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In the United States Bankruptcy Court for the Western District of Pennsylvania
In Re RHTC Liquidating Co.

Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania*

Managing Editor: Paula J. Gregory
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Erie County Bar Association

Calendar of Events and Seminars

TUESDAY, MARCH 16, 2010

Primer on Fair Debt Collection Practices Act

PBI Groupcast Seminar

Erie County Bar Association

8:30 a.m. - 12:45 p.m. (8:00 a.m. reg.)

\$224 (member) \$204 (admitted after 1/1/06)

\$244 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:

\$199 (member) \$179 (admitted after 1/1/06) \$219 (nonmember)

4 hours substantive

WEDNESDAY, MARCH 17, 2010

Handling the Workers Comp Case

PBI Groupcast Seminar

Bayfront Convention Center

8:30 a.m. - 4:30 p.m. (8:00 a.m. reg.)

\$224 (member) \$204 (admitted after 1/1/06)

\$244 (nonmember)

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\$199 (member) \$179 (admitted after 1/1/06) \$219 (nonmember)

5 hours substantive / 1 hour ethics

MONDAY, MARCH 22, 2010

The Estate Planning Quagmire of 2010 Caused By

The One Year Repeal of The Federal Estate Tax

PBI Groupcast Seminar

Erie County Bar Association

10:00 a.m. - 4:30 p.m. (9:30 a.m. reg.)

\$224 (member) \$204 (admitted after 1/1/06)

\$244 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:

\$199 (member) \$179 (admitted after 1/1/06) \$219 (nonmember)

5.5 hours substantive

TUESDAY, MARCH 30, 2010

Trial of a Medical Malpractice Case

PBI Video Seminar

Erie County Bar Association

9:00 a.m. - 4:00 p.m. (8:30 a.m. reg.)

\$149 (member) \$129 (admitted after 1/1/06)

\$169 (nonmember)

6 hours substantive

WEDNESDAY, MARCH 31, 2010

Metadata and Electronic Documents

ECBA Live Lunch-n-Learn Seminar

Bayfront Convention Center

12:15 p.m. - 1:15 p.m. (Lunch at 11:45 a.m.)

\$29 (member) \$45 (nonmember)

1 hour ethics

WEDNESDAY, APRIL 7, 2010

Great! Adverse Depositions: Principles and

Principle Techniques

PBI Groupcast Seminar

Erie County Bar Association

8:30 a.m. - 4:30 p.m. (8:00 a.m. reg.)

Includes Lunch

\$354 (member) \$329 (admitted after 1/1/06)

\$374 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:

\$329 (member) \$309 (admitted after 1/1/06) \$349 (nonmember)

6.5 hours substantive

THURSDAY, APRIL 8, 2010

Piercing the Corporate Veil

PBI Groupcast Seminar

Erie County Bar Association

12:00 p.m. - 3:15 p.m. (11:30 a.m. reg.)

Includes Lunch

\$234 (member) \$214 (admitted after 1/1/06)

\$254 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:

\$209 (member) \$189 (admitted after 1/1/06) \$229 (nonmember)

3 hours substantive

FRIDAY, APRIL 9, 2010

Medicine for Lawyers: The Most Common Injuries to the Brain and Spine

PBI Groupcast Seminar

Erie County Bar Association

8:30 a.m. - 3:45 p.m. (8:00 a.m. reg.)

Includes Lunch

\$304 (member) \$284 (admitted after 1/1/06)

\$324 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:

\$279 (member) \$259 (admitted after 1/1/06) \$299 (nonmember)

6 hours substantive

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IN RE:

**RHTC LIQUIDATING CO., fka Railpower Hybrid Technologies Corp.,
fka Railpower Corporation, fka Technologies Hybrides Railpower Corp.,
Alleged Debtor**

RHTC LIQUIDATING CO. f/k/a Railpower Hybrid Technologies Corp., *Movant*

v.

**UNION PACIFIC RAILROAD COMPANY, THE FORQUER GROUP, STAUFFER
DIESEL INC. AND EFCO, INC. d/b/a ERIE PRESS SYSTEMS, *Respondents***

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT
OF PENNSYLVANIA Case No. 09-11492-TPA Chapter 7

Related to Document No. 20

Appearances: Lawrence C. Bolla, Esq., for Petitioning Creditors
Dennis B. Auerbach, Esq., for Petitioning Creditors
Paul J. Cordaro, Esq., for Monitor
David W. Ross, Esq., for Alleged Debtor

MEMORANDUM OPINION

The issue currently before the Court is whether this involuntary Chapter 7 case should be dismissed because the Alleged Debtor, RHTC Liquidating Co., f/k/a Railpower Hybrid Technologies Corp. (hereinafter usually referred to as “Railpower U.S.”) is already involved in a Canadian bankruptcy proceeding (discussed in more detail below) that has previously been given Chapter 15 recognition in this Court.

The present case was commenced on August 14, 2009, when Union Pacific Railroad Company, The Forquer Group, Stauffer Diesel, and EFCO, Inc., d/b/a Erie Press Systems (collectively, the “Petitioning Creditors”) filed an involuntary Chapter 7 petition against the Alleged Debtor. The initial response to the involuntary petition was a *Motion to Dismiss Involuntary Chapter 7 Case* (“Motion”) filed on September 8, 2009, at Document No. 20, pursuant to 11 U.S.C. §305(a) by the Alleged Debtor’s “foreign representative”, Ernst and Young, Inc., which had been appointed as the “Monitor” in the Canadian bankruptcy proceeding.¹ The Alleged Debtor itself filed a “joinder” in the *Motion* that same date.

After the *Motion* was filed, the Court issued a Scheduling Order requiring a *Response* to the *Motion* by the Petitioning Creditors and briefs by the Parties. On December 14, 2009, a status conference on the *Motion* was held and at that time the Parties advised the Court that there was a possibility of a negotiated resolution but, nevertheless, the Court should schedule a date for an evidentiary hearing, if needed. On December 16, 2009, the Court entered an order setting forth a pretrial schedule and setting February 9, 2010 as the date for an evidentiary hearing. Unfortunately, the Parties were not able to resolve the matter so it was necessary to go forward with the hearing. However, through the good efforts of Counsel for the Parties, an agreement was reached on a set of stipulated facts necessary for decision on the *Motion*, so that the February 9th “evidentiary hearing” ended up being

¹ The Court’s jurisdiction to hear the *Motion* under 28 U.S.C. §§157 and 1334 is not in dispute. This is a core matter pursuant to 28 U.S.C. §157(b)(2)(A), (O) and (P).

only a legal argument.

Having now reviewed all pertinent filings and considered the arguments of the Parties, the Court will deny the Monitor's *Motion*.

FACTUAL BACKGROUND ²

The Alleged Debtor, Railpower U.S., is an American company incorporated in the State of Washington. It is a wholly-owned subsidiary of a Canadian company called 450-4020 Canada, Inc., formerly known as Railpower Technologies Corp. (hereinafter usually referred to as "Railpower Canada"). Together, Railpower U.S. and Railpower Canada are referred to herein as the "Railpower Entities."

Before the sale of most of their assets last year, the Railpower Entities were engaged in the production of efficient and ecologically-friendly railroad locomotives. Railpower U.S. was formed to conduct these operations in the United States. Its corporate headquarters is located in Quebec, Canada, in the same location as Railpower Canada. However, at all relevant times most of the assets and employees of Railpower U.S. were located in the United States and it primarily operated from an office in Erie, Pennsylvania. More than 90% in number of Railpower U.S. creditors are located in the United States and its customers were also primarily located in this country.

Initiation of the Canadian Proceeding

On February 4, 2009, a joint voluntary proceeding was commenced when Railpower U.S. and Railpower Canada filed a "petition" in the Québec Superior Court under the *Canadian Company's Creditors Arrangement Act*, or "CCAA", R.S.C. 1985, c. C-36 ³. This proceeding, which remains pending, will be referred to generally as the "Canadian Proceeding". On the petition date, the Canadian court entered an initial order in the Canadian Proceeding granting the petition of the Railpower Entities and providing for various other relief, including the appointment of Ernst & Young, Inc. as the Monitor for both Railpower Entities. The Canadian law firm of McCarthy Tetrault LLP represents both Railpower Entities in the Canadian Proceeding and the Railpower Entities presently have a single part-time employee who acts on behalf of both companies, and is paid on an hourly basis.

The Initiation of the Chapter 15 Case

On February 5, 2009, one day after the commencement of the Canadian Proceeding, the Monitor commenced a Chapter 15 case for Railpower U.S. in this Court by filing a petition under *Chapter 15* of the Bankruptcy Code, 11 U.S.C. §§1501-1532, at Case No. 09-10198 ("the Chapter 15 case"). On that same day, the Monitor filed a motion seeking, *inter alia*, recognition of the Canadian Proceeding as Railpower U.S.'s "foreign main proceeding"

² Unless otherwise stated, factual recitations in this *Memorandum Opinion* are taken from the Stipulated Facts contained in the *Consolidated Pretrial Narrative Statement/Stipulation* filed on behalf of the Monitor and the Petitioning Creditors, Document No. 65 at 13-20.

³ Canadian law apparently permits a joint filing in a single petition. In addition to the CCAA, Canadian law also includes the *Bankruptcy and Insolvency Act*, or "BIA", R.S.C. 1985, c. B-3. The Court has been advised that the CCAA is a reorganization law somewhat comparable to Chapter 11 of the Bankruptcy Code while the BIA covers straight liquidations, similar to Chapter 7 of the Bankruptcy Code. See also, http://www.ic.gc.ca/eic/site/cilp-pdci.nsf/eng/h_c100021.html.

(Chapter 15 case, Document No. 3). On March 6, 2009, the Honorable Warren W. Bentz entered an Order in the Chapter 15 case granting the Monitor's motion and recognizing the Canadian Proceeding as Railpower U.S.'s foreign main proceeding (Chapter 15 case, Document No. 23)⁴. That Order provided in relevant part:

ORDERED, that the Canadian Proceeding (including the initial order entered in the Canadian Proceeding) is granted recognition pursuant to section 1517(a) of the Bankruptcy Code; and it is further

ORDERED, that the Canadian Proceeding is granted recognition as a foreign main proceeding pursuant to section 1517(b)(1) of the Bankruptcy Code;

ORDERED, that this court reserves the right under 11 U.S.C. §1521(b) to review any proposed distribution to creditors to determine "that the interests of the creditors in the united states are sufficiently protected" in view of the statement in debtor's motion that debtor owes trade payables of \$825,000 and owes \$66,900,000 to its parent corporation, raising questions as to the validity of the larger claim;

March 6, 2009 *Order*; Chapter 15 case, Document No. 3 at 3-4.

As the last paragraph quoted above demonstrates, Judge Bentz documented the Court's concerns about the assertion that Railpower U.S. owed Railpower Canada approximately \$67 million ("the Intercompany Claim") as against the contention by the non-insider creditors (for the most part, the Petitioning Creditors) that this "claim" should actually be treated as a contribution to equity. This concern appears to have been the chief reason for Judge Bentz to include the "reservation" language in the March 6, 2009 *Order*.

The asset sale, the Canadian claims process and the Railpower U.S. estate

On May 29, 2009, pursuant to an order of the Canadian court dated May 27, 2009 and this Court's *Order* dated May 28, 2009 (Chapter 15 case, Docket No. 67), the Railpower Entities sold substantially all of their assets to R.J. Corman Railroad Group, LLC (the "Asset Sale") and ceased their normal business operations. Substantially all of the Railpower U.S. assets that were sold to R.J. Corman were located in the United States. This Court's May 28, 2009 *Order* approving the Asset Sale states in relevant part that

"... the Monitor shall hold and segregate the proceeds generated from the sale of [Railpower U.S.'s] portion of the Acquired Assets in the Monitor's bank account in trust for the Debtor and its creditors and no distributions shall be made to the Debtor's pre-petition creditors until further authorized by this Court."

Chapter 15 case, Document No. 67, at 4.

On May 27, 2009, the Canadian court entered an order (the "Canadian Claims Process Order") that, *inter alia*, provides that: (i) a claims bar date by which creditors must submit proofs of claim, (ii) the Monitor is charged with the duty of reviewing all proofs of claim

⁴ Judge Bentz retired on September 22, 2009, and responsibility for his cases was transferred to the Undersigned effective that date.

filed by creditors and, where applicable, sending the creditor a Notice of Revision or Disallowance to proofs of claim, (iii) the resolution of claims shall occur in accordance with the procedure set forth in the Canadian Claims Process Order, and (iv) all claim disputes and matters will occur and be resolved in the Canadian Court.

On June 2, 2009, the Monitor filed a motion in the Chapter 15 case seeking to have the Canadian Claims Process Order enforced in the United States. Chapter 15 case, Document No. 69. On July 8, 2009, this Court entered an order granting that motion and recognizing and enforcing in the United States the claims process established in the Canadian Claims Process Order, with certain modifications. See Chapter 15 case, Document No. 89. That order included the following provision:

ORDERED that if the CCAA plan provides less than a 100% distribution to all creditors of [Railpower U.S.] other than for the potential claim of [Railpower Canada], then this Court reserves the right, either on its own initiative or upon objection of any claimant, to adjudicate the appropriateness of the allowance of Railpower Canada's claim against Railpower U.S. and to any distribution provided to Railpower Canada under the CCAA Plan.

The claims bar date by which creditors were required to submit proofs of claim against the Railpower Entities pursuant to the Canadian Claims Process Order was August 24, 2009.

Railpower US's current assets principally consist of approximately US \$2 million of cash (as of January 20, 2010) held by the Monitor in trust in a Canadian bank account.⁵ This cash was principally derived from (i) the Asset Sale, and (ii) the return to Railpower US of a US \$419,000 security deposit that was held by Bank of America in the United States. Excluding the Intercompany Claim, approximately US \$9.3 million in claims have been asserted against Railpower U.S. in accordance with the Canadian Claims Process Order. If the Intercompany Claim is included, approximately US \$73.6 million in claims have been asserted against Railpower U.S. in accordance with the Canadian Claims Process Order.

The Monitor has advised the Court that it intends to issue a "notice of disallowance" of the Intercompany Claim on the grounds that it should be subordinated to the claims of non-insider creditors under principles of recharacterization and/or equitable subordination. See Document No. 45. The Monitor advised the Court in mid-November 2009 that it would be issuing this notice of disallowance "in the upcoming days" but it has apparently not done so as of yet. This is of some significance because Railpower Canada will have ten (10) days to contest the disallowance, with that period beginning to run upon issuance of the notice.

For its part, Railpower Canada currently holds cash of approximately CN \$3.9 million (as of January 20, 2010). That cash is also held by the Monitor in a Canadian bank account. The Monitor expects that Railpower Canada will receive an additional US \$550,000 from a sale of locomotives, which the Monitor contends are owned by Railpower Canada.

⁵ The Union Pacific Railroad Company has separately filed a *Motion...for an Order Directing Debtor's Funds to be Deposited into a United States Bank Account*, Document No. 57 in the Chapter 7 case and a similar motion in the Chapter 15 case at Document No. 127, seeking to have the funds being held in trust by the Monitor transferred to an account in a United States bank. The Court has scheduled argument on those motions for March 16, 2010.

Approximately CN \$58.8 million in claims have been asserted against Railpower Canada in accordance with the Canadian Claims Process Order. The Ontario Teachers Pension Plan (“OTPP”) is Railpower Canada’s largest shareholder (holding an interest of not less than 10%) and the primary secured creditor of Railpower Canada. OTPP is an investment fund based in Canada. OTPP has filed a claim of CN \$41,560,000 against Railpower Canada in accordance with the Canadian Claims Process Order, all of which remains outstanding. OTPP asserts a lien on all of Railpower Canada’s assets, with the exception of approximately CN \$1 million in cash.⁶

The Involuntary Chapter 7 Case

The Petitioning Creditors filed this involuntary Chapter 7 petition against Railpower U.S. on August 14, 2009. Canon Financial Services, Inc. joined as a Petitioning Creditor on September 9, 2009. The Petitioning Creditors represent more than 85 percent of the claims (in dollar amount and excluding the Intercompany Claim) that have been filed against Railpower U.S. The Intercompany Claim has not yet been disallowed. As such, if the Intercompany Claim is included in the claims filed against Railpower U.S., the Petitioning Creditors represent approximately 10 percent of the claims (in dollar amount) that have been filed against Railpower U.S. Union Pacific Railroad Company (“Union Pacific”), Railpower U.S.’s largest creditor (excluding the Intercompany Claim), has attended hearings and made representations to the Canadian Court in certain of the Canadian Proceedings. Union Pacific has timely filed a proof of claim against Railpower U.S. in the amount of US \$7,838,312.50. The proof of claim was subsequently amended to \$8,165,260.00.

An Order for Relief has not yet been entered in this Chapter 7 case. On September 8, 2009, the Monitor filed its *Motion* requesting dismissal of the Chapter 7 case.

DISCUSSION

The *Motion* asks the Court to dismiss this case pursuant to the abstention doctrine recognized in *11 U.S.C. §305(a)*, which provides:

§ 305. Abstention

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if -

- (1) the interests of creditors and the debtor would be better served by such dismissal or suspension; or
- (2) (A) a petition under section 1515 for recognition of a foreign proceeding has been granted; and
(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.

⁶The OTPP is currently seeking the right to intervene in both the Chapter 7 and Chapter 15 cases. See Document No. 70 and Chapter 15 case Document No. 134. In these motions the OTPP asserts that effective February 1, 2010 it was “given the right to directly collect all payments due and owing to Railpower Canada, including those owed by Railpower U.S. on the Intercompany Claim”, making it a creditor of Railpower U.S. The Court has scheduled argument on these motions for March 16, 2010.

The Monitor as the party seeking relief under *Section 305(a)* bears the burden of proof on the *Motion*. *In re Mylotte, David & Fitzpatrick*, 2007 WL 3027352 *5 (Bankr. E.D. Pa. 2007). Furthermore, the Monitor concedes that the decision whether to dismiss under *Section 305(a)* is committed to the sound discretion of the Court based upon the totality of the circumstances. *See Brief of the Monitor in Support of Voluntary Dismissal of the Case*, Document No. 55 at 2 (citing *In re O'Neil Village Pers. Care*, 88 B.R. 76, 79 (Bankr. W.D. Pa. 1988)).

As is apparent from the language of the statute quoted above, there are two “tests” for dismissal under *Section 305(a)* and they are written in the disjunctive, so that if either one is met it will suffice for a dismissal. The Monitor asserts that both tests are met, though it devotes most of its attention to a dismissal under *Section 305(a)(2)*. The Petitioning Creditors take the contrary position, arguing that neither of the tests can be met, and that the *Motion* should therefore be denied and the Chapter 7 case permitted to proceed. The Court will consider each of the prongs under *Section 305(a)* in turn.

Dismissal Under Section 305(a)(1)

Courts that have construed *Section 305(a)(1)* have generally agreed that abstention under this provision is an extraordinary remedy that is appropriate only where the court finds that both creditors and the debtor would be better served by a dismissal. *See In re Globo Comunicacoes e Participacoes S.A.*, 317 B.R. 235, 255 (S.D.N.Y. 2004) (citing cases). The test under *Section 305(a)(1)* requires that both creditors and the debtor benefit from a dismissal, not merely the application of a balancing test to determine whether dismissal is appropriate. *Id.* A dismissal pursuant to *Section 305(a)(1)* is to be granted only with “extreme caution.” *In re DGE Corp.*, 2006 WL 4452846 *3 (Bankr. D. N.J. 2006). The Monitor, as the Movant, bears the burden of showing that the interests of the debtor and the creditors would benefit from dismissal. *In re AMC Investors, LLC*, 406 B.R. 478, 488 (Bankr. D. Del. 2009).

After careful consideration of the filings and the arguments of the Parties, the Court concludes that the Monitor has not met its burden of proof under *Section 305(a)(1)*, and in particular, has not shown that a dismissal would benefit the creditors of Railpower U.S. The Court notes that the Petitioning Creditors here represent approximately 85%, by number and amount, of the noninsider, unsecured creditors of Railpower U.S. They also include large and sophisticated entities, for example the Union Pacific Railroad Company.

The Court starts with a presumption that these creditors have made a studied decision that their interests are best served by pursuing the involuntary Chapter 7 case in this Court rather than simply acquiescing in what happens in the Canadian Proceeding. Furthermore, the Petitioning Creditors have expressed a number of reasons for this conclusion, including a fear that their interests are not being sufficiently protected in the Canadian Proceeding, differences between Canadian and United States bankruptcy law that are detrimental to them, the existence of insufficiently explained post-petition asset transfers from Railpower U.S. to Railpower Canada which have occurred during the pendency of the Canadian Proceeding, and, the failure of the Monitor to aggressively pursue possible claims against Railpower Canada or insiders that could benefit the Railpower U.S. bankruptcy estate. The Petitioning Creditors contend that the continuance

of the present case and the appointment of a Chapter 7 trustee is the best remedy for these problems.

The Monitor advances a number of arguments in an attempt to show that dismissal would actually be in the best interest of the creditors. It claims that distributions in the Canadian Proceeding are “on the horizon” and a Chapter 7 trustee will just add another layer of expenses to dilute the available assets. However, it appears almost certain that the OTPP is going to challenge the treatment of the Intercompany Claim in the Canadian Proceeding regardless of what happens in this Court, so any “imminent” distribution in Canada appears unlikely. Additionally, contrary to the Monitor’s assertion, the appointment of a Chapter 7 trustee is not necessarily an expense-draining exercise, but rather in many instances, may be the most efficient way to proceed. If there are viable claims to be made against Railpower Canada or others, it certainly seems more likely that such claims will be pursued by a Chapter 7 trustee appointed by this Court rather than in the Canadian Proceeding.

The Monitor had also raised the specter that if this Chapter 7 case were not dismissed the OTPP would be likely to seek substantive consolidation of the Railpower Entity estates in the Canadian Proceeding or file a *Bankruptcy Insolvency Act* case against Railpower Canada, and possibly Railpower U.S., in Canada, which it predicted could be “catastrophic” for the Petitioning Creditors. *See* Monitor’s *Brief* in support of *Motion* at 12, Document No. 55. Conversely, the Monitor predicted that if the Chapter 7 case were dismissed, OTPP would not take any further action against the Railpower Entities, would not contest the disallowance of the Intercompany Claim, and would simply “close the file.” *Id* at 15. The Monitor’s prediction in this regard has not proven to be accurate.

On February 12, 2010, only a few days after the hearing on the *Motion*, and with no decision having been yet made on it by this Court, OTPP filed a motion in the Canadian Proceeding by which it seeks relief from stay so that it can file BIA petitions against both of the Railpower Entities. *See Petitioning Creditors’ Supplemental Brief in Opposition to Monitor’s Motion to Dismiss Involuntary Chapter 7 Petition*, Document No. 76. In this motion, the OTPP makes clear that it believes Canadian law applies to the distribution of Railpower U.S. assets and the Intercompany Claim should be allowed. A hearing on OTPP’s motion in the Canadian Proceeding has been set for March 17, 2010.

Although the Monitor had formerly contended that initiation of a BIA proceeding would be a catastrophe for the Petitioning Creditors, it now paints this latest development in a more positive light, saying that permission to file BIA proceedings will result in the appointment of a trustee, which is exactly what the Petitioning Creditors are seeking in this Chapter 7 case. Of course, such a trustee would be operating in the context of the Canadian law, under which the Petitioning Creditors contend their interests are not being adequately protected, especially regarding treatment of the Intercompany Claim. Given the July 8, 2009 Order by Judge Bentz in the Chapter 15 case in which he reserved the right to adjudicate the treatment of the Intercompany Claim if noninsider creditors are not paid 100%, the Court does not share the Monitor’s view that the appointment of a trustee under the BIA would benefit the Petitioning Creditors.

The Court therefore concludes that the Monitor has failed to meet its burden of proof as to dismissal of the case under *Section 305(a)(1)*.

Dismissal Under Section 305(a)(2)

A request for dismissal under *Section 305(a)(2)* is geared specifically to cases where there is also a pending Chapter 15 case involving the debtor. Chapter 15 was added to the *Bankruptcy Code* as part of the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* (“BAPCPA”), *Pub.L. No. 109-8, 119 Stat.23*, so it is still fairly new, with little in the way of a developed case law.⁷

Chapter 15 largely incorporates the *Model Law on Cross-Border Insolvency* (“Model Law”) promulgated by the *United Nations Commission on International Trade Law* (“UNCITRAL”) in May 1997. *See* H.R. Rep. 109-31(I) at 105, reprinted at 2005 U.S.C.C.A.N. 88, 169. The Model Law and an accompanying Report and Guide published by UNCITRAL to accompany the Model Law are available at <http://www.uncitral.org/uncitral/en/commission/sessions/30th.html>. *See also*, A. Ranney-Marinelli, *Overview of Chapter 15 Ancillary and Other Cross-Border Cases*, 82 Am. Bankr. L. J. 269 (2008), for a helpful general discussion of Chapter 15.

There are two discrete elements to the test for dismissal set forth under *Section 305(a)(2)*. The first element is that a petition under *11 U.S.C. §1515* for recognition of a foreign proceeding has been granted. Both sides agree that this element has been met in the form of Judge Bentz’s March 6, 2009 *Order*; Document No. 3, in the Chapter 15 Case.⁸ Therefore, attention is centered on the second element, *i.e.*, whether the purposes of Chapter 15 would be best served by a dismissal or suspension of this case.

⁷ Prior to the enactment of Chapter 15 in *BAPCPA*, much the same function was served by former *11 U.S.C. §304* (repealed), entitled “Cases ancillary to foreign proceedings”, albeit in a much less comprehensive manner.

⁸ At the argument on the *Motion*, Counsel for the Petitioning Creditors commented in passing that the Court has the power to revisit the recognition issue if it is shown that the grounds for granting recognition were fully or partially lacking or have ceased to exist. *See 11 U.S.C. §1517(d)*. The Court is aware of that power and does have some concerns about the propriety of continuing to recognize the Canadian Proceeding for Railpower U.S. as a “foreign main proceeding” (as opposed to a “foreign nonmain proceeding”) in light of information that has come to light, or at least more into focus, since Judge Bentz issued his order. For instance, in recently filing their *Supplemental Brief in Opposition to Monitor’s Motion to Dismiss Involuntary Chapter 7 Petition*, Document No. 76, the Petitioning Creditors included as an exhibit, an excerpt from the 2007 Annual Report of the Railpower Entities which states that Railpower U.S. “has its principal office in Erie, Pennsylvania”. This seems to conflict with the statement made to Judge Bentz at the hearing on May 5, 2009 that the “principal place of business [of Railpower U.S.] is in Brossard, Quebec.” Tr. at 6, Ch. 15 case Document No. 100.

It would seem to the Court that the undisputed facts that Railpower U.S. is an American corporation incorporated in the State of Washington, with a registered office address in Seattle, and with substantially all of its employees, assets, customers and business operations located in this country, do at least on their face raise an issue of whether the company’s “center of main interests” should be considered as Canada, a necessary precondition for the Canadian Proceeding to be recognized here as a “foreign main proceeding.” *See 11 U.S.C. §§1502(4), (5), 1516(c)* (in absence of contrary evidence, debtor’s registered office is presumed to be its center of main interests). Unfortunately, Chapter 15 does not provide a definition for the key term “center of main interests”. The Court’s limited research indicates that it was intended to be somewhat akin to the concept of “principal place of business,” to use a term more familiar in American law, and that the foreign representative seeking recognition would have the burden of proof to show the foreign country is the debtor’s center of main interests. *See, e.g., In re Tri-Cont’l. Exchange, Ltd.*, 349 B.R. 627 (Bankr. E.D. Cal. 2006). But, *c.f., Hertz Corp. v. Friend*, ___ U.S. ___, 2010 WL 605601 (February 23, 2010) (resolving a split among the Circuits and holding that “principal place of business” for federal diversity purposes under *28 U.S.C. §1332* is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities).

Ultimately, the Court does not believe that the question of whether the Canadian Proceeding should be properly characterized as a foreign main proceeding or a foreign nonmain proceeding is critical to a decision on the *Motion*, so it will not revisit that issue at this time. However, the Court is aware of the issue and, depending on future events in the cases here or in Canada, could decide that another look is required.

Chapter 15 is unique among the various chapters in the Bankruptcy Code in that Congress has actually spelled out the purposes behind the enactment of the Chapter in the statute itself. *11 U.S.C. §1501(a)* provides:

Sec. 1501. *Purpose and scope of application*

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of -

(1) cooperation between -

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor's assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

11 U.S.C. §1501(a). When a statute includes an explicitly-stated purpose it should be interpreted consistently therewith even if another canon of statutory construction might seem to point in a different direction. *Lopez v. ML #3, LLC*, 607 F. Supp.2d 1310, 1313 (N.D. Fla. 2009). The Court will therefore first separately consider whether a dismissal or suspension would best serve each of the stated purposes of Chapter 15 prior to reaching its overall conclusion.

(1) Cooperation with the Canadian court

The Parties have referred to this statutory purpose as the promotion of “comity” and the Court agrees that is an apt, shorthanded way of stating this element. However, the Parties disagree on whether a dismissal of the Chapter 7 case would advance the goal of comity.

The Monitor’s argument is essentially that comity requires, or at least strongly suggests, that deference should be given to a foreign insolvency proceeding so long as that proceeding is governed by standards of fundamental fairness that allow the assets of a debt or to be dispersed in an equitable, orderly, and systematic manner, even if the laws in that foreign proceeding would result in a distribution to creditors that would be different than that provided by the *Bankruptcy Code* under American law. The Monitor has cited a number of cases, both pre- and post-Chapter 15, in which United States courts have deferred to foreign insolvency proceedings (including specifically Canadian proceedings) in accordance with the principle of comity. *See, e.g., Clarkson Co., Ltd., v. Shaheen*, 544 F.2d 624 (2nd. Cir. 1976), *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F. Supp. 1255 (S.D.N.Y. 1979), *In re Ionica, PLC*, 241 B.R. 829 (Bankr. S.D.N.Y. 1999), *In re Atala Shipping A/S*, 404 B.R. 726 (Bankr. S.D.N.Y. 2009), *In re Davis*, 191 B.R. 577 (Bankr. S.D.N.Y. 1996).

The Petitioning Creditors take a narrower view of comity, arguing that it respects the interest of a foreign nation regarding application of its own laws to its own citizens. In support of this view, at the hearing on the *Motion*, Counsel for the Petitioning Creditors pointed out that all of the cases cited by the Monitor in which a foreign insolvency proceeding was shown deference by a United States court based on principles of comity involved foreign debtors, making those cases distinguishable from the present case where the Alleged Debtor, Railpower U.S., is a United States corporation.⁹

The Petitioning Creditors also rely on *Remington Rand Corporation-Del. v. Business Sys. Inc.*, 830 F.2d 1260 (3rd. Cir. 1987) in which the court made a number of statements that would seem to comport more closely with their view of comity than with that of the Monitor. For instance, the *Remington* court stated:

In the foreign bankruptcy context, comity is based on the additional rationales that the foreign debtor's assets will be distributed in an equitable fashion..., and that one who conducts his affairs with foreign corporations subjects himself to foreign bankruptcy laws.

830 F.2d at 1267-68 (citations omitted). Later in its opinion the *Remington* court stated:

American courts have recognized the interest of foreign courts in liquidating or winding up the affairs of their own domestic business entities. Creditors of an insolvent foreign corporation may be required to assert their claims against a foreign bankrupt before a duly convened foreign bankruptcy tribunal.

830 F.2d at 1271.

Finally, the Petitioning Creditors argue that no special deference is due in the present case, where the Canadian court would be applying Canadian law in an insolvency regarding a United States company wherein the funds to be distributed were derived primarily from the sale of assets that were located in this country.

The Court finds that the Petitioning Creditors' have presented a compelling argument on this point. It is not readily apparent why a court in the United States should voluntarily restrain itself from acting purely out of a sense of comity in these circumstances.

The Monitor responds by quoting from a venerable opinion of the Supreme Court in which that Court stated that comity "is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, *or of other persons who are under the protection of its laws.*" *Hilton v. Guyot*, 159 U.S. 113, 164 (1895) (emphasis added). The Monitor appears to read the emphasized language as saying that comity is due here because Railpower U.S. is a "person" under the protection of the laws of Canada, even though it is not a citizen of that country. The Court disagrees with that reading of the language in *Hilton*. It seems more plausible that the term "its laws" in the

⁹ See *Transcript of Hearing*, February 9, 2010, at 53, Document No. 73. Counsel for the Petitioning Creditors continued to point out:

"There is not a single case that the Monitor cited where a U.S. Court granted comity to adjudicate a bankruptcy case of a U.S. company in a foreign jurisdiction. He didn't find it, I didn't find it. So this is a different animal, Your Honor."

Counsel for the Monitor had an opportunity to rebut that contention but did not do so.

quotation from the case is actually a reference to the laws of the court in which the question of comity is under consideration, not the foreign court.

The Monitor also fails to give sufficient acknowledgment to the fact that comity is not just a one-way street. Just as this Court will defer to a foreign court if the circumstances require it, so too should a foreign court defer to this Court when appropriate. In this case it was clear from the start that Judge Bentz expressed reservations about the distribution of Railpower U.S. assets in the Canadian Proceeding which is why every key order he entered in the Chapter 15 case included a provision to the effect that Railpower U.S. assets were not to be distributed in the Canadian Proceeding without the prior approval of this Court. The Monitor has non explained how this requirement is to be met unless the Canadian court shows comity to this Court.

The Monitor is on firmer ground in pointing out that this Court previously recognized the Canadian Proceeding as a “foreign main proceeding” without objection by the Petitioning Creditors. This is arguably some evidence of a tacit acceptance by the Petitioning Creditors to the contention of the Monitor that the “center of main interest” of Railpower U.S. is in Canada, which of course tends to undercut their argument that no deference should be paid to the Canadian Proceeding under the comity principle because Railpower U.S. is a United States company, with its assets in this country, etc. As indicated above (see n. 8 *supra*), the Court does have some question as to whether that recognition should continue.¹⁰

To sum up, the Court finds that application of the underlying law on the principle of comity as considered without regard to the events occurring in the Chapter 15 case, lead to a finding against deferral to the Canadian Proceeding, and thus a finding against dismissal of the Chapter 7 case. The previous recognition by this Court of the Canadian Proceeding as a foreign main proceeding in the Chapter 15 case is a factor that goes the other way, though it is not enough to completely overcome the initial conclusion based on the law of comity. Thus, although the facts of the case do not support an absolutely clear conclusion on the point, the Court finds that, on balance, the purpose of comity, or cooperation underlying Chapter 15, is not likely to be advanced by a dismissal of the Chapter 7 case.

(2) Legal certainty for trade and Investment

The Parties disagree with respect to this factor as well. The Monitor sets forth the view that a dismissal of the Chapter 7 case would benefit this purpose because if the case is permitted to proceed “parties will likely become uncertain and confused as to which insolvency proceeding they must comply.” The Petitioning Creditors respond by arguing that creditors and other parties who dealt with Railpower U.S. would reasonably expect that a liquidation of the company would occur in this country because it is an American corporation and most of its operations, assets, and customers were here. Both sides make valid points on this issue, but once again, it appears that the Petitioning Creditors have the stronger argument.

It does seem reasonable to conclude that creditors or investors dealing with a company from a particular country, and with most of its assets and operations in that same country,

¹⁰ Nevertheless, unless and until such time as the recognition is withdrawn by the Court, its existence is a factor that weighs in favor of the Monitor’s position that dismissal is appropriate to further the Chapter 15 purpose of comity.

would anticipate a liquidation of the company would also occur there. That is not to say that such a liquidation can never occur in a different country, merely that the normal expectation (existing at the time the decision is made to transact business with the company) is that it would not. A refusal to dismiss the present case would thus further the purpose of providing some legal certainty, both in this case and for the guidance of parties in the future, by respecting this normal expectation. On the other hand, if the case were dismissed it would be in response to the particular facts presented, and would offer little or no guidance for parties in future cases.

(3) Fair and efficient administration/ protection of interests

Along with the “cooperation” factor, this one is perhaps the most significant to the Court’s determination. The Petitioning Creditors argue strenuously that their interests are not being adequately protected in the Canadian Proceeding and that it is necessary to allow the present case to proceed so that a trustee can be appointed. They cite a number of specific ways in which they contend this alleged lack of protection has been manifested, including that:

- An irreconcilable conflict of interest exists between Railpower U.S. and Railpower Canada yet the same single employee gives instructions to counsel on behalf of both entities in the Canadian Proceeding.
- A net of at least CN \$700,000 has been transferred *after* the petition date from Railpower U.S. to Railpower Canada, something which Petitioning Creditors contend is a violation of this Court’s March 6, 2009 Order in the Chapter 15 case, Document No. 23.¹¹
- The Monitor has not done anything in the Canadian Proceeding to attempt to recover these post-petition payments or to assert other potential claims against Railpower Canada or insiders.
- Even though the Monitor has indicated it will seek disallowance of the Intercompany Claim that Railpower Canada has asserted against Railpower U.S., Railpower Canada can contest such disallowance and the status of the doctrines of recharacterization of debt as equity and equitable subordination in the Canadian Proceeding is uncertain.
- The Intercompany Claim, if allowed, will result in approximately 90% of Railpower U.S.’s assets going to Railpower Canada, and ultimately to its largest shareholder OTPP, whereas Railpower U.S.’s other creditors will receive less than a 2% dividend.

¹¹ At the hearing on the *Motion*, Counsel for the Petitioning Creditors also raised an issue about another post-petition transfer of \$127,000 from Railpower U.S. to Railpower Canada for payment of professional fees of which he recently became aware. He questioned whether such payment was in violation of the March 6, 2009 or May 28, 2009 Orders in the Chapter 15 Case. Counsel for the Monitor explained that this transfer occurred as a “reimbursement” because Railpower U.S.’s bankruptcy-related legal expenses had inadvertently been paid out of Railpower Canada funds. Counsel for the Monitor stated that he had advised Judge Bentz of the possibility that administrative claims could be paid out of the proceeds from the sale of assets and it was understood this such would not require prior approval of this Court. The transcript of the May 28, 2009 sale motion hearing confirms that to be an accurate characterization of the hearing. See Tr., Document No. 135 in the Chapter 15 Case at 18-20. As such, this transfer cannot be considered a violation of the Orders, although it would have been preferable for the Monitor to have advised this Court of the transfer out of courtesy, if nothing else.

- The OTTP has recently filed documents in the Canadian Proceeding indicating it is seeking relief from stay so it can file *Bankruptcy and Insolvency Act* proceedings against the two Railpower Entities.

The Petitioning Creditors have raised valid concerns about whether their interests are being sufficiently protected in the Canadian Proceeding which have not been addressed by the Monitor to the Court's satisfaction.

It was clear from the outset of the Chapter 15 case that this Court had some concerns about the protection of the non-insider creditors of Railpower U.S. in light of the large Intercompany Claim and the possibility of a substantive consolidation of the estates of the Railpower Entities in the Canadian Proceeding. That was the reason for the reservation of the right under *11 U.S.C. §1521(b)* retained in the March 6, 2009 *Order* for this Court to review any proposed distribution to creditors to insure that the interests of the creditors in the United States were sufficiently protected. Chapter 15 case, Document No. 23 at 4. That concern was again noted at the hearing on the motion to approve the sale of Railpower U.S. assets, with Counsel for the Monitor stating that a provision had been put in the proposed sale order preventing any distributions to unsecured creditors until further order of this Court "because of some of the concerns that you [i.e., Judge Bentz] raised earlier in the case." *Tr. of 5/28/2009 hearing at 19*, Chapter 15 case Document No. 135.

The Court's misgivings as to the fairness of the Canadian Proceeding *vis-a-vis* the creditors of Railpower U.S. have been heightened by the recent revelation and acknowledgment by the Monitor of the large net post-petition transfer from Railpower U.S. to Railpower Canada. While the Court is not prepared at this time to firmly conclude that the transfer was done in violation of the Orders in the Chapter 15 case, the Petitioning Creditors' argument to that effect is certainly not frivolous. Since the Monitor is by its own admission a "neutral" party in the Canadian Proceeding, the Court is left to wonder who is left to advocate for the interests of the creditors as against Railpower Canada and the OTTP.

As a counterpoint against these reasons for concern about the fairness to creditors, the Monitor had until recently been able to point to a perceived significant advantage in time and efficiency to be gained by deferring to the Canadian Proceeding. However, recent events have called even that into substantial doubt. First, the Court was informed at the recent hearing that the notice of disallowance of the Intercompany Claim has not yet been issued in the Canadian Proceeding. It appears virtually certain that Railpower Canada and/or the OTTP will challenge that disallowance, thereby indefinitely delaying any possible distribution to creditors. Second, as indicated previously, contrary to the prediction by the Monitor that the OTTP would not attempt to file *BIA* petitions against the Railpower Entities so long as the present Chapter 7 case were dismissed, the OTTP in fact took that step on February 12, 2010, three days after the hearing on the *Motion*. Any suggestion that the creditors would enjoy a quick distribution if only this Court agrees to defer to the Canadian Proceeding by dismissing the present action is thus untenable.

In light of the foregoing, the Court concludes that the Monitor has failed in its burden of showing that a dismissal of the present case would advance the important interest of protection of the Petitioning Creditors. In fact, to the contrary, it appears to the Court that a dismissal would actually have the opposite effect.

(4) Protection and maximization of debtor assets

The Monitor argues that a denial of the *Motion* will create a new and unnecessary layer of Chapter 7 administrative fees, including trustees' fees, attorneys' fees and other expenses, that will only serve to dilute the funds available for distribution to creditors. Petitioning Creditors counter that the appointment of a Chapter 7 trustee would have offsetting savings because the Monitor and its Canadian and U.S. counsel and the Railpower Entities' Canadian counsel will no longer be charging fees to the Railpower U.S. estate. They additionally note that Chapter 7 professional fees are subject to review and approval by the Court, something which is apparently not true under Canadian insolvency law.

At the hearing on the *Motion* the Court advised the Parties that, based on its personal experience, it gives little credence to the contention that a Chapter 7 proceeding will necessarily add costs, thereby reducing the assets of Railpower U.S. that are available for distribution to creditors. Although it is impossible to predict with certainty in advance which would be the least costly alternative, the Court believes it is at least equally likely that allowing this case to proceed will result in streamlining efficiencies that will benefit the estate.

(5) Rescue of financially troubled businesses

This factor is of no relevance under the circumstances of the *Motion* because the assets of Railpower U.S. have already been liquidated and the company is no longer engaged in business operations. A decision either to dismiss the case or allow it to proceed will have no impact on rescuing the business or protecting investment or employment.

CONCLUSION

For the reasons stated above, the Court finds that the Monitor has failed to meet its burden of proof under either prong of *Section 305(a)* and accordingly, its *Motion* will be denied. The Court wishes to stress that its decision should in no way be read as a criticism of the Canadian Proceeding or Canadian insolvency law in general. The Court merely finds that under the specific facts of this case, and in light of the current procedural posture of the Canadian Proceeding, dismissal of this case involving an American debtor whose assets and creditors were primarily in this country, and with this Court's prior reservations placed on the record directed at protecting the dividend ultimately paid to the Petitioning Creditors, is not warranted.

The recognition of a foreign proceeding in a Chapter 15 case was never intended to be an automatic bar to additional proceedings being brought in the United States that might, to some extent, conflict with or overlap the foreign proceeding. This should be apparent from the fact that a request for dismissal under *Section 305(a)(2)* is subject to the discretion of the bankruptcy court after weighing the purposes of Chapter 15. See also, *UNCITRAL Guide to the Model Law at 9* ("[r]ecognition of foreign proceedings does not prevent local creditors from initiating or maintaining collective insolvency proceedings in the enacting state.").

The Court further recognizes that the Canadian Proceeding is ongoing, and future developments occurring there could conceivably change the analysis under *Section 305(a)*. The denial of the *Motion* will therefore be without prejudice to refile and renewing a request for relief in the event of any material change in circumstances.

Finally, although the Alleged Debtor would normally have 14 days to file an *Answer* to the Involuntary Petition following denial of a motion to dismiss, see *Fed.R.Bankr.P. 1011(c), 7012(a)*, the Court does not believe that much time is necessary in the circumstances presented. The case has already received extensive attention by the Parties and the Court, and, if an *Answer* is to be filed contesting the Involuntary Petition containing allegations not already addressed in the *Motion*, it should be fairly easy to prepare and not burdensome to file in the reduced time period. Accordingly, the Court will shorten the time for filing an *Answer* to one week.

An appropriate *Order* will follow.

ORDER

AND NOW, this *5th* day of *March, 2010*, based upon the findings of fact and conclusions of law issued pursuant to *Fed.R.Bankr.P. 7052* which is made applicable to contested matters by *Fed.R.Bankr.P. 9014*. as set forth in the above *Memorandum Opinion*, it is hereby **ORDERED, ADJUDGED and DECREED** that the Monitor's *Motion to Dismiss Involuntary Chapter 7 Case* filed at Document No. 20 is **DENIED**, without prejudice.

It is **FURTHER ORDERED** that if the Monitor, acting on behalf of the Alleged Debtor, intends to file an *Answer* to the *Involuntary Petition* it shall do so **on or before March 12, 2010**.

/s/ Thomas P. Agresti, Chief Judge
United States Bankruptcy Court

ACTION TO QUIET TITLE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA
NO. 13415-2007

GERALD C. MUNSCH AND
CAROLYN J. MUNSCH, Plaintiffs
v.

ANNA MACHINSKI, Defendant
LEGAL NOTICE

ACTION TO QUIET TITLE

To: Anna Machinski, her successors
and/or assigns, Defendant

You have been sued in Court. If you wish to defend against the claims set forth in the Complaint you must take action within twenty (20) days after this publication by entering a written appearance personally or by an attorney and filing in writing with the Court your defenses or objections in the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for the relief requested by the Plaintiffs. You may lose money, property or other rights important to you. You should take this notice to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone

Lawyers Referral Service
PO Box 1792, Erie, PA 16507
(814) 459-4411

Mon. - Fri. 8:30 a.m. to 3:00 p.m.
to find out where you can get
legal help.

The Complaint, filed in the Court of Common Pleas of Erie County, Pennsylvania at No. 13415 - 2007, alleges that the Plaintiffs, Gerald C. Munsch and Carolyn J. Munsch, are the owners of the following parcel of property:

All that certain piece or parcel of land situate in the City of Erie, County of Erie and State of Pennsylvania, bounded and described as follows, to-wit: Beginning in the South line of 26th Street, as now laid out, at a point sixty (60) feet east of the southeast corner of Cherry and 26th Streets; thence Southwardly parallel with Cherry Street one hundred twenty (120) feet to a point; thence Eastwardly parallel

with the south line of 26th Street forty-five (45) feet to a point; thence Northwardly parallel with Cherry Street one hundred twenty (120) feet to a point on the south line of 26th Street; thence Westwardly along the south line of 26th Street forty-five (45) feet, more or less to the place of beginning; having erected thereon a 2½ story dwelling commonly known as 555 West 26th Street, Erie, Pennsylvania. Said parcel being further identified as Erie County Tax Index No. (19) 6045-119.

The Court has ordered that notice to this action may be given by publication so that title to the property may be adjudicated. The Complaint requests the Court to decree that title to the property is free and clear of any claim or interest of any of the said Defendant, her successors and/or assigns, and that said Defendant be barred from asserting any right, title and interest in and to the property inconsistent with the interest and claim of the Plaintiffs unless an action of ejectment is brought within thirty (30) days of the Court's Order.

Richard A. Blakely, Esq.

Quinn, Buseck, Leemhuis, Toohey
& Kroto, Inc.

2222 West Grandview Boulevard
Erie, PA 16506-4508

Mar. 12

ACTION TO QUIET TITLE

IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA

Action to Quiet Title No. 15622-09

MATTHEW T. PRIOR, Plaintiff

v.

NANCY TAMMARO, ESTATE
OF NANCY TAMMARO, her
heirs, successors, & assigns,

Defendants

TO: NANCY TAMMARO,
ESTATE OF NANCY TAMMARO,
her heirs, successors and assigns
and any and all persons claiming by
or through them, Defendants

NOTICE

YOU HAVE BEEN SUED IN
COURT. If you wish to defend
against the claims set forth in the
following pages, you must take

action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or 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 or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

The complaint, filed in the Court of Common Pleas to the above term and number alleges that the Plaintiff is the absolute indefeasible owner of a parcel of property bounded and described as follows:

All that certain piece or parcel of land situate in the City of Erie, County of Erie and State of Pennsylvania, bounded and described as follows, to-wit;
BEING Lots No. Sixty-five (65) and No. sixty-six (66) in Brandes Addition of the City of Erie as recorded in Erie County, Pennsylvania Map Book 1, Page 317.

Having erected thereon a one and one-half story frame dwelling with a two-car attached garage being commonly known as 2009 Pennsylvania Avenue, Erie, Pennsylvania 16503 and being further identified by Erie County Tax Index No. (15) 2054-111. Being the same premises conveyed to the late Nancy J. Borland and her late husband, Robert K. Borland, Sr., by Deed dated January 13, 1982, and recorded January 14, 1982, in Erie County Deed Book 1444 at Page 535.

Robert K. Borland, Sr. died on November 9, 1992 as evidence by the Proof of Death previously filed with the Register of Wills of Erie County, Pennsylvania.

The Court has ordered that Notice to this action may be given by publication so that the title to the property may be adjudicated. The Complaint requests the Court to decree that the title to said property is free and clear of any claim or interest of NANCY TAMMARO, her heirs, successors, & assigns and any and all persons claiming by or through them, Defendants, and that all persons claiming title through or under them be barred from asserting any right, title or interest in and to the property inconsistent with the interest and claim of the Plaintiff, MATTHEW T. PRIOR.

Lawyers Referral Service
PO Box 1792
Erie, PA 16507
(814) 456-4411

David R. Devine, Esquire
201 Erie Street
Edinboro, PA 16412
(814) 734-5032
Ct. I.D. No. 25024

Mar. 12

CERTIFICATE OF AUTHORITY

Notice is hereby given that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on February 17, 2010, by Protective Sports Equipment Inc., a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at c/o Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988. The registered office in Pennsylvania is located at 12069 Lay Road, Edinboro, PA 16412.

Mar. 12

CHANGE OF NAME NOTICE IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

DOCKET NO. 10897-10

IN RE: Jennifer Leigh Koestel

Notice is hereby given that on the 1st day of March, 2010, a Petition was filed in the above named Court, requesting an order to change the name of Jennifer Leigh Koestel to Jennifer Leigh Shoffner.

The Court has fixed the 13th day of April, 2010, at 9:00 a.m. in Courtroom No. 1 on the second floor of the Erie County Court House as the time and place for the hearing on said Petition, when and where all interested persons may appear and show cause, if any, why the prayers of the Petitioner should not be granted.

Mar. 12

LEGAL NOTICE

NOTICE OF PETITION AND
HEARING TO TERMINATE

PARENTAL RIGHTS
PENDING ADOPTION

TO: Christopher Jerome Folden.
DOB: 4/2/1983. White Male;
Brown Hair; Brown Eyes; 6 feet 2
inches; 190lbs; regarding Devon
Folden; DOB: 8/2/2004; Birthplace,
Titusville FL.

A petition to terminate parental rights pending adoption has been filed. A copy of the petition is being served with this notice. There will be a hearing on the petition to terminate parental rights pending adoption **ON APRIL 5, 2010 AT 9:00 AM BEFORE JUDGE CRAWFORD LOCATED AT VIERA MOORE JUSTICE CENTER LOCATED AT 2825 JUDGE FRAN JAMIESON WAY.** The Court has set aside 15 minutes for this hearing.

Under Section 63.089, Florida Statutes, failure to timely file a written response to this notice and the petition with the Court and to appear at this hearing constitutes grounds upon which the Court shall end any parental rights you may have or assert regarding the minor child.

Mar. 5, 12, 19, 26

SHERIFF SALES

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

March 19, 2010

at 10:00 AM

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

Bob Merski

Sheriff of Erie County

Feb. 26 and Mar. 5, 12

SALE NO. 1

Ex. #13720 of 2009

Beneficial Consumer Discount Company d/b/a Beneficial Co. of Pennsylvania, Plaintiff

v.

**Brian Charles Keinath,
Defendant(s)**

LEGAL DESCRIPTION

ALL that certain piece or parcel of land situate in the Township of Millcreek, County of Erie and State of Pennsylvania bounded and described as follows, to-wit:
BEING Lot No. 40 of MONTCLAIR ESTATE SUBDIVISION, as recorded in the Recorder's Office of Erie County, Pennsylvania, in Map Book 2 at page 478, said lot being 65 feet front on the west side

of Greeley Avenue and extending westwardly in uniform depth of 138 feet more or less and having erected thereon a one story frame bungalow and garage commonly known as 2710 Greeley Avenue, Erie, Pennsylvania, 16506.

Being further described by Erie County Tax Index No. (33) 70-2780-600.

Being the same premises conveyed by Dorothy E. Waidley to Joan E. Kelly and Robert W. Waidley by deed dated May 18th, 1990 and recorded May 22nd, 1990 in Erie County Deed Book 123 at page 253. First party has no actual knowledge of any hazardous waste, as defined in Act No. 1980-97 of the Commonwealth of Pennsylvania having been or presently being disposed of on or about the property described in this deed.

Subject to all restrictions, easements, rights-of-way, building lines, leases and oil gas leases of record and to all easements and rights-of-way visible and discoverable upon an inspection of the premises.

BEING KNOWN AS: 2710 Greeley Avenue (Millcreek Township), Erie, PA 16506

PROPERTY ID NO.: (33) 70-278-6
TITLE TO SAID PREMISES IS VESTED IN Brian Charles Keinath, single by Deed from Joan E. Kelley, single, and Robert W. Waidley, married dated 2/7/01 recorded 2/7/01 in Deed Book 751 page 1783.

Udren Law Offices, P.C.

Mark J. Udren, Esq.

Attorney for Plaintiff

Woodcrest Corporate Center

111 Woodcrest Road, Suite 200

Cherry Hill, NJ 08003-3620

(856) 669-5400

Feb. 26 and Mar. 5, 12

SALE NO. 3

Ex. #14744 of 2009

Northwest Savings Bank

v.

Larry W. Kinney, II

Sabra L. Kinney

SHERIFF'S SALE

By virtue of a Writ of Execution filed at No. 14744-2009, Northwest Savings Bank vs. Larry W. Kinney,

II, and Sabra L. Kinney, owners of property situate in Union Township, Erie County, Pennsylvania being: 10489 Concord Road, Union City, Pennsylvania.

6.76 Acres

Assessment Map Number:
(43) 17-49-1

Assessed Value Figure: \$159,800.00
Improvement Thereon: Residence

Kurt L. Sundberg, Esq.

Marsh Spaeder Baur Spaeder

& Schaaf, LLP

Suite 300, 300 State Street

Erie, Pennsylvania 16507

(814) 456-5301

Feb. 26 and Mar. 5, 12

SALE NO. 4

Ex. #14888 of 2009

**FIRST NATIONAL BANK OF
PENNSYLVANIA, Plaintiff**

v.

MARY B. COVINGTON and

DARLENE B. HESSER, also

known as DARLENE B. JAFFE,

also known as

BRIGITTE JAFFE, Defendants

SHORT DESCRIPTION

ALL that certain piece or parcel of land situate in the Township of Greene, County of Erie and Commonwealth of Pennsylvania, having erected thereon a ranch style home with attached two car garage further identified by Erie County Assessment Index No. (25) 3-23-3.03 and commonly known as 5263 Knoyle Road, Erie, Pennsylvania 16510.

Susan Fuhrer Reiter

Supreme Court ID No. 43581

MacDonald, Illig, Jones &

Britton LLP

100 State Street, Suite 700

Erie, Pennsylvania 16507-1459

(814) 870-7760

Attorneys for Plaintiff

Feb. 26 and Mar. 5, 12

SALE NO. 5

Ex. #12365 of 2009

**American General Consumer
Discount Company**

v.

Brian S. Henning &

Michelle A. Henning

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 2009-12365;

American General Consumer Discount Company vs. Brian S. Henning & Michelle A. Henning, owner(s) of property (2 parcels) situated in Summit Township, Erie County, Pennsylvania being 1101 Eller Lane, Erie, Pennsylvania 16509

Parcel 1 contains 17 acres of land and parcel 2 contains 44.1 acres of land

Assessment Map Number: Parcel 1 - 40005019006400; Parcel 2 - 40005019006800

Assessed Value Figure: Parcel 1 - \$208,656.00; Parcel 2 - \$44,478.00

Improvement thereon: Parcel 1 - Frame bungalow with full basement; Parcel 2 - None

William T. Morton, Esq.
Attorney for the Plaintiff

3213 West 26th Street

Erie, PA 16506

(814) 836-1011

Feb. 26 and Mar. 5, 12

SALE NO. 6

Ex. #13515 of 2009

**U.S. Bank National Association,
as Trustee, on Behalf of the
Holders of the Home Equity
Asset Loan Trust 2005-1
Home Equity Pass-Through
Certificates, Series 2005-1**

v.

**Christopher A. Baldwin and
Karen R. Baldwin
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 13515-09, U.S. BANK NATIONAL ASSOCIATION, as Trustee, on Behalf of the Holders of the Home Equity Asset Loan Trust 2005-1 Home Equity Pass-Through Certificates, Series 2005-1 v. CHRISTOPHER A. BALDWIN and KAREN R. BALDWIN, Owners of the property situated in Borough of Lake City being known as 245 Edge Park Drive, Lake City, PA.

Tax Map Number: 28002002001200

Assessed Value Figure: \$80,980.00

Improvements thereon: Detached, Single Story Split Tri-Level Single Family Residential Dwelling

Barbara A. Fein, Esquire

The Law Offices of
Barbara A. Fein, P.C.

425 Commerce Drive, Suite 100

Fort Washington, PA 19034

(215) 653-7450

Feb. 26 and Mar. 5, 12

SALE NO. 7

Ex #14847 of 2009

AMC Financial Holdings, Inc.

v.

**Walter Rotthoff and
Virginia Lee Rotthoff a/k/a
Virginia L. Rotthoff
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 14847-09, AMC FINANCIAL HOLDINGS, INC.

v. WALTER ROTTHOFF and VIRGINIA LEE ROTTHOFF a/k/a VIRGINIA L. ROTTHOFF, Owners of the property situated in Township of Venango being known as 13828

Route 8/89, Wattsburg, PA.

Tax Map Number: 44021036003800

Assessed Value Figure: \$127,600.00

Improvements thereon: Detached, One Story Ranch-style Single Family Residential Dwelling

Barbara A. Fein, Esquire

The Law Offices of

Barbara A. Fein, P.C.

425 Commerce Drive, Suite 100

Fort Washington, PA 19034

(215) 653-7450

Feb. 26 and Mar. 5, 12

SALE NO. 8

Ex. #15041 of 2009

WELLS FARGO BANK, N.A.,

Plaintiff

v.

JOHN D. GREER Defendant(s)

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 15041-09

WELLS FARGO BANK, N.A. vs. JOHN D. GREER

Amount Due: \$102,407.97

JOHN D. GREER, owner(s) of property situated in the TOWNSHIP OF NORTH EAST, Erie County, Pennsylvania being 11352 EMILY DRIVE, NORTH EAST, PA 16428-1846

Dimensions: 80 x 171.03

Acreage: 0.7379

Assessment Map number: 37-039-090.0-004.00

Assessed Value: \$82,140.00

Improvement thereon: residential

Phelan Hallinan & Schmieg, LLP

One Penn Center at Suburban

Station, Suite 1400

1617 John F. Kennedy Boulevard

Philadelphia, PA 19103-1814

(215) 563-7000

Feb. 26 and Mar. 5, 12

SALE NO. 9

Ex. #12516 of 2009

**CHASE HOME FINANCE LLC,
Plaintiff**

v.

ROBERT D. ROUECHE,

Defendant(s)

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 12516-09

CHASE HOME FINANCE LLC vs. ROBERT D. ROUECHE

Amount Due: \$74,750.24

ROBERT D. ROUECHE, owner(s) of property situated in TOWNSHIP OF CITY OF ERIE, Erie County, Pennsylvania being 1727 WEST 21ST STREET, ERIE, PA 16502-2120

Dimensions: 75 x 135.1

Acreage: 0.2326

Assessment Map number: 19-062-008.0-318.00

Assessed Value: \$62,600.00

Improvement thereon: residential

Phelan Hallinan & Schmieg, LLP

One Penn Center at Suburban

Station, Suite 1400

1617 John F. Kennedy Boulevard

Philadelphia, PA 19103-1814

(215) 563-7000

Feb. 26 and Mar. 5, 12

SALE NO. 10

Ex. #14778 of 2009

BAC HOME LOANS

SERVICING, L.P., Plaintiff

v.

ALLEN B. WILLIAMS,

Defendant(s)

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 14778-09

BAC HOME LOANS SERVICING, L.P. vs. ALLEN B. WILLIAMS

Amount Due: \$82,720.55

ALLEN B. WILLIAMS, owner(s) of property situated in the CITY OF ERIE, Erie County, Pennsylvania

being 1442 WEST 32ND STREET,
ERIE, PA 16508-2302
Dimensions: 40 X 105.215
Acreage: 0.0966
Assessment Map number:
19-062-025.0-120.00
Assessed Value: 54,000
Improvement thereon: residential
Phelan Hallinan & Schmieg, LLP
One Penn Center at Suburban
Station, Suite 1400
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1814
(215) 563-7000

Feb. 26 and Mar. 5, 12

SALE NO. 11

Ex. #14428 of 2009

**U.S. BANK NATIONAL
ASSOCIATION TRUSTEE
FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,
Plaintiff**

v.

**CHRYSTIE M. MEYER
A/K/A CHRYSTIE M. ALEX,
Defendants**

SHERIFF'S SALE

By virtue of a Writ of Execution No. 14428-09 U.S. BANK NATIONAL ASSOCIATION TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. CHRYSTIE M. MEYER A/K/A CHRYSTIE M. ALEX, Defendants Real Estate: 133 EAGLE POINT BOULEVARD, ERIE, PA Municipality: City of Erie, Erie County, Pennsylvania Dimensions: 165 x 40 See Deed Book 1133, Page 0170 Tax I.D. (14) 1128-239 Assessment: \$12,500. (Land) \$35,510. (Bldg) Improvement thereon: a residential dwelling house as identified above Leon P. Haller, Esquire Purcell, Krug & Haller 1719 North Front Street Harrisburg, PA 17104 (717) 234-4178

Feb. 26 and Mar. 5, 12

SALE NO. 12

Ex. #14347 of 2007

**U.S. BANK NATIONAL
ASSOCIATION TRUSTEE
FOR THE PENNSYLVANIA
HOUSING FINANCE AGENCY,**

**Plaintiff
v.**

**ELIEZER PEREZ, Defendant
SHERIFF'S SALE**

By virtue of a Writ of Execution No. 13437-07 U.S. Bank National Association Trustee for the Pennsylvania Housing Finance Agency, Plaintiff vs. Eliezer Perez, Defendant Real Estate: 1201 LYNN STREET, ERIE, PA

Municipality: City of Erie, Erie County, Pennsylvania
Dimensions: 78 x 33 ½
See Deed Book 1316, Page 0434
Tax I.D. (14) 1042-207
Assessment: \$ 5,700. (Land)

\$26,700. (Bldg)

Improvement thereon: a residential dwelling house as identified above Leon P. Haller, Esquire Purcell, Krug & Haller 1719 North Front Street Harrisburg, PA 17104 (717) 234-4178

Feb. 26 and Mar. 5, 12

SALE NO. 13

Ex. #12173 of 2007

**Wells Fargo Bank, N.A., Plaintiff
v.**

**Ronald Harden, Defendant
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 12173-07 Wells Fargo Bank, N.A. vs. Ronald Harden, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 3023 Davison Avenue, Erie, PA 16504

.25 acres
Assessment Map number:
18-5157-207

Assessed Value figure: \$107,700.00
Improvement thereon: a residential dwelling
Leslie J. Rase, Esquire
Shapiro & DeNardo, LLC
Attorney for Movant/Applicant
3600 Horizon Drive, Suite 150
King of Prussia, PA 19406
(610) 278-6800

Feb. 26 and Mar. 5, 12

SALE NO. 14

Ex. #12733 of 2009

**HSBC Bank USA, N.A., as
Indenture Trustee for the**

**registered Noteholders of
Renaissance Home Equity Loan
Trust 2007-2, Plaintiff
v.**

**Ralph J. Porter and
Lori A. Porter, Plaintiff
SHERIFF'S SALE**

By virtue of a Writ of Execution filed to No. 12733-2009 HSBC Bank USA, N.A. as Indenture Trustee for the registered Noteholders of Renaissance Home Equity Loan Trust 2007-2 vs. Ralph J. Porter and Lori A. Porter, owner(s) of property situated in Township of Springfield, Erie County, Pennsylvania being 808 Ellis Road, East Springfield, PA 16411

2.798 acres

Assessment Map number:
39002014000701

Assessed Value figure: \$110,500.00
Improvement thereon: a residential dwelling:

Leslie J. Rase, Esquire
Shapiro & DeNardo, LLC
Attorney for Movant/Applicant
3600 Horizon Drive, Suite 150
King of Prussia, PA 19406
(610) 278-6800

Feb. 26 and Mar. 5, 12

SALE NO. 15

Ex. #10128 of 2009

**NORTHWEST SAVINGS
BANK, Plaintiff**

v.

**ROBERT W. OSBORN, JR.,
Defendant**

LEGAL DESCRIPTION

ALL that certain piece or parcel of land situate in the City of Erie, County of Erie and State of Pennsylvania, being part of the In Lots Numbers nineteen hundred and seventy-nine (1979) and nineteen hundred and eighty-two (1982) bounded and described as follows, to-wit:

Beginning at a point in the South line of Sixth Street one hundred fifty-five (155) feet Eastwardly from the East line of German Street; thence Eastwardly, along the South line of Sixth Street, Forty-one (41) feet; thence Southwardly, parallel with German Street, One Hundred Sixty-five (165) feet; thence Westwardly, parallel with Sixth Street, Forty-one

(41) feet; and thence Northwardly, parallel with German Street, One Hundred and Sixty-five (165) feet to the South line of Sixth Street at the place of beginning.

SAID premises have erected thereon a dwelling commonly known as 317-317 1/2 East Sixth Street, Erie, Pennsylvania, 16507 and are further identified by Erie County Assessment Index Number (14) 10-10-218.

BEING the same premises conveyed to the Mortgagor by deed which is intended to be recorded forthwith.

BEING the same premises conveyed to Robert W. Osborn, Jr. by deed dated May 20, 2005 and recorded May 23, 2005 in Erie County, Pennsylvania Record Book 1235, Page 2275 and being Erie County Tax Index No. (14) 10-10-218.

Knox McLaughlin Gornall & Sennett, P.C.

Mark G. Claypool, Esquire
Attorneys for Plaintiff

120 West Tenth Street
Erie, Pennsylvania 16501-1461
(814) 459-2800

Feb. 26 and Mar. 5, 12

SALE NO. 16

Ex. #14945 of 2009

Bank of America, N.A.

v.

Preston J. Brown

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 2009-14945 Bank of America, N.A. vs. Preston J. Brown, owners of property situated in City of Erie, Erie County, Pennsylvania being 1102 Cascade Street, Erie, PA 16502

Assessment Map number:
16-3051-107

Assessed Value figure: \$38,700.00

Improvement thereon: Residential Dwelling

Mary L. Harbert-Bell, Esquire
220 Lake Drive East, Suite 301
Cherry Hill, NJ 08002
(856) 482-1400

Feb. 26, and Mar. 5, 12

SALE NO. 17

Ex. #14946 of 2009

Bank of America, N.A.

v.

Randell B. Coleman

SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 2009-14946, Bank of America, N.A. vs. Randell B. Coleman, owners of property situated in City of Erie, Erie County, Pennsylvania being 1820 Fairmont Parkway, Erie, PA 16510

Assessment Map number:

(1) 18-051-024.0-221.00,

(2) 18-051-024.0-222.00 &

(3) 18-051-024.0-223.00

Assessed Value figure:

(1) \$12,300.00, (2) \$45,940.00,

(3) \$12,300.00

Improvement thereon: Residential Dwelling

Mary L. Harbert-Bell, Esquire
220 Lake Drive East, Suite 301
Cherry Hill, NJ 08002
(856) 482-1400

Feb. 26 and Mar. 5, 12

SALE NO. 18

Ex. #15162 of 2008

DEUTSCHE BANK NATIONAL

TRUST COMPANY, AS

TRUSTEE, IN TRUST

FOR THE REGISTERED

HOLDERS OF AMERIQUEST

MORTGAGE SECURITIES

INC., ASSET-BACKED PASS-

THROUGH CERTIFICATES,

SERIES 2005-R9, Plaintiff

v.

TONI BRENNAN

NANCY P. FOERSCHNER,

Defendant(s)

DESCRIPTION

All that piece and parcel of land located in Tracts 162 and 161, North East Township, County of Erie, Commonwealth of Pennsylvania bounded and described as follows, to wit: Beginning at a point said point being located in the centerline of the Buffalo (U.S. R. 20) Road, north seventy eight (78) degrees nine (09) minutes east a distance of seven hundred eighty nine and five tenths (789.5) feet from the intersection of the centerline of Buffalo Road (U.S. R. 20) and Haskell Road, thence north seventy eight (78) degrees nine (9) minutes east along the centerline of the Buffalo Road (U.S. R. 20) a distance of two hundred sixty and twenty two hundredths

(260.22) feet to a point, thence south seven (7) degrees twenty nine (29) minutes east a distance of three hundred twenty eight and two tenths (328.2) feet to an iron pin, thence north eighty two (82) degrees thirty one (31) minutes east a distance of five hundred eighty and seventy three hundredths (580.73) feet to an iron pin located in the centerline of private or abandoned McNeil Road, thence south one (1) degree ten (10) minutes west along centerline of said road a distance of five hundred fifty nine and seventy four hundredths (559.74) feet to a point, thence north sixth five (65) degrees ten (10) minutes east a distance of sixty six and zero tenths (66.0) feet to a point, thence south fourteen (14) degrees ten (10) minutes east a distance of one hundred ninety two and zero tenths (192.0) feet to a point, thence south fifty seven (57) degrees seven (7) minutes east a distance of one hundred eighty and one tenths (180.1) feet to a point, thence north sixty four (64) degrees forty four (44) minutes east a distance of two hundred ten and zero tenths (210.0) feet to a point thence south zero (0) degrees fifty five (55) minutes west a distance of forty eight and zero tenths (48.0) feet to a point on the right of way line of the New York Central Railroad, thence south sixty three (63) degrees thirty five (35) minutes west along the right of way of the New York Central Railroad a distance of eight hundred thirty and ninety six hundredths (830.96) feet to an iron pin, thence north zero (0) degrees six (6) minutes east a distance of seven hundred thirty four and seven tenths (734.7) feet to an iron pin, thence south eighty eight (88) degrees fifty four (54) minutes west a distance of five hundred seventy five and fifty hundredths (575.50) feet to an iron pin, thence north one (1) degree nine (9) minutes east a distance of six hundred seventeen and sixty eight hundredths (617.68) feet to the point and place of beginning. Having erected thereon a frame dwelling and frame barn. Excepting and reserving all that certain piece of parcel of land situate

in the Township of North East, County of Erie, Commonwealth of Pennsylvania and part of tracts 161 and 162 and being more particularly bounded and described as follows, to wit:

Beginning at an iron pipe in the east line of the W. Hall McCord property, as described in Deed Book 1061 at page 119, being south one (1) degree nine (9) minutes, zero (0) seconds west three hundred sixty seven and fifty five hundredths (367.55) feet from the centerline of U.S. Route 20, thence north eighty two (82) degrees, thirty one (31) minutes, zero (0) seconds east along the residue of the Gray property, five hundred sixty five and two hundredths (565.02) feet to an iron pipe, thence south seven (7) degrees, twenty nine (29) minutes zero (0) seconds east continuing along the residue of the Gray property, two hundred twenty five and one hundredths (225.01) feet to an iron pipe, thence south twelve (12) degrees three (3) minutes forty (40) seconds west still along the residue of the Gray property, ninety one and fifty five hundredths (91.55) feet to an iron pipe at the corner of the W. Hall McCord Property, thence south eighty eight (88) degrees fifty four (54) minutes zero (0) seconds west along the land of McCord, five hundred seventy five and fifty hundredths (575.50) feet to an iron pipe, thence north one (1) degree nine (9) minutes zero (0) seconds east and continuing along the lands of McCord, two hundred fifty and thirteen hundredths (250.13) feet to the place of beginning.

Also excepting and reserving thereout and therefrom the same premises which Bradley D. Foerschner and Nancy P. Foerschner, husband and wife, by Deed dated and recorded 5/5/1999 at Erie County in Record Book 634 page 523 conveyed unto Jon L. Bowser and Maria Bowser, husband and wife, in fee.

Also excepting and reserving thereout and therefrom the same premises which Bradley D. Foerschner, single and Nancy P. Foerschner, single by Deed dated

1/16/2003 and recorded 1/16/2003 in Record Book 967 page 1238 conveyed unto Gary T. Hess, in fee. Tax Id#: 3702006800060
PROPERTY ADDRESS: 9401 West Main Road, North East, PA 16428
Michael T. McKeever, Esquire
Attorney for Plaintiff
Suite 5000 - Mellon Independence Center, 701 Market Street
Philadelphia, PA 19106
(215) 627-1322

Feb. 26 and Mar. 5, 12

SALE NO. 19

Ex. #14603 of 2009

CITIMORTGAGE, INC.,

Plaintiff

v.

GEOFFREY H. CLARIDGE

KATHRYN M. HERMAN,

Defendant(s)

DESCRIPTION

ALL that certain piece or parcel of land situate in the City of Erie, County of Erie and Commonwealth of Pennsylvania, bounded and described as follows, to-wit:

BEING Lot No. Twenty-eight (28) of the Andrews Land Company Subdivision Reserve Tract No. Sixty-nine (69), known as GLENWOOD HILLS, as per map recorded in the Recorder's Office of Erie County, Pennsylvania, in Map Book 2, pages 389-390. BEING commonly known as 4145 Beech Avenue, Erie, Pennsylvania and being further identified by Erie County Tax Index No. (18) 5347-212.

Being the same premises which Howard Schaal and Chester Schaal, by deed dated 04/30/03 and recorded 05/02/03 in the Office of the Recorder of Deeds in and for Erie County, in Deed Book 1006 Page 0223, granted and conveyed unto Kathryn Herman, as joint tenants with Geoffrey Claridge.

PROPERTY ADDRESS: 4145 Beech Avenue, Erie, PA 16508
Michael T. McKeever, Esquire
Attorney for Plaintiff
Suite 5000 - Mellon Independence Center, 701 Market Street
Philadelphia, PA 19106
(215) 627-1322

Feb. 26 and Mar. 5, 12

SALE NO. 20

Ex. #13762 of 2009

**U.S. BANK, NATIONAL
ASSOCIATION, AS**

**TRUSTEE FOR THE
CERTIFICATEHOLDERS OF
ASSET BACKED SECURITIES
CORPORATION HOME
EQUITY LOAN TRUST,
SERIES OOMC 2006-HE3,**

Plaintiff

v.

SHAWN D. GREENAWALT,

Defendant(s)

DESCRIPTION

All that certain piece or parcel of land situate in Lowville, Venango Township, Erie County and State of Pennsylvania, bounded and described as follows, to-wit:

Beginning at a point in the center of a public road running from Wattsburg to Erie known as State Highway Route No. 8, which point is one foot west of the protracted line of the east line of the cement driveway now or formerly of Ben Drake and Mildred Drake, his wife, leading back to their garage; Thence south and one foot west of the east line of said cement driveway, 108 feet; thence east parallel with said highway 18 ½ feet; thence south 168 ½ feet; thence east parallel with said highway 63 ½ feet to land now or formerly of Art Brumagin and school house lot line 274 ½ feet to the center of said road leading from Wattsburg to Erie; thence westwardly along the center line of said highway 83 feet to the place of beginning. These measurements being the number of feet given on each line, be the same more or less, and having located thereon a frame dwelling house and other improvements. Being commonly known as 13480 Route 8, Wattsburg, PA 16442 and bearing Erie County Tax Id (44) 15-38-6.

Being the same premises which James and Rhonda Greenawalt, husband and wife, by deed dated 11/30/05 and recorded 12/29/06 in the Office of the Recorder of Deeds in and for Erie County in Deed Book 1297 Page 194, granted and conveyed unto Shawn Greenawalt. Parcel# (14) 15 38 6

Property Address: 13480 Route 8,
Wattsburg, PA 16442
Michael T. McKeever, Esquire
Attorney for Plaintiff
Suite 500 - Mellon Independence
Center, 701 Market Street
Philadelphia, PA 19106
(215) 627-1322

Feb. 26, and Mar. 5, 12

SALE NO. 22

Ex. #10255 of 2007
CITIMORTGAGE INC.,
Plaintiff

v.

DAYLE R. MILLER,
Defendant(s)
DESCRIPTION

All that certain piece or parcel of land situate in the City of Erie, County of Erie and State of Pennsylvania, being more fully described as all of Lot Nos. 390, 393, and 394 and the North nine (9) feet of Lot 389 and the South nine (9) feet of 397 of Burton Heights Subdivision, as shown in Erie County Map Book 1, page 403, bounded and described as follows, to wit:

Beginning at a point in the East side of Brandes Street, said point being sixty (60) feet northwardly from the intersection of the East side of Brandes Street with the North line of East 37th Street, thence Northwardly along the East side of Brandes Street, one hundred twenty (120) feet to a point; thence Eastwardly along a line parallel with East 36th Street, one hundred thirty-five (135) feet to a point; thence Southwardly and parallel with the East line of Brandes Street, one hundred twenty (120) feet to a point; thence Westwardly and parallel with the North line of East 37th Street, one hundred thirty-five (135) feet to a point, the place of beginning. Having erected thereon two two-family dwelling houses and being commonly known as 3609 and 3615 Brandes Street, Erie, Pennsylvania. Being further identified by Erie County Tax Index No. (18) 5211-209.

PROPERTY ADDRESS: 3609-3615 Brandes Street, Erie, PA 16504
Michael T. McKeever, Esquire
Attorney for Plaintiff

Suite 5000 - Mellon Independence
Center, 701 Market Street
Philadelphia, PA 19106-1532
(215) 627-1322

Feb. 26 and Mar. 5, 12

SALE NO. 23

Ex. #14386 of 2009
DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS
TRUSTEE FOR MORGAN
STANLEY IXIS REAL ESTATE
CAPITAL TRUST 2006-2,
Plaintiff

v.

ASHLEY A. PETERSON,
Defendant(s)
DESCRIPTION

ALL that certain piece or parcel of land situate in the City of Erie, County of Erie and State of Pennsylvania, bounded and described as follows, to-wit:

COMMENCING at a point in the north line of Twenty-fifth Street, forty (40) feet east of the east line of Cascade Street; thence northwardly, parallel with Cascade Street, ninety (90) feet; thence eastwardly, parallel with Twenty-fifth Street, forty (40) feet; thence southwardly, parallel with Cascade Street, ninety (90) feet to the north line of Twenty-fifth Street; and thence westwardly along the north line of Twenty-fifth Street, forty (40) feet to the place of beginning. Together with all buildings and improvements erected thereon. Said premises more commonly known as 960 West 25th Street, Erie, Pennsylvania and bearing Erie County Index Number (19) 6028-230.

Parcel # 19-6028-230

Being the same premises which Cyril Duska by deed dated 06/27/06 and recorded 06/29/06 in the Office of the Recorder of Deeds in and for Erie County, in Deed Book 1340 Page 2072, granted and conveyed unto Ashley Peterson.

PROPERTY ADDRESS: 960 West 25th Street, Erie, PA 16502
Michael T. McKeever, Esquire
Attorney for Plaintiff
Suite 5000 - Mellon Independence
Center, 701 Market Street
Philadelphia, PA 19106-1532
(215) 627-1322

Feb. 26 and Mar. 5, 12

SALE NO. 24

Ex. #14306 of 2009
BBJD Ventures, LLC, Plaintiff
v.

Donald G. Cole and
Donna M. Cole, Defendant
SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 14306-09, BBJD Ventures, LLC vs. Donald G. Cole and Donna M. Cole, owner(s) of property situated in Borough of Cranesville, Erie County, Pennsylvania being 9945 Bateman Avenue, Cranesville, PA 16410

53' x 10 rods

Assessment Map number: 9-5-2-20
Assessed Value figure: \$49,030.00
Improvement thereon: single family dwelling

Patrick Thomas Woodman, Esq.
436 Seventh Avenue
1400 Koppers Bldg.
Pittsburgh, PA 15219
(412) 434-7955

Feb. 26, and Mar. 5, 12

SALE NO. 25

Ex. #12505 of 2009
IndyMac Federal Bank FSB
v.

Michael Stover a/k/a
Michael J. Stover
SHORT DESCRIPTION

By virtue of a Writ of Execution filed to No. 12505-09 IndyMac Federal Bank FSB v. Michael Stover a/k/a Michael J. Stover, owner of property situated in the Township of Third Ward of the City of Corry, Erie County, Pennsylvania being 415 Grand Street, Corry, Pennsylvania 16407.

Tax I.D. No. (7) 26-70-7

Assessment: \$83,389.49

Improvements: Residential Dwelling
McCabe, Weisberg and Conway, P.C.
123 South Broad Street, Suite 2080
Philadelphia, PA 19109

Feb. 26 and Mar. 5, 12

ESTATE 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. 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 their attorneys named below.

FIRST PUBLICATION

**ALLEN, DANIEL M.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Arthur D. Allen
Attorney: Thomas J. Minarcik, Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

**BROOKHOUSER, GEORGIA F.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: M. Eric Brookhouser, 1576 West 36th Street, Erie, Pennsylvania 16508
Attorneys: MacDonald, Illig, Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**FUTRELL, DENNIS A.,
deceased**

Late of the City of Erie
Executrix: Geri A. Kohler
Attorney: James D. Amoriello, Esquire, Amoriello Law Office, 1001 State St., 14th Floor, Erie, PA 16501

**GULLBRAND, ELEANOR J.,
deceased**

Late of the Township of Millcreek, County of Erie, Pennsylvania
Executor: Scott E. Miller, 246 West 10th Street, Erie, PA 16501
Attorney: Scott E. Miller, Esq., 246 West 10th Street, Erie, PA 16501

**JOHNSON, MARGARET G.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Carolyn Bills, c/o James E. March, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Attorneys-at-Law, Suite 300, 300 State Street, Erie, PA 16507

**JOHNSON, ROBERT E.,
deceased**

Late of the Township of Summit, County of Erie, Pennsylvania
Executrix: Amelia M. Johnson, c/o Thomas E. Larson, 2820 W. 23rd St., Suite 101, Erie, PA 16506
Attorney: Thomas E. Larson, Esq., 2820 W. 23rd St., Suite 101, Erie, PA 16506

**KAZMIERSKI, SYLVIA,
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania
Executor: Berdina Jaskiewicz, 709 East 12th Street, Erie, PA 16503
Attorney: Gary K. Schonhaler, Esquire, The Gideon Ball House, 135 East 6th Street, Erie, PA 16501

**MACEK, CHARLES J., SR.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Administratrix: Barbara C. Macek, c/o Robert C. Brabender, Esquire, 2741 West 8th Street, Suite No. 16, Erie, PA 16505
Attorney: Robert C. Brabender, Esquire, 2741 West 8th Street, Suite No. 16, Erie, PA 16505

**MEHL, WILLIAM E.,
deceased**

Late of Fairview Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Marilyn K. Mehl
Attorney: David J. Rhodes, Esq., Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

**REIDEL, MARY D.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Executor: Teresann Greissing, 68 Welisewitz Road, Ringoes, NJ 08551
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

SECOND PUBLICATION

**D'AURORA, CORNELIA M.,
deceased**

Late of the City of Erie, County of Erie
Executor: Mario E. D'Aurora, 2912 Contessa Lane, Erie, PA 16506
Attorney: Gene P. Placidi, Esquire, Melaragno & Placidi, 502 West Seventh Street, Erie, Pennsylvania 16502

**DePOTY, MARJORIE A.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Jay B. DePoety, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**FESTOR, RAYMOND A.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Eric R. Festor, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**HAYDON, JANE GRACE, a/k/a
JANE SCHACHT HAYDON,
deceased**

Late of the City of Erie
Executor: W. Bruce Haydon
Attorney: Deanna L. Heasley, Esquire, 337 West Sixth Street, Erie, PA 16507

**HOLTZ, THOMAS F., a/k/a
THOMAS HOLTZ,
deceased**

Late of the Borough of Albion, County of Erie, Pennsylvania
Executor: Deborah Gillette, 1810 Campden Way, Fairview, PA 16415
Attorney: None

**KOZLOWSKI, ALOIS D.,
deceased**

Late of the Borough of Wesleyville, Erie County, Pennsylvania
Executor: Joseph A. Kane, c/o 120 West 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**KUVIK, ALBERT D.,
deceased**

Late of the Borough of Girard
Executrix: Sonja Lloyd, c/o James S. Bryan, Esq., 11 Park Street, North East, PA 16428
Attorney: James S. Bryan, Esq., Knox McLaughlin Gornall & Sennett, P.C., 11 Park Street, North East, PA 16428

**PORTENIER, BETTY L., a/k/a
BETTY LOU PORTENIER,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executrix: Darleen D. Barbour, 4137 Wood Street, Erie, PA 16509
Attorney: None

**RICKLOFF, BARBARA,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Administrator: Todd A. Trocki, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Valerie H. Kuntz, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**SHONTZ, DAVID L.,
deceased**

Late of the Township of Millcreek, County of Erie, State of Pennsylvania
Administratrix: Alicia M. Shontz, c/o 78 East Main Street, North East, PA 16428
Attorney: John C. Brydon, Esq., Brydon Law Office, 78 East Main Street, North East, PA 16428

**WINKLER, LUCILLE,
deceased**

Late of the City of Erie, County of Erie, PA
Executrix: Linda Rae Watkins, c/o Elizabeth Brew Walbridge, 900 State Street, Suite 103, Erie, PA 16501
Attorney: Elizabeth Brew Walbridge, Esq., 900 State Street, Suite 103, Erie, PA 16501

**WRIGHT, HELEN C., a/k/a
HELEN WRIGHT,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executrix: Mary Ann Curtze, P.O. Box 748, Erie, PA 16512
Attorney: None

THIRD PUBLICATION

**CROSBY, ROSALIE,
deceased**

Late of the City of Erie
Executor: Robert C. Crosby, 255 Short St., Erie, PA 16507
Attorney: Larry D. Meredith, Esq., 2021 E. 20th St., Erie, PA 16510

**DAUGHERTY, WILLIAM O.,
a/k/a WILLIAM OTIS
DAUGHERTY, a/k/a
WILLIAM DAUGHERTY,
deceased**

Late of the Borough of Girard, County of Erie, State of Pennsylvania
Executor: Jason Daugherty, 267 Palacade Ct., Girard, Pennsylvania 16417
Attorney: James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

**FIORITA ELIZABETH, a/k/a
ELIZABETH LUCAS FIORITA,
deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania
Administrator: James R. Steadman, 24 Main Street East, P.O. Box 87, Girard, Pennsylvania 16417
Attorney: James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

**LORD, BARBARA JOYCE, a/k/a
BARBARA JOYCE PROPER
LORD, a/k/a JOYCE PROPER,
a/k/a BARBARA J. LORD,
deceased**

Late of Union City Borough, Erie
County, Pennsylvania
Administrator: Terry C. Lord,
c/o Thomas J. Ruth, Esquire, 43
North Main Street, Union City,
Pennsylvania 16438
Attorney: Thomas J. Ruth,
Esquire, 43 North Main Street,
Union City, Pennsylvania 16438

**PANOS, MARY LOU,
deceased**

Late of the Township of
Fairview, County of Erie, and
Commonwealth of Pennsylvania
Co-Executors: Leslie Clifton, 607
Powell Avenue, Erie, PA 16505
and George Panos, 1117 Deana
Court, Morgan Hill, CA 95037
Attorneys: MacDonald, Illig,
Jones & Britton LLP, 100
State Street, Suite 700, Erie,
Pennsylvania 16507-1459

**SAPP, HELENA MARIE, a/k/a
HELENA M. SAPP,
deceased**

Late of the City of Erie, County
of Erie and Commonwealth of
Pennsylvania
Executor: Robert Kinstler, c/o
3305 Pittsburgh Avenue, Erie,
Pennsylvania 16508
Attorney: Darlene M. Vlahos,
Esquire, 3305 Pittsburgh Avenue,
Erie, Pennsylvania 16508

**WILCOX, THORA A.,
deceased**

Late of Waterford Boro
Executor: Kenneth A. Wilcox,
9031 Lake Pleasant Road, Erie,
PA 16509
Attorney: Jack M. Gornall, Esq.,
Knox McLaughlin Gornall &
Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**WILSON, JUDY M., a/k/a
JUDY MARIE WILSON,
deceased**

Late of the Township of Summit,
Erie County, Pennsylvania
Executrix: Beverly Ann Hawes,
c/o Robert C. Ward, Esquire, 307
French Street, Erie, Pennsylvania
16507-1542
Attorney: Robert C. Ward,
Esquire, 307 French Street, Erie,
Pennsylvania 16507-1542

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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

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1001 State Street, Suite 700
Erie, PA 16501 ----- *lmeredith@nwls.org*

Sally A. Owen ----- (814) 823-5829
457 East 9th Street
Erie, PA 16503 ----- *sarbon@hotmail.com*

Name Change

Julia Dudics is now **Julia Bagnoni**.

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THE ERIE COUNTY BAR ASSOCIATION, PLEASE
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