



# Northampton County Reporter

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VOL. LXII

EASTON, PA    October 12, 2023

NO. 93

**Luther Bond and David Flyte, on Behalf of Themselves and All Others Similarly  
Situating, Plaintiffs v. Waste Management of Pennsylvania, Inc. and  
Grand Central Sanitation Landfill, Inc., Defendants (Part 2 of 2)**

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

**Quarterly Association Meeting**  
Thursday, November 9, 2023

**NORTHAMPTON COUNTY BAR ASSOCIATION  
2023 BAR ASSOCIATION OFFICERS**

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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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Ralph J. Bellafatto, Esquire

Editor

**NOTICE TO NCBA MEMBERS – BAR NEWS**

**Save the Dates**

October 21, 2023	CluedUpp Scavenger Hunt for members, families and friends of all ages.
November 9, 2023	Quarterly Association Meeting
November 20, 2023	Fifth Annual Municipal Law Colloquium

I think people want peace so much that one of these days governments had better get out of the way and let them have it. ~ Dwight D. Eisenhower

**ESTATE AND TRUST NOTICES**

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

**FIRST PUBLICATION****FANTAUZZI, JOEL ALEXI**, dec'd.

Late of Bethlehem City, Northampton County, PA  
Administratrix: Kristen L. Behrens, 1500 Market St., #3500E, Philadelphia, PA 19102  
Attorneys: Kristen L. Behrens, Esquire, Dilworth Paxson, LLP, 1500 Market St., #3500E, Philadelphia, PA 19102

**GEHMAN, CAROLYN B.**, dec'd.

Late of Bushkill Township, Northampton County, PA  
Executrix: Carolyn E. Hill, 1129 Miller Road, Wind Gap, PA 18091  
Attorney: Gary Neil Asteak, Esquire, 726 Walnut Street, Easton, PA 18042

**LANDIS, GARRY P.**, dec'd.

Late of the Township of Moore, Northampton County, PA  
Administrator: Craig Phillip Landis c/o Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

**MANTZ, DOROTHY B.**, dec'd.

Late of Bethlehem Township, Northampton County, PA  
Executor: Robert Richard Mantz c/o Constantine M. Vasiliadis, Esquire, Kolb, Vasiliadis, Florenz & Recchiuti, LLC, 60 W. Broad Street, Suite 303, Bethlehem, PA 18018-5721

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

**McKENNA, GAIL J.**, dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Co-Executrices: Joanna Gail Bartholomew and Jennifer Lynne Margaret Peterson c/o James C. Omdahl, Esquire, 54 South Commerce Way, Suite 172, Bethlehem, PA 18017  
Attorney: James C. Omdahl, Esquire, 54 South Commerce Way, Suite 172, Bethlehem, PA 18017

**MIZACK, VIRGINIA R.**, dec'd.

Late of the Township of Bethlehem, Northampton County, PA  
Executor: Steven N. Goudsouzian c/o Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064  
Attorneys: Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

**NEISER, BOYD B. a/k/a BOYD BRUCE NEISER**, dec'd.

Late of Upper Saucon Township, Lehigh County, PA

Executrix: Maureen F. Lawrence  
a/k/a Maureen Lawrence c/o  
Tara A. Eckels, Esquire, 4510  
Bath Pike, Suite 201, Bethlehem,  
PA 18017

Attorney: Tara A. Eckels, Esquire,  
4510 Bath Pike, Suite 201,  
Bethlehem, PA 18017

**NIEDZWIECKI, RICHARD**, dec'd.

Late of Easton City, Northampton  
County, PA

Executrix: Jennifer D. Haines  
c/o Daniella A. Horn, Esquire,  
Klenk Law, LLC, 2202 Delancey  
Place, Philadelphia, PA 19103

Attorneys: Daniella A. Horn,  
Esquire, Klenk Law, LLC, 2202  
Delancey Place, Philadelphia, PA  
19103

**OMATA, ATSUSHI**, dec'd.

Late of the Township of Palmer,  
Northampton County, PA

Executor: Robert L. Smith, Jr.  
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

**SMITH, MARY JANE**, dec'd.

Late of Pen Argyl Borough,  
Northampton County, PA

Administratrix: Jennifer Lynn  
Reinhardt c/o Kristen L.  
Behrens, Esquire, Dilworth  
Paxson LLP, 1500 Market St.,  
Ste. 3500E, Philadelphia, PA  
19102

Attorneys: Kristen L. Behrens,  
Esquire, Dilworth Paxson LLP,  
1500 Market St., Ste. 3500E,  
Philadelphia, PA 19102

**SPECK, WALTER R., JR.**, dec'd.

Late of the Township of Beth-  
lehem, Northampton County, PA  
Executrix: Mildred Dianne  
DeWalt 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

**TOUCHTON, SARAH A.**, dec'd.

Late of the Township of Beth-  
lehem, Northampton County, PA  
Executrix: Ms. Leslie S. Touchton  
c/o Robert A. Nitchkey, Jr.,  
Esquire, 730 Washington Street,  
Easton, PA 18042

Attorney: Robert A. Nitchkey, Jr.,  
Esquire, 730 Washington Street,  
Easton, PA 18042

**WEAVER, ARTHUR L.**, dec'd.

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

Executor: Dale Ralph Weaver  
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

**SECOND PUBLICATION**

**BARNDT, VICTORIA LEE**, dec'd.

Late of Palmer Township, North-  
ampton County, PA

Executrix: Jessica L. Cardone  
c/o Tara A. Eckels, Esquire,  
4510 Bath Pike, Suite 201,  
Bethlehem, PA 18017

Attorney: Tara A. Eckels, Esquire,  
4510 Bath Pike, Suite 201,  
Bethlehem, PA 18017

**CASTEEL, JOY YVONNE**, dec'd.

Late of Bethlehem, Northampton  
County, PA

Executrix: Brenda J. Butler c/o  
William W. Matz, Jr., Esquire,  
211 W. Broad Street, Bethlehem,  
PA 18018-5517

Attorney: William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

**FUNK, SANDRA**, dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executor: Eric E. Funk c/o Fitzpatrick Lentz & Bubba, P.C., Two City Center, 645 West Hamilton Street, Suite 800, Allentown, PA 18101  
Attorneys: Fitzpatrick Lentz & Bubba, P.C., Two City Center, 645 West Hamilton Street, Suite 800, Allentown, PA 18101

**HENRITZY, CYNTHIA V.**, dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executors: Theodore Trent Henritzy, 19 Jonquil Drive, Newtown, PA 18940 and Paige Anne Zaia, 37186 Sheepscoot Rd., Lewes, DE 19958  
Attorney: Paul J. Harak, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

**HRUBENAK, MARGARET MARIE**, dec'd.

Late of the City of Bethlehem, Northampton County, PA  
Executor: John S. Hrubenak, 4418 Lenox Drive, Bethlehem, PA 18017  
Attorney: Victor E. Scmillio, Esquire, 1216 Linden Street, P.O. Box 1409, Bethlehem, PA 18016

**KNECHT, JENNIFER L.**, dec'd.

Late of the Township of Forks, Northampton County, PA  
Administratrix: Devon E. Graham c/o Theresa Hogan, Esquire, 340 Spring Garden Street, Easton, PA 18042  
Attorney: Theresa Hogan, Esquire, 340 Spring Garden Street, Easton, PA 18042

**LEHMAN, CHESTER ANDREW**, dec'd.

Late of the Township of Forks, Northampton County, PA  
Administrators: Lisa M. Flood and Jeffrey Andrew Lehman c/o Carla J. Thomas, Esquire, 716 Washington St., Easton, PA 18042  
Attorney: Carla J. Thomas, Esquire, 716 Washington St., Easton, PA 18042

**MEASE, JEANETTE E.**, dec'd.

Late of Bethlehem, Northampton County, PA  
Executrix: Ann Caroline Gibson c/o William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517  
Attorney: William W. Matz, Jr., Esquire, 211 W. Broad Street, Bethlehem, PA 18018-5517

**PIERSON, ROBERT BLUNT**, dec'd.

Late of Bethlehem, Northampton County, PA  
Co-Executors: Karen L. Graffman and Douglas R. Pierson c/o Robert B. Roth, Esquire, The Roth Law Firm, P.O. Box 4355, Allentown, PA 18105  
Attorneys: Robert B. Roth, Esquire, The Roth Law Firm, P.O. Box 4355, Allentown, PA 18105

**REED, CAROLINE B.**, dec'd.

Late of Forks Township, Northampton County, PA  
Executor: Daniel L. Lucas c/o Tara A. Eckels, Esquire, 4510 Bath Pike, Suite 201, Bethlehem, PA 18017  
Attorney: Tara A. Eckels, Esquire, 4510 Bath Pike, Suite 201, Bethlehem, PA 18017

**SABO, GAIL M.**, dec'd.

Late of Palmer Township, Northampton County, PA

Executrices: Jacqueline K. Panuccio and Cynthia L. Sabo c/o Steven B. Molder, Esquire, 904 Lehigh St., Easton, PA 18042

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

**SPANGLER, ALVERTA M.,** dec'd.

Late of East Allen Township of Bethlehem, Northampton County, PA

Co-Administrators: Richard Gary Spangler and Sharon Jane Bechtold c/o Joshua D. Shulman, Esquire, Shulman Law Office PC, 1935 Center Street, Northampton, PA 18067  
Attorneys: Joshua D. Shulman, Esquire, Shulman Law Office PC, 1935 Center Street, Northampton, PA 18067

**STATLER, EDWARD M., JR.,** dec'd.

Late of the Borough of Nazareth, Northampton County, PA

Administrator: Stephen C. Statler c/o Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

**WAMBOLD, GEORGE F.,** dec'd.

Late of the Township of Bushkill, Northampton County, PA

Executor: Brian N. Wambold, Sr. c/o Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

Attorneys: Alfred S. Pierce, Esquire, Pierce & Steirer, LLC, 124 Belvidere Street, Nazareth, PA 18064

**THIRD PUBLICATION**

**HERMAN, LORI L.,** dec'd.

Late of the Borough of Northampton, Northampton County, PA

Executrix: Janice Marie Breidinger c/o Peters, Moritz, Peischl, Zulick, Landes & Brienza, LLP, 1 South Main Street, Nazareth, PA 18064

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

**LaFLEUR, CATHERINE B.,** dec'd.

Late of Moore Township, Northampton County, PA

Co-Executors: Andrew George Wheeler, Jr. and Paul Joseph Wheeler

Attorney: David E. Schwager, Esquire, 183 Market Street, Suite 100, Kingston, PA 18704-5444

**METALLO, ROSARIA,** dec'd.

Late of the Township of Forks, Northampton County, PA

Executor: Samuel J. Metallo c/o Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 W. Lafayette Street, Suite 100, Easton, PA 18042

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

**RUTT, NANCY,** dec'd.

Late of the Township of Palmer, Northampton County, PA

Executor: Barry Rutt c/o Robert C. Brown, Jr., Esquire, Fox, Oldt & Brown, 940 W. Lafayette Street, Suite 100, Easton, PA 18042



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

**THOMAS, RICHARD C.**, dec'd.

Late of Walnutport, Northampton  
County, PA

Executor: Shawn R. Thomas c/o  
Keith W. Strohl, Esquire, Steckel  
and Stopp LLC, 125 S. Walnut  
Street, Suite 210, Slatington, PA  
18080

Attorneys: Keith W. Strohl,  
Esquire, Steckel and Stopp LLC,  
125 S. Walnut Street, Suite 210,  
Slatington, PA 18080

**TRAUGHER, MARGARET E.**,  
dec'd.

Late of the Township of Moore,  
Northampton County, PA

Co-Executors: Craig E. Traugher  
and Carlotta Emma Horvath c/o  
Peters, Moritz, Peischl, Zulick,  
Landes & Brienza, LLP, 1 South  
Main Street, Nazareth, PA 18064

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

**WELSH, MASAKO**, dec'd.

Late of Lower Mount Bethel  
Township, Northampton County,  
PA

Executor: Gregory Stolarski c/o  
Christopher T. Spadoni, Esquire,  
1413 Easton Ave., P.O. Box 522,  
Bethlehem, PA 18018

Attorney: Christopher T.  
Spadoni, Esquire, 1413 Easton  
Ave., P.O. Box 522, Bethlehem,  
PA 18018

**YOKAI, AGNES A.**, dec'd.

Late of the City of Bethlehem,  
Northampton County, PA

Executor: Thomas A. Yeager, Jr.  
c/o Nancy K. Busch, Esquire,  
825 North 19th Street, Allentown,  
PA 18104

Attorney: Nancy K. Busch,  
Esquire, 825 North 19th Street,  
Allentown, PA 18104

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

NOTICE IS HEREBY GIVEN that  
the following accounts in decedents'  
estates, have been filed in the Office  
of the Orphans' Court of Northamp-  
ton County, and that the same will  
be called for Confirmation on  
OCTOBER 26, 2023 at 9 A.M., IN  
COURTROOM #10, at which time the  
Courts will hear exceptions, and  
make distribution of the balances  
ascertained to be in the hands of  
accountants.

\*Estate of VERA HOSZOWSKI;  
Michael Hoszowski, Executor

\*Estate of CHARLES CHRIN;  
David Eastburn, Executor

\*Estate of PAUL MOATZ; Monica  
Wool, Executrix

\*Estate of SAMUEL LOSAGIO;  
Nancy Gottwald-Losagio, Executrix

Patricia Manento

Acting Register of Wills &  
Clerk of Orphans' Court

Oct. 12, 19

**NOTICE OF INCORPORATION**

NOTICE IS HEREBY GIVEN that  
Articles of Incorporation were filed in  
the Department of State of the  
Commonwealth of Pennsylvania on  
October 3, 2023 for:

**TERABIT WIRELESS  
TELECOM INC.**

under the provisions of the Pennsyl-  
vania Business Corporation Law of  
1988, as amended.

Oct. 12

**CORPORATE FICTITIOUS NAME  
REGISTRATION NOTICES**

NOTICE IS HEREBY GIVEN,  
pursuant to the provisions of Act 295  
of 1982, as amended, of intention to  
file, or the filing of, in the Office of the  
Secretary of the Commonwealth of



Pennsylvania at Harrisburg, Pennsylvania, a certificate for the conduct of a business in Pennsylvania, under the assumed or fictitious name, style or designation of:

**OLD SCHOOL AUTO FINDER**

with its principal place of business at: 2465 Freemansburg Avenue, Easton, PA 18042.

The name and address of the entity owning or interested in said business are: E-Street Motorsports, LLC, 2465 Freemansburg Avenue, Easton, PA 18042.

GOUDSOUZIAN & ASSOCIATES  
2940 William Penn Highway  
Easton, PA 18045-5227  
(610) 253-9171

Oct. 12

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name has been filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania, for the purposes of obtaining the following Fictitious Name, pursuant to the provisions of 54 Pa. C.S. 311:

The Fictitious Name is:

**REAGLE CHRYSLER DODGE  
JEEP RAM**

having a principal place of business at: 1223 Blue Valley Drive, Pen Argyl, PA 18072.

The name and address of the entity owning or interested in said business are: Joseph C. Reagle, Inc., 1223 Blue Valley Drive, Pen Argyl, PA 18072.

Oct. 12

**NOTICE OF ARTICLES  
OF AMENDMENT**

NOTICE IS HEREBY GIVEN that Articles of Amendment to the Articles of Incorporation of Aunt Wendy's Kiffles, Inc., a Pennsylvania Professional Corporation, with its registered office located at 20 North Spruce Street, Nazareth, PA 18064, have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on October 4, 2023, pursuant to the provisions of the Business Corporation Law of Pennsylvania.

The nature and character of the amendment was to change the corporation name and address to:

**WENDY LEVINS KIFFLES, INC.**

354 W. Moorestown Rd., Nazareth, PA 18064.

JEFFREY K. LANDIS, ESQUIRE  
LANDIS, HUNSBERGER,  
GINGRICH & WEIK, LLP

114 East Broad Street

P.O. Box 64769

Souderton, PA 18964-0769

Oct. 12

**OFFICE SPACE AVAILABLE**

Law/Professional Office Space in existing law office for rent 1/2 block West of Courthouse. Spacious 15.5' by 14.5' office with separate secretarial area and access to conference room or, at option of Lessee, second 12' by 12' room available. Rent, utilities and access to copier negotiable, depending on option(s) chosen. Minimum one (1)-year lease with one (1) month S/D. Inquire at (610) 258-0821.

Sept. 28; Oct. 5, 12

*Continued from previous issue*

Next, the class will need to prove that GCSL's conduct caused odors to invade its properties to establish its claims. Here, Plaintiffs have made clear that the conduct in question is GCSL's odor mitigation practices during the time in question. This conduct is the same for each prospective class member and will turn on the common question of whether such practices were reasonable during the time in question.

Finally, the issue of legal or proximate cause is more difficult and Defendants argue that Plaintiffs have failed to prove GCSL is the legal cause of the odors. Specifically, Defendants argue that Plaintiffs have failed to rule out the local wastewater treatment plant, farm, or nearby dumpsters as a source of the odors. To be certain, the existence of intervening or superseding causes may preclude commonality. *See Weismer*, supra at 431. Moreover, such causes are relevant to the merits of the underlying nuisance claim. However, the court returns to the preliminary nature of the proceeding.

Indeed, "if there is an actual conflict on an essential fact, the class proponent bears the risk of non-persuasion." *Janicik*, supra. However, the court does not interpret this risk to require that the court prematurely supplant the role of the ultimate fact-finder and rule on causation. At this juncture, the court finds that Plaintiffs have sufficiently shown that causation is capable of common proof at trial.

Thus, the court finds that Plaintiffs have shown that nuisance is indeed subject to common proof. Here, there exists a common injury in the effect that GCSL's hydrogen sulfide emissions may have had on the proposed class. All of those injuries are themselves rooted in a common course of conduct or practice: GCSL's odor mitigation practices during the time in question. Put another way, all of the proposed class members' claims would rise or fall on three common legal questions: whether GCSL caused hydrogen sulfide to invade the class members' land; whether GCSL is the legal cause of that invasion; and whether that invasion resulted in a significant harm by interfering with the private use and enjoyment of the land. Therefore, the court finds the commonality prerequisite satisfied.

### *Typicality*

Next, Rule 1702 requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Pa. R.Civ.P. 1702(3). Typicality is a consideration of fairness. Its purpose "is to ensure that 'the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members.'" *Samuel-Bassett*, supra at 30 (quoting *D'Amelio v. Blue Cross of Lehigh Valley*, 500 A.2d 1137, 1146 (Pa. Super. 1985)). "The existence of factual distinctions between the claims of the named plaintiff and

the claims of the proposed class will not necessarily preclude a determination of typicality.” *Muscarella*, supra. “The typicality requirement is closely akin to the requirements of commonality and the adequacy of representation.” *Janicik*, supra at 457. However, “while commonality tests the sufficiency of the class itself by focusing on the class claims, typicality tests the sufficiency of the named plaintiff by focusing on the relationship between the named plaintiff and the class as a whole.” *Buynak*, supra at 1164.

The court is convinced that Flyte and Bond’s claims are sufficiently typical such that they will likely advance the interests of absent class members in advancing the interests of their own claims. Both Flyte and Bond live within the proposed class area and described the foul-smelling odor in a similar manner. Further, their claims are both rooted in the emission of such odors from GCSL and the odors’ effect on the use and enjoyment of their land. In particular, they are rooted in the use of the outdoor area of their properties, the ability to entertain guests, or, at the very least, their ability to open their windows. In pursuing this litigation, Flyte and Bond will advance the interests of all proposed class members.

Again, Defendants argue that the possible existence of other odors and the variability of impact preclude a finding of typicality. Defendants further note the variability of the homes in size and amenities, etc. However, these individual circumstances are more relevant to the commonality and predominance requirement. For the reasons already outlined, the court finds the typicality prerequisite met.

### *Adequacy of Representation*

The fourth prerequisite is that “the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709.” Pa. R.Civ.P. 1702(4). Rule 1709 states:

In determining whether the representative parties will fairly and adequately assert and protect the interests of the class, the court shall consider among other matters

- (1) whether the attorney for the representative parties will adequately represent the interests of the class,
- (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
- (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R.Civ.P. 1709. “Preliminarily, ‘[a] litigant must be a member of the class which he or she seeks to represent at the time the class is certified by the ... court’ in order to ensure due process to the absent class members and to satisfy requirements of standing.” *Janicik*, supra at 458 (quoting *Sosna v. Iowa*, 419 U.S. 393, 403 (1975)). Adequacy of representation and lack

of conflicts of interest are generally presumed unless evidence is offered to the contrary. *See id.* at 458-59; *see also, Haft v. U.S. Steel Corp.*, 451 A.2d 445, 447-48 (Pa. Super. 1982).

Here, the Plaintiffs' attorneys have represented to this court that they will be advancing the costs of the representation to the class. Further, given the performance and professionalism of Plaintiffs' attorneys thus far, the court is convinced, and Defendants offer no evidence to the contrary, that Plaintiffs' counsel will fairly and adequately represent the interests of the class.

### *Fair and Efficient*

Finally, the fifth prerequisite is that "a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in Rule 1708." Pa. R.Civ.P. 1702(5). Rule 1708 provides, in relevant part, the following criteria for determination of this prerequisite:

In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth in subdivisions (a), (b) and (c).

(a) Where monetary recovery alone is sought, the court shall consider

(1) whether common questions of law or fact predominate over any question affecting only individual members;

(2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;

(3) whether the prosecution of separate actions by or against individual members of the class would create a risk of

(i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

(ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

(5) whether the particular forum is appropriate for the litigation of the claims of the entire class;

(6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;

(7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Pa. R.Civ.P. 1702(a). “In determining fairness and efficiency, the court must balance the interests of the litigants, present and absent, and of the court system.” *Janicik*, supra at 461.

Many of these factors weigh in favor of maintaining a suit with little or no analysis. For example, the court finds, and Defendants do not contest, that Northampton County is the appropriate venue in which to litigate the claims, as GCSL and the proposed class are entirely within the county. The court has not been made aware of any pending litigation concerning the same issues. Further, the court agrees with Plaintiffs that the attorney’s fees and expense of proving this claim through expert testimony is likely to dissuade class members from bringing individual suits. Moreover, the sheer volume of claims makes inconsistent verdicts or adjudications a risk.

The crux of remaining factors in the rule is “whether common questions of law or fact predominate over any question affecting only individual members.” Pa. R.Civ.P. 1708(a)(1).

The ‘predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation.’ *Amchem Prods., [Inc. v. Windsor]*, 521 U.S. [591], 623 [1997] ... . Thus, a class consisting of members for whom most essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals for whom resolution of such elements does not advance the interests of the entire class.

*Samuel-Bassett*, 34 A.3d at 23. The predominance requirement is closely related to though more demanding than the commonality prerequisite. *See id.* In analyzing the predominance requirement, the court finds it useful to separate common questions of law and fact from individual questions of law and fact.

By now, the common questions essential to the proposed class members’ claims are familiar: whether GCSL proximately caused an odor to invade the class members’ properties; whether that invasion interfered with the private use and enjoyment of the land; and whether that interference constitutes a significant harm. The individual questions are also familiar. Through the testimony of real estate appraiser Charles T. Brigden, Defendants have singled out the extent of the interference on each property, the types of use and enjoyment interfered with, and the variability in the size and amenities of each home.

Generally, Defendants argue that the interests in use and enjoyment of each property is so broad that they must predominate any common issues. Per the Restatement, use and enjoyment comprehends a wide range of considerations including “the pleasure, comfort and enjoyment that a person normally derives from the occupancy of land.” Restatement (Second) of Torts §821D cmt. b. For instance, gardeners and non-gardeners are impacted differently. The social property owner loses the enjoyment of hosting company while the loners do not. At its simplest, those closest to GCSL suffer a higher concentration of odors than those farthest. However, these variables speak to the extent of damage, which would not itself be dispositive as to predominance. *See Cambanis v. Nationwide Ins. Co.*, 501 A.2d 635, 640 (Pa. Super. 1985) (“It is well-established that questions as to the amount of individual damages do not preclude a class action.”).

Further, the court does not find that these individual issues predominate the common issues of fact and law addressed above. The bulk of the issues identified are all bound together by recurring themes, namely an inability to use the outside portion of their properties and an inability to entertain guests. The variability of what lays in the backyard of each property owner is not so great as to outweigh the common questions at issue. Finally, Plaintiffs have offered a method by which the variability in damages can be calculated. Their proposal would have Sullivan model the frequency with which the hydrogen sulfide was concentrated beyond the applicable threshold in the class area from 2017 to 2019. Should the jury resolve the common issues of law and fact in favor of Plaintiffs, it would then need only assign an amount of damages on a per-hour basis. Plaintiffs’ proposed method thus mitigates some of the variability of the individual questions at issue.

For all the reasons noted above, the court finds that Plaintiffs have satisfied Pennsylvania’s class action prerequisites.

### *CONCLUSIONS OF LAW*

1. The proposed class is so numerous as to make joinder of all its members impracticable.
2. There exist questions of fact and law common to the class which predominate over any questions affecting individual members.
3. Plaintiffs’ claims are typical of the claims of the class.
4. Plaintiffs’ counsel will fairly and adequately represent all members of the class.
5. A class action is a fair and efficient method for adjudicating this controversy.

WHEREFORE, the court enters the following:

### *ORDER*

AND NOW, this 31 day of July, 2023, it is hereby ORDERED and DECREED that:

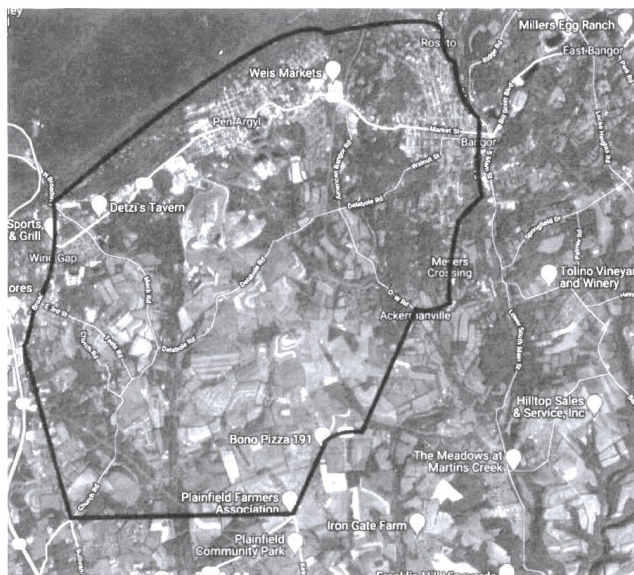
1. Plaintiffs' Motion for Class Certification, filed on April 22, 2022, is hereby GRANTED.

2. Luther Bond and David Flyte are designated as Class Representatives in the instant action.

3. Attorneys John E. Kotsatos, Jonathan Nace, and Mark L. Minotti shall serve as Class Counsel and represent the interests of the Class Representatives and all Class Members in this Matter.

4. The following Class is certified for the instant action: All individuals who owned or rented residential property between 2017 through 2019 within the class area identified below as proposed in Section 7.0 of Ryan Sullivan's report dated February 15, 2022, page 25:

7.0 CLASS AREA IMPACTED BY H<sub>2</sub>S EMISSIONS



5. Pursuant to Pa.R.Civ.P. 1711(a), the court finds that every member of the class as defined herein is included, unless and until a written election to be excluded from the class is received after notice is disseminated to the class and an opportunity to be heard as to any requested exclusion is afforded to all parties.

6. Within fifteen (15) days of the date of this order, Class Plaintiffs shall submit a proposed plan and form of notice of the pendency of this class action. Within ten (10) days thereafter, Defendants shall file any objections thereto and, within ten (10) days thereafter, Plaintiffs shall file any reply thereto. Otherwise, the parties may submit a joint proposed plan and form of notice to the court within thirty (30) days.

7. Pursuant to Pa.R.Civ.P. 1710(d), this Class Certification Order is conditional and may be revoked, altered or amended by the court on its own motion or on the motion of any party.





**PERIODICAL PUBLICATION**

**\* Dated Material. Do Not Delay. Please Deliver Before Monday, October 16, 2023**