amending the complaint. Defendants then moved to strike six paragraphs in the amended complaint for failure to cite specific statutes that Plaintiffs allege Defendants violated. Finally, Defendants sought to strike all of Plaintiffs' allegations of reckless conduct or claims for punitive damages for failure to plead a claim with legal sufficiency.

In dismissing the first preliminary objection, this Court found Plaintiffs filed their amended complaint within twenty days of being served Defendants' preliminary objections, complying with Pa. R.C.P. No. 1028(c) that allows a party to file an amended pleading as a matter of course within twenty days after receiving service of preliminary objections to a pleading. Defendants' second objection was without merit because Plaintiffs did cite the specific statutes it alleges Defendants violated and, as a whole, the amended complaint provides Defendants enough information to allow them to prepare a defense. Plaintiffs also sufficiently pleaded factual allegations to support a claim for punitive damages, thereby requiring dismissal of Defendants final preliminary objection.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—Law, No. C-48-CV-2010-7057.

GARY S. FIGORE, ESQUIRE, for Plaintiffs Kelly and Richard Demeuse.

TODD S. MILLER, ESQUIRE, for Plaintiffs Erin and Dale Beck.

GERARD X. SMITH, ESQUIRE, for Defendants Wallace Putkowski.

ADAM M. SORCE, ESQUIRE and DAVID F. WHITE, ESQUIRE, for Defendants Geppert Bros., Inc. and John Lightcap.

Order of Court entered on November 23, 2010 by BARATTA, J.

*ORDER*

AND NOW, this 23rd day of November, 2010, upon consideration of the Defendants' Preliminary Objections and the Plaintiffs' response thereto, it is hereby ORDERED:

1. By agreement of the parties, Defendants' Preliminary Objection seeking to strike paragraph 42(kk) of the Amended Complaint is GRANTED.

2. Defendants' remaining Preliminary Objections are DENIED.

*STATEMENT OF REASONS**Factual and Procedural History*

This action arises from an automobile accident that occurred on May 15, 2009, in Whitehall Township on MacArthur Road. Defendant, John Lightcap, was allegedly transporting a 155,000 pound Terex Scraper owned by Wallace Putkowski pursuant to an agreement between Mr. Putkowski and Geppert Bros. According to the Amended Complaint, due to the Defendants' negligence, the Terex Scraper fell off the tractor-trailer operated by Mr. Lightcap and struck two automobiles, one driven by Erin Beck and the other driven by Kelly Demeuse. In addition to damage to the vehicles, both plaintiffs sustained physical injuries.

Ms. Beck and Ms. Demeuse, with their respective husbands Dale J. Beck, Jr. and Richard Demeuse, filed a Complaint against the Defendants on July 8, 2010 for the injuries they sustained in the May 15, 2009, accident. After Defendants filed preliminary objections to the Complaint on August 2 and August 6, 2010, Plaintiffs filed an Amended Complaint on August 13, 2010. Plaintiffs sought damages allegedly suffered in the May 15, 2009 incident and also made a claim for punitive damages.

Defendant Wallace Putkowski filed Preliminary Objections on September 1, 2010, requesting that this Court strike all claims for punitive damages in the Amended Complaint. Defendants John Lightcap and Geppert Bros. jointly filed Preliminary Objections on September 10, 2010, also asking that this Court strike Plaintiffs' claim for punitive damages, and additionally requesting that this Court strike Plaintiffs' claim for vicarious liability and several paragraphs generally alleging violations of state and federal laws and regulations. Plaintiffs responded to all preliminary objections on September 27, 2010. The matter was set for the November 9, 2010 Argument List and counsel for all parties presented oral argument.

*Legal Standard*

In ruling on preliminary objections in the nature of a demurrer, the trial court may consider no testimony or evidence outside of the complaint. *Mellon Bank, N.A. v. Fabinyi*, 437 Pa. Super. 559, 567-68, 650 A.2d 895, 899 (1994). All well-pleaded, material, relevant facts, along with all reasonable inferences therefrom, must be taken as true; *i.e.*, the court may not consider the factual merits of the claims. *In re Adoption of S.P.T.*, 783 A.2d 779, 782 (Pa. Super. 2001). In order to grant a demurrer, it must be certain from the face of the complaint that the claims will not support recovery under any legal theory. *Mellon Bank*, *supra* at 568, 650 A.2d at 899; *Eckell v. Wilson*, 409 Pa. Super. 132, 135-36, 597 A.2d 696, 697-98 (1991), *appeal denied*, 530 Pa. 643, 607 A.2d 253 (1992).

Preliminary objections, whose end result would be the dismissal of a cause of action, should be sustained only where "it is clear and free from

doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief.” *Bourke v. Kazaras*, 746 A.2d 642, 643 (Pa. Super. 2000) (citation omitted). Moreover, it is essential that the face of the complaint indicate that its claims may not be sustained and that the law will not permit recovery. If there is any doubt, it should be resolved by the overruling of the demurrer. *Bailey v. Storlazzi*, 729 A.2d 1206, 1211 (Pa. Super. 1999).

### *Discussion*

Defendant Putkowski argues that Plaintiffs’ claims for punitive damages and allegations of reckless conduct were not pled with legal sufficiency. Defendants Geppert Bros. and Lightcap raised the same objection to Plaintiffs’ punitive damage claims in addition to two other objections: (1) the Plaintiffs did not comply with Pa. R.C.P. No. 1033 when they added vicarious liability allegations to the Amended Complaint that were not in the original Complaint, and (2) various paragraphs of the Amended Complaint were vague and failed to comply with Pa. R.C.P. No. 1019(a) and 1028(a)(3).

#### *1. Motion To Strike Vicarious Liability Claims in Amended Complaint*

Defendants Geppert Bros. and Lightcap allege that Plaintiff made vicarious liability claims in paragraph 16, Count II and Count X of the Amended Complaint that were not alleged in the Complaint. Defendants aver Plaintiffs violated Pa. R.C.P. No. 1033 because they did not seek leave of court or Defendants’ permission before including these allegedly new claims in the Amended Complaint.

Pa. R.C.P. No. 1028(c)(1) states a “party may file an amended pleading as of course within twenty days after service of a copy of preliminary objections.” All preliminary objections to the original pleading are deemed moot if a party files an amended pleading as of course. *Id.* Rule 1028(c)(1) is an exception to the requirement in Pa. R.C.P. No. 1033 that a party must seek either leave of court or the consent of the adverse party prior to filing an amended pleading. *See* 3 Goodrich-Amram 2d §1033:7 (West 2010). The allowance of an amendment to a pleading under Rule 1033 is within the complete discretion of the trial court except where such an amendment is allowed of course under Pa. R.C.P. No. 1028. *Koresko v. Farley*, 844 A.2d 607 (Pa. Commw. 2004).

Two sets of preliminary objections were filed to the original Complaint, Defendant Putkowski’s on August 2, 2010, and Defendants Geppert Bros. and Lightcap on August 6, 2010. Plaintiffs filed an Amended Complaint in response to these preliminary objections on August 13, 2010. Plaintiffs’ Amended Complaint was clearly filed within twenty days of service of both sets of preliminary objections. Rule 1028(c) is also clear; Plaintiffs have the right as a matter of course to file an amended complaint

in response to Defendants' preliminary objections. There exists no prohibition against amplifying or adding additional claims in an amended complaint so long as there is no violation of the statute of limitations.

Finally, we note that Paragraph 20 of the original Complaint alleged Geppert Bros., Inc. was responsible for the actions of Mr. Lightcap because of his relationship with Geppert Bros. This allegation sufficiently put Defendants on notice that Plaintiffs were pursuing a claim under a vicarious liability theory. It would be illogical to grant Defendants' preliminary objection because Plaintiffs amended their Complaint to provide even clearer notice of its vicarious liability claim. Defendants' objection that they were surprised and prejudiced by insertion of this allegedly new claim is without merit.

Therefore we dismiss Defendants' preliminary objection to paragraph 16, Count II and Count X.

## 2. Motion To Strike Paragraphs 42(l-o), (w), and (kk) for Lack of Specificity

Defendants object to Plaintiffs general references to violations of "state and federal statutes and regulations" and "the applicable motor vehicle statutes." The Defendants argue that the references to violations of statutes or regulations which are not specifically cited violate the Rules of Civil Procedure and are prejudicial because the Defendants cannot prepare a defense in response. Defendants allege in their brief that it is "mandated by the Rules of Civil Procedure that Plaintiffs specifically allege the rules, regulations, and statutes they claim were violated." (Defendants' Brief p. 4.) However, Defendants cite no specific rule or applicable case law to support this proposition.

A preliminary objection due to lack of specificity is intended to ensure that an adverse party's right and ability to answer and defend will not be unduly impaired by a pleader's vagueness in stating the grounds of his or her suit. *Local No. 163, International Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers of America v. Watkins*, 417 Pa. 120, 207 A.2d 776 (1965); *Stilp v. Commonwealth of Pennsylvania*, 910 A.2d 775 (Pa. Commw. 2006). The sole question for the court is "whether the pleading is sufficiently clear to enable the defendant to prepare his defense." *Paz v. Commonwealth Department of Corrections*, 135 Pa. Commonwealth Ct. 162, 580 A.2d 452 (1990). To determine whether a particular paragraph in a complaint is stated with sufficient specificity, the paragraph must be read in context with all the allegations in the complaint. *United Sportsmen of Pennsylvania v. Pennsylvania Game Commission (PGC)*, 950 A.2d 1120, 1134 (Pa. Commw. 2008). A plaintiff is not required to specify the statute which the plaintiff alleges the defendant violated as long as the plaintiff alleges material facts that form the basis of a cause of action that raises a violation of the statute. *City of New Castle v. Uzamere*, 829 A.2d 763, 772-73 (Pa. Commw. 2003); *Commonwealth of Pennsylvania*

*nia, Department of Transportation v. Shipley Humble Oil Company*, 29 Pa. Commonwealth Ct. 171, 174, 370 A.2d 438, 440 (1977); *Gordon v. Board of Directors of West Side Area Vocational Technical School*, 21 Pa. Commonwealth Ct. 616, 621, 347 A.2d 347, 350 (1975). The preliminary objection will be denied if the complaint provides enough facts to allow the defendant to frame a proper answer and prepare a defense. *Foster v. Peat Marwick Main & Co.*, 138 Pa. Commonwealth Ct. 147, 587 A.2d 382 (1991), *aff'd* 767 A.2d 652 (Pa. 1996).

Below are listed the six paragraphs, in their entirety, to which the Defendants object on a lack of specificity basis:

42. The Defendants in this matter were reckless and/or negligent for the following: ...

(l) knowing and recklessly disregarding the applicable motor vehicle statutes and state and federal statutes and regulations related to the transportation of an overweight and oversized machine, in their actions and inactions more specifically set forth in the within Amended Complaint;

(m) failing to comply with the applicable motor vehicle statutes and state and federal statutes and regulations for the transportation of an overweight and oversized machine, in their actions and inactions more specifically set forth in the within Complaint;

(n) knowing and recklessly disregarding state and federal regulations including 67 Pa. Code § 179.10, 75 § 4903(a-c), 75 § 1575(a), 75 § 4107(b)(2), 67 § 179.10, 67 § 231.311, 67 § 231.312, 67 § 231.313, 49 CFR 393.100, 49 CFR 393.102, 49 CFR 393.104, 49 CFR 393.104 b+c, 49 CFR 393.106, 49 CFR 393.106(d), 49 CFR 393.108, 49 CFR 393.1, Pa. Code Title 67 Chapter 231, 49 CFR 380-399;

(o) failing to comply with state and federal statutes and regulations including 67 Pa. Code § 179.10, 75 § 4903(a-c), 75 § 1575(a), 75 § 4107(d)(2), 67 § 179.10, 67 § 231.311, 67 § 231.312, 67 § 231.313, 49 CFR 393.100, 49 CFR 393.102, 49 CFR 393.104, 49 CFR 393.104 b+c, 49 CFR 393.106, 49 CFR 393.106(d), 49 CFR 393.108, 49 CFR 393.1, Pa. Code Title 67 Chapter 231, 49 CFR 380-399; ...

(w) failing to comply with the applicable motor vehicle statutes relating to the transport of an overweight and oversized vehicle such as the 90,000-155,000 lb. Terex scraper in their actions and inactions more specifically set forth in the within Amended Complaint; ...

(kk) failing to exercise due and proper care.

In their brief, Plaintiffs agree to voluntarily strike paragraph 42(kk) from their Amended Complaint. (Plaintiffs' Brief p. 16.) We now turn to the remaining five paragraphs at issue.

We feel compelled to note that Defendants argue Plaintiffs did not cite the specific provisions that Defendants allegedly violated. That assertion is without merit. Defendants' brief purports to reproduce paragraphs 42(n) and (o), but in fact Defendants placed an ellipsis after the word "including," and then failed to show the specific citations to the actual state and federal regulations that Plaintiffs asserted were violated. It is difficult for us to find Defendants' arguments credible when their arguments are based on what we must conclude was an intentionally incomplete and therefore misleading reproduction of the paragraphs at issue.

Clearly, within paragraphs 42(n) and 42(o), Plaintiffs cited a long list of specific statutory and/or regulatory provisions that they assert the Defendants violated. However, by using the word "including," one can infer that Plaintiffs' list may not be exclusive. We find that at this stage of the litigation, the fact that one may infer that the list is not exclusive does not render the complaint defective. The factual predicate set forth in the body of the complaint provides sufficient notice to the Defendants with regard to the alleged negligent actions causing Plaintiffs' injuries.

In *Yacoub v. Lehigh Valley Medical Associates, P.C.*, 805 A.2d 579, 588 (Pa. Super. 2002) the Superior Court reversed a trial court's pretrial decision to exclude plaintiff's evidence of an agency relationship between certain radiologists and a hospital because the single paragraph alleging an agency relationship did not specifically name the radiologists as agents of the hospital. The trial court determined the complaint did not allege with sufficient specificity that the radiologists were agents of the hospital. On appeal, the Superior Court held that while the paragraph in question did not specifically question the hospital's conduct through the radiologists' actions, other paragraphs in the complaint did call into question the hospital's conduct through its radiology department. The Superior Court held that "it is not enough to focus on one portion of the complaint." Plaintiff should have been able to present evidence of an agency relationship between the radiologists and hospital because the complaint as a whole provided fair notice of the claim. *Id.* at 589; *see also*, Pa. R.C.P. No. 1019(g) ("Any part of a pleading may be incorporated by reference in another part of the same pleading or in another pleading in the same action"); *Smith v. Wagner*, 403 Pa. Super. 316, 320, 588 A.2d 1308, 1310 (1991) (while averments in the complaint are not specific and generally refer to attached copies of a newspaper, after "wad[ing] through the sea of information contained in [the] complaint" there was a cognizable cause of action).

Similarly, Defendants' objection focuses on five sub-paragraphs of an Amended Complaint that contains 92 numbered paragraphs. In paragraphs 42(l), 42(m), and 42(w), Plaintiffs reference averments listed previously in the Amended Complaint to support the allegations in those three paragraphs. These previously listed averments include, among others, specific allegations that the Defendants used broken equipment to secure



the Terex scraper, failed to use a pilot car during transport and the operator of the tractor-trailer untimely attempted to stop the vehicle. These allegations put Defendants on notice that there is a claim based on a negligence theory, and that these alleged actions could be the basis for a violation of certain state and federal statutes and regulations. Paragraphs 42(l-o), (w) are not impermissibly vague when read in the context of the entire Amended Complaint.

The issue of identifying other possible statutory and/or regulatory violations is fodder for discovery. Thus, we deny Defendants' preliminary objection to paragraphs 42(l-o), and (w).

### 3. Legal Sufficiency of Plaintiff's Punitive Damage Claims

All three Defendants filed a preliminary objection to Plaintiffs' claims for punitive damages and recklessness. Defendants argue Plaintiffs failed to plead facts sufficient to show there is a viable claim for punitive damages on the face of the Amended Complaint. Recognizing our duty to read all averments of the Amended Complaint as true when considering a preliminary objection in the nature of a demurrer, *In re Adoption of S.P.T., supra*, we determine that Plaintiffs pleaded a legally sufficient claim for punitive damages.

A plaintiff must plead facts sufficient to support a claim for punitive damages. *Smith v. Brown*, 283 Pa. Super. 116, 120, 423 A.2d 743, 745 (1980). It is essential to a claim for punitive damages that a plaintiff plead facts showing a defendant's conduct was so outrageous as to demonstrate willful, wanton or reckless conduct. *SHV Coal, Inc. v. Continental Grain Co.*, 526 Pa. 489, 493, 587 A.2d 702, 704 (1991); *McDaniel v. Merck, Sharp & Dohme*, 367 Pa. Super. 600, 623, 533 A.2d 436, 447 (1987) (must allege defendant had evil motive or reckless indifference to the rights of others to support punitive damages claim). Allegations of mere negligence, or even gross negligence, are not enough to support a claim for punitive damages. *SHV Coal Inc.*, *supra* at 495, 587 A.2d at 705.

Reckless conduct that can support a claim for punitive damages is conduct where the "actor knows, or has reason to know, ... of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or to fail to act, in conscious disregard of, or indifference to, that risk." Restatement (Second) of Torts, §500, comment a (1965); *SHV Coal, Inc.* *supra* at 494, 587 A.2d at 704-705. Negligence is conduct that consists of inattention or inadvertence, but wantonness encompasses conduct "where the danger to the plaintiff, though realized, is so recklessly disregarded that, even though there be no actual intent, there is at least a willingness to inflict injury, a conscious indifference to the perpetration of the wrong." *Bloom v. Dubois Regional Medical Center*, 409 Pa. Super. 83, 98, 597 A.2d 671, 679 (1991) (quoting *Kasanovich v. George*, 348 Pa. 199, 203, 34 A.2d 523, 525 (1943)).

Paragraphs 90 and 92, each containing twenty subparts, of the Amended Complaint list the factual averments on which Plaintiffs' punitive damage claim is based. Considering these averments as completely true, Plaintiffs make several allegations that Defendants secured the scraper with equipment known to be broken or that they knew was inadequate to secure a machine the size of a Terex scraper. Based on these pleadings, a jury could find Defendants engaged in reckless conduct if they knowingly used broken equipment to secure a scraper weighing 155,000 pounds on a tractor-trailer while traveling on a highway with other motor vehicles, and the Defendants ignored the high risk to others posed by this inadequately secured machine. On their face, Plaintiffs' factual allegations suggest that Defendants' conduct was more than just the result of simple negligence or inadvertence. In fact, Plaintiffs claim that the Defendants knew it would be highly dangerous to others to transport the Terex scraper as it was secured on May 15, 2009, but Defendants, in the face of such dangerous risk to others, elected to do so anyway. The pleadings are sufficient to satisfy Plaintiffs' burden for pleading punitive damages and overcome Defendants' preliminary objection.

Therefore we dismiss Defendants' preliminary objections to Plaintiffs' claims for punitive damages.

**CAPITAL ONE BANK (USA), N.A., Plaintiff v.  
MARK BRANDSTETTER, Defendant**

*Summary Judgment—Credit Card—Statement of Account—Rule 1019(i).*

Court denies Plaintiff's Motion for Summary Judgment and Defendant's Cross-motion for Summary Judgment. Plaintiff filed an action to collect an outstanding credit card debt allegedly owed by Defendant. Pa. R.C.P. No. 1019(i) requires a pleader to attach any documents on which a claim is based. Plaintiff's claim is based on credit card statements that showed how much the Defendant owed. Plaintiff failed to file any document that showed Defendant owed the full amount allegedly due or how Plaintiff calculated the amount allegedly due. This Court denied Plaintiff's motion because Plaintiff failed to submit a full and accurate statement of account, and a genuine issue of material fact existed as to the amount of Defendant's debt.

Defendant's motion was denied because it did not raise any legitimate defense to Plaintiff's allegations. Instead, Defendant made unsupported conspiracy allegations against Plaintiff and the Federal Reserve Board.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—Law, No. C-48-CV-2008-3044.

RAYMOND C. MAJCAN, ESQUIRE, for the Plaintiff.

DOUGLAS G. KUNKLE, ESQUIRE, for the Defendant.

Order of the Court entered on October 7, 2010 by BARATTA, J.

*ORDER*

AND NOW, this 7th day of October, 2010, upon due consideration of the Parties' Competing Motions for Summary Judgment and the briefs filed in support thereof, it is hereby ORDERED:

Plaintiff's Motion for Summary Judgment is DENIED.

Defendant's Cross-Motion for Summary Judgment is DENIED.

*STATEMENT OF REASONS*

*Factual and Procedural History*

Plaintiff, Capital One Bank, filed a complaint against Defendant, Mark Brandstetter, on March 28, 2008, seeking a judgment to recover an allegedly unpaid credit card debt. Defendant applied for a credit card from Plaintiff on August 17, 2003, which he subsequently received and used to make purchases for a period between August 22, 2003, and March 21, 2006. At some point, Defendant stopped making payments on his credit card debt. Paragraph 4 of the Complaint alleges Defendant's credit card balance stood at \$6,659.70 on February 18, 2008. The addendum Paragraph asserts an interest rate on that balance of 28.240% per annum.

On May 6, 2009, Defendant filed an Answer after being served Plaintiff's Complaint on March 14, 2009. Defendant's Answer included two counterclaims alleging Plaintiff charged unlawfully high interest on De-

fendant's debt in violation of federal and Pennsylvania law. Plaintiff filed preliminary objections to Defendant's counterclaims. This Court, by Order of Hon. Leonard Zito, granted Plaintiff's preliminary objections and dismissed both of Defendant's counterclaims on September 9, 2009. Defendant did not amend his counterclaims within 20 days.

Plaintiff served a Request for Admissions on Defendant on September 23, 2009. Defendant served his Interrogatories and Request for Production on Plaintiff on October 6, 2009. Plaintiff answered Defendant's discovery requests on January 11, 2010. Defendant has not answered Plaintiff's discovery requests. On May 14, 2010, Plaintiff filed a Motion for Summary Judgment against the Defendant. Defendant filed a Cross Motion for Summary Judgment on July 23, 2010. Both Plaintiff and Defendant filed briefs supporting and opposing their respective motions. The matter was set for the September 7, 2010 Argument List, and counsel for both parties presented oral argument.

### *Legal Standard*

Pennsylvania Rule of Civil Procedure 1035.2 states:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law: (1) whenever 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, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to the jury.

Pa. R.C.P. No. 1035.2. Further, under Pa. R.C.P. No. 1035.3(a), the non-moving party may not rest upon mere allegations or denials of the pleadings but must file a response within thirty (30) days after service of the motion. Rule N1035.2(a)(2). In other words, the non-moving party has a clear and affirmative duty to respond to a motion for summary judgment. *Harber Philadelphia Center City Office Limited v. LPCI Limited Partnership*, 764 A.2d 1100, 1104 (Pa. Super. 2000). Also, Pa. R.C.P. No. 1035.3(d) specifically provides that "[s]ummary judgment may be entered against a party who does not respond." The non-moving party bears a responsibility to raise its defenses and grounds for relief in a response to a motion for summary judgment, and a trial court cannot be expected to "scour the record for every conceivable ground on which to deny summary judgment." *Harber*, supra, 764 A.2d at 1104-1105.

Summary judgment may be granted only in the clearest of cases where the record shows that there are no genuine issues of material fact and also demonstrates that the moving party is entitled to judgment as a matter of law. *Trowbridge v. Scranton Artificial Limb Company*, 560 Pa. 640, 747 A.2d 862 (2000); *PJS v. Pennsylvania State Ethics Commission*, 555 Pa. 149, 723 A.2d 174, 176 (1999). The moving party has the burden of proving the non-existence of any genuine issue of material fact. *O'Rourke v. Pennsylvania Department of Corrections*, 730 A.2d 1039 (Pa. Cmwlth. 1999) (citing *Kee v. Pennsylvania Turnpike Commission*, 722 A.2d 1123 (Pa. Cmwlth. 1998)). The record must be viewed in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Ertel v. Patriot-News Company*, 544 Pa. 93, 98-99, 674 A.2d 1038, 1041 (1996).

### *Discussion*

#### *1. Plaintiff's Motion for Summary Judgment*

The record as created by Plaintiff is sloppy at best. Plaintiff's Complaint is a one-page, seven-paragraph (7-sentence) document which is clearly a generic form containing almost no information specific to this dispute. There is also a single page attachment which appears to be a portion of the March 2006 credit card bill showing what appears to be the current balance due on the account of \$6,083.79, and it references a "corresponding APR 28.24%."

In response to Defendant's discovery request, Plaintiff provided the credit card application and customer agreement signed by Defendant on August 17, 2003. Plaintiff filed its response to Defendant's discovery request with the Prothonotary on January 11, 2010.

Plaintiff also served upon Defendant Requests for Admissions on September 23, 2009. Attached to the requests for admissions were the monthly statements for Defendant's credit card account from September 21, 2003, through March 21, 2006. In its request for admissions, Plaintiff asked Defendant to admit or deny: the accuracy of the credit card statements, that no payments have been made on the credit card since February 1, 2007 and that \$6,659.70 is a correct and accurate current balance of the account in question.

Apparently, Defendant failed to respond to the requests for admission.

Plaintiff's Request for Admissions and the credit card statements were filed with this Court on May 14, 2010, along with Plaintiff's motion for Summary Judgment.

A party may request admissions from the opposing party in any matter allowed within the scope of discovery defined by Pa. R.C.P. 4003.1-4003.5, *et seq.* See Pa. R.C.P. No. 4014. When a request for admissions asks a party to authenticate certain documents, "[c]opies of [the] documents

shall be served with the request unless they have been or are otherwise furnished or available for inspection and copying in the county.” Pa. R.C.P. No. 4014(a). If a party fails to respond to a request for admissions within 30 days, Pa. R.C.P. No. 4014(b) requires the court to deem the requested statements admitted. *Thomas v. Elash*, 781 A.2d 170, 177 (Pa. Super. 2001).

If we understand the Rules of Civil Procedure, the plaintiff is required to file a statement of account and the credit card customer agreement with its complaint. *See* Pa. R.C.P. No. 1019(i). Rule 1019(i) requires that when any claim is based on a writing, the pleader shall attach a copy of the writing, or material part thereof, to the complaint or explain why a copy is not accessible to the pleader.

In *Atlantic Credit and Finance, Inc. v. Giuliana*, 829 A.2d 340, 345 (Pa. Super. 2003), the Superior Court held that a creditor’s complaint was defective because the creditor failed to file a statement of account or the credit card customer agreement with the complaint. Here, Plaintiff’s Complaint is clearly defective.

However, for purposes of our inquiry, Plaintiff can rectify this defect if the appropriate information was developed of record. Otherwise, Plaintiff is not entitled to summary judgment.

We have reviewed the record, including the deemed admitted requests for admission and Plaintiff’s discovery response. After our careful review, we are not satisfied that an accurate or full statement of account is contained in the record, therefore we cannot grant summary judgment.

We note that Paragraph 4 of the Complaint alleges an outstanding balance due of \$6,659.70, yet the attachment to the Complaint shows a balance due of \$6,083.79. Plaintiff did not attach the monthly statement for February 2008 even though the Complaint referenced a balance due for February 19, 2008. In its discovery response, the Plaintiff failed to produce statements from April 2006 through February 2008. We have no documentation from the Plaintiff which confirms the amount of the debt for which Plaintiff seeks summary judgment, which is alleged to be \$6,659.70 as of February 19, 2008.

In addition, Paragraph 6 of the Complaint alleges Plaintiff is entitled to 28.24% interest per annum on the unpaid balance from February 19, 2008. However, the record provides no evidence as to what interest rate was charged on Defendant’s account. The credit card agreement produced in discovery speaks of the “finance charge” being set by the mathematical calculation of multiplying the “daily periodic rate” by the “daily balance” and no further information related to an interest rate. The agreement also indicates that Defendant was previously informed of the periodic rate on the account and that the rate will appear on Defendant’s monthly statement, however, there is no actual reference to a specific interest rate anywhere in the documentation. The Plaintiff presented no proof that the interest rate was agreed to at 28.24%. We assume Plaintiff’s reply would be that the

phrase “corresponding APR 28.24%” which is recited in the monthly bills is proof of the interest rate. However, such an argument would require this Court to not only make that assumption, but also to further assume that the interest rate, although perhaps adjustable if we understand the APR reference, remained at that amount throughout the entire period in question.

In order for this Court to accept Plaintiff’s assertions, we must make assumptions rather than merely review the record. We are unwilling to do so. In our opinion, Plaintiff’s record is too sloppy to grant summary judgment in its favor. There remains material issues of fact that must be resolved before the trier of fact.

## *2. Defendant’s Cross-Motion for Summary Judgment*

Defendant argues he is entitled to summary judgment because the credit card contract is unlawful and Plaintiff’s Complaint should be dismissed because the debt cannot be collected. However, Defendant does not show that there is no genuine issue of material fact or that he is clearly entitled to judgment as a matter of law. In his briefs to this Court, Defendant alleges there is a conspiracy amongst Plaintiff, Federal Reserve Board members and federal regulators that allow credit card companies to charge unlawfully high interest rates on credit card debt. Defendant provided no factual support for any of these allegations. Defendant has not demonstrated he is entitled to judgment as a matter of law or that there is no genuine issue of material fact.

It is clear that Defendant has no legitimate defense to this claim and is merely grasping at straws. Defendant’s motion for summary judgment is also denied.



**WILLIAM F. ZALEWSKI, Plaintiff v. ALLIANCE ENERGY CORPORATION, Defendant**

*Preliminary Objections—Negligent Hiring—Negligent Supervision—Statute of Limitations—Punitive Damages.*

In his complaint, Plaintiff alleged that he was injured at Defendant's business in a physical altercation with a teenager and asserted causes of action for negligent hiring and negligent supervision because Defendant's employees falsely imprisoned him, assaulted and battered him, allowed the teenager to assault him, and failed to call an ambulance for him.

In its preliminary objections, Defendant first argued that Plaintiff's claims were precluded by the statute of limitations. Because Defendant did not brief this issue, the objection was deemed abandoned. In addition, the Court noted that the statute of limitations, which is an affirmative defense, may not be raised by way of preliminary objections.

Defendant next asked the Court to dismiss Plaintiff's claims for punitive damages. Although a demurrer is an inappropriate means by which to challenge punitive damages, the Court treated the demurrer as a motion to strike impertinent matter. The Court noted that Plaintiff does not seek to hold Defendant vicariously liable for the actions of its employees and instead asserts direct claims against Defendant. To establish causes of action for negligent hiring and supervision, a plaintiff must demonstrate that the employer had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that the employer acted, or failed to act, in conscious disregard of that risk. *Hutchison ex rel. Hutchison v. Luddy*, 896 A.2d 1260, 1266 (Pa. Super. 2006). Because Plaintiff did not allege facts to support a finding that Defendant was aware that its employees were dangerous, Plaintiff's claims for punitive damages were stricken.

In the Court of Common Pleas of Northampton County, Pennsylvania,  
Civil Division—No. C-48-CV-2010-2407.

William F. Zalewski, Pro Se.

PAUL G. LEES, ESQUIRE, for Defendant.

Order of the Court entered on February 3, 2011 by BELTRAMI, J.

*OPINION*

This matter is before the Court on "Defendant's Preliminary Objections to Plaintiff's Amended Complaint," filed on October 29, 2010. The case was placed on the January 4, 2011, argument list. Briefs have been submitted, and the matter is now ready for disposition.

In his amended complaint, filed on September 24, 2010, Plaintiff alleges that he visited Defendant's business, a gasoline station located at 2599 North Delaware Drive, Mount Bethel, Pennsylvania, on March 12, 2008. Pl.'s Am. Compl. ¶¶2-3. Plaintiff claims he was injured at Defendant's business in a physical altercation with a teenager, Charles W. Longyhore, IV ("Longyhore"). *Id.* ¶¶5-7. In Count I of his amended complaint, Plaintiff alleges a cause of action for Defendant's negligent hiring. Plaintiff contends that Defendant's employees falsely imprisoned him, assaulted and battered him, allowed Longyhore to assault him, and failed to call an am-

balance for him. *Id.* ¶6(a)-(f). In Count II of his amended complaint, Plaintiff alleges a negligent supervision cause of action, arguing that Defendant failed to supervise its employees. Plaintiff requests compensatory and punitive damages.

In its preliminary objections, Defendant asserts demurrers to Counts I and II of Plaintiff's complaint. Pennsylvania Rule of Civil Procedure 1028(a)(4) allows for a preliminary objection on the ground of legal insufficiency of a pleading, which is called a demurrer. A demurrer will only be sustained if the plaintiff's complaint fails to state any legally cognizable cause of action. *Lerner v. Lerner*, 954 A.2d 1229, 1234 (Pa. Super. 2008). However, any doubt as to whether the complaint states a cause of action should be resolved in favor of overruling the demurrer. *Francesco v. Group Health Inc.*, 964 A.2d 897, 899 (Pa. Super. 2008). In ruling on a demurrer, a trial court may not consider any testimony or evidence outside of the complaint. *Cooper v. Frankford Health Care System, Inc.*, 960 A.2d 134, 143 (Pa. Super. 2008). Further, a trial court may not consider the factual merits of the complaint, but must accept as true all well-pleaded, material, relevant facts, as well as all inferences reasonably deducible therefrom. *Filippi v. City of Erie*, 968 A.2d 239, 242 (Pa. Commw. 2009).

Defendant first asserts that Plaintiff's amended complaint includes new and distinct claims that exceed the two-year statute of limitations. While this issue was raised in Defendant's objections, it was not briefed. Therefore, this objection has been abandoned. See *Commonwealth v. Desus*, 262 Pa. Super. 443, 452, 396 A.2d 1254, 1258 (1978).

Even if the objection had not been abandoned, it is without merit. Pennsylvania Rule of Civil Procedure 1030 provides that "all affirmative defenses including ... *statute of limitations* ... shall be pleaded in a responsive pleading under the heading 'New Matter[.]'" Pa. R.C.P. 1030(a) (emphasis added). Therefore, the statute of limitations may not be raised by way of preliminary objections. *Kyle v. McNamara & Criste*, 506 Pa. 631, 635, 487 A.2d 814, 816 (1985); *Evans to Use of Roadway Express, Inc. v. D'Iorio*, 360 Pa. Super. 45, 48, 519 A.2d 983, 984 (1987).

Defendant next asks the Court to dismiss Plaintiff's claims for punitive damages. In its brief, Defendant argues this objection as a demurrer. A demurrer is an "inappropriate means by which to challenge the legality of the damages sought in a complaint." *Hudock v. Donegal Mutual Insurance Company*, 438 Pa. 272, 277 n.2, 264 A.2d 668, 671 n.2 (1970); see also, *Potis v. Coon*, 1980 WL 429, at \*2 (Pa. Com. Pl. May 29, 1980). In both of those cases, the court treated the demurrer as a motion to strike impertinent matter. This Court will do likewise.

Pennsylvania Rule of Civil Procedure 1028 allows for any party to file a preliminary objection on the ground of "inclusion of ... impertinent matter[.]" Pa. R.C.P. 1028(a)(2). "To be ... impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action." *Com-*

*mon Cause/Pennsylvania v. Commonwealth of Pennsylvania*, 710 A.2d 108, 115 (Pa. Commw. 1998).

In this case, Plaintiff does not seek to hold Defendant vicariously liable for the actions of its employees. Rather, Plaintiff makes direct claims against Defendant, arguing that it was negligent in hiring and supervising its employees. In this regard, there are only two factual allegations in Plaintiff's complaint concerning Defendant's actions, as opposed to the actions of its employees. First, Plaintiff contends that Defendant was "negligent" in hiring employees who were "unfit, incompetent, and dangerous." Pl.'s Compl., Count I, ¶6. Second, Plaintiff complains of Defendant's "negligent or non-supervision of its two employees." *Id.*, Count II, ¶6.

Section 317 of the Second Restatement of Torts sets forth a negligent hiring and supervision cause of action as follows:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

(a) the servant

(i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

(ii) is using a chattel of the master, and

(b) the master

(i) knows or has reason to know that he has the ability to control his servant, and

(ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts §317 (1965). This section has been adopted as applicable law in this Commonwealth. *See Hutchison ex rel. Hutchison v. Luddy*, 896 A.2d 1260 (Pa. Super. 2006). In *Hutchison*, the Superior Court reviewed whether a jury's award of punitive damages in a case sounding under Section 317 was supported by the evidence. In describing the applicable standard, the Superior Court stated:

"Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." [Hutchison] IV, *supra* at 121, 870 A.2d at 770, quoting *Feld v. Merriam*, 506 Pa. 383, 395, 485 A.2d 742, 747 (1984), quoting Restatement (Second) of Torts § 908(2) (1979) (other citation omitted). Further, '[P]unitive damages are penal in nature and are proper only in cases where the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct.' *Id.* (citations omitted). Because punitive damages are intended to punish the tortfeasor for outra-

geous conduct and to deter him and others like him from similar conduct in the future, ‘“[t]he state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious.”’ *Id.* at 121-122, 870 A.2d at 770-771, quoting Feld, *supra* at 396, 485 A.2d at 748; citing *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 171 n. 12, 494 A.2d 1088, 1097 n. 12 (1985) (plurality opinion).

As the Hutchison IV court further observed, when the Martin court considered the requisite state of mind necessary to constitute reckless indifference, the court adopted only the first type of reckless conduct set forth in § 500 of the Restatement, ‘Reckless Disregard of Safety Defined’:

‘The actor’s conduct is in reckless disregard of the safety of another if he does an act or intentionally fails to do an act which it is his duty to the other to do, *knowing or having reason to know* of facts which would lead a reasonable man to realize, not only that his conduct creates an unreasonable risk of physical harm to another, but also that such risk is substantially greater than that which is necessary to make his conduct negligent.’

*Id.*, quoting Restatement (Second) of Torts § 500 (emphasis added). Pursuant to this test, the actor must not only know or have reason to know of facts that create a high degree of risk, but must deliberately proceed to act in conscious disregard of, or indifference to, that risk. *Id.*, citing *Martin*, *supra* at 171, 494 A.2d at 1097 (other citation omitted).

The state of mind of the actor in Pennsylvania therefore requires a higher degree of culpability than the alternative state of mind set forth in § 500, necessitating only that while the actor is or should be aware of the facts, the actor does not realize or appreciate the high degree of risk involved, even though a reasonable person in his position would do so. In this regard, our supreme court reasoned:

‘The only purpose of punitive damages is to deter outrageous conduct. It is impossible to deter a person from taking risky action if he is not conscious of the risk. Thus, in *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742 (1984), we addressed the issue of when punitive damages are warranted and stressed that, in determining whether certain conduct is outrageous, “[t]he state of mind of the actor is vital. The act, or the failure to act, must be intentional, reckless or malicious.” Similarly, the Restatement explains that “reckless indifference to the rights of others and conscious action in *deliberate* disregard of them ... may provide the necessary state of mind to justify punitive dam-

ages.” [Section 500] Comment b (emphasis in *Hutchison IV* ). Therefore, an appreciation of the risk is a necessary element of the mental state required for the imposition of such damages.’

*Id.* at 123-124, 870 A.2d at 771-772, quoting *Martin*, supra at 171 n. 12, 494 A.2d at 1097 n. 12.

As the *Hutchison IV* court therefore opined:

Thus, in Pennsylvania, a punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk.

*Id.* at 124, 870 A.2d at 772, citing *Martin*, supra at 171-172, 494 A.2d at 1097-1098.

*Hutchison ex rel. Hutchison*, supra, 896 A.2d at 1265-66 (footnote omitted).

In his complaint, Plaintiff has not alleged facts to support his conclusions of negligence or to support a finding that Defendant was aware that its employees were dangerous such that they would attack a customer when hired or left to operate the store unsupervised. Without such facts, the Court cannot conclude that Defendant subjectively appreciated or consciously disregarded a risk that its employees would harm Plaintiff or some other customer. Thus, while the Court can easily conclude that the facts alleged against Defendant’s employees could support a finding that they acted maliciously, wantonly, willfully, oppressively, and/or with reckless indifference to Plaintiff’s rights, there are no facts upon which the Court can make the same conclusion with regard to Defendant’s hiring and/or supervision of those employees. Thus, Plaintiff’s claims for punitive damages are impertinent at this stage of the lawsuit and will be stricken from the complaint.

WHEREFORE, we enter the following:

#### ORDER

AND NOW, this 3rd day of February, 2011, “Defendant’s Preliminary Objections to Plaintiff’s Amended Complaint” are hereby SUSTAINED, in part, and OVERRULED, in part. Plaintiff’s claims for punitive damages are hereby stricken from Plaintiff’s amended complaint. Plaintiff is granted leave to file a second amended complaint within twenty (20) days.

## Northampton County Bar Association Notification of Change Form

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