

In the United States District Court for the Western District of Pennsylvania Wisinski v. American Commerce Group, Inc., et al.

Erie County Legal Journal

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

> Managing Editor: Paula J. Gregory Associate Editor: Heidi M. Weismiller

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Erie County Bar Association Calendar of Events and Seminars

TUESDAY, MARCH 8, 2011

Department of Corrections 101 PBI Video Seminar Erie County Bar Association 9:00 a.m. - 1:30 p.m. (8:30 a.m. reg.) \$129 (member) \$109 (admitted after 1/1/07) \$149 (nonmember) 4 hours substantive

MONDAY, MARCH 14, 2011

Dead Man's Rule PBI Groupcast Seminar Erie County Bar Association 12:30 p.m. - 2:30 p.m. (12:00 p.m. reg.) Lunch Included \$214 (member) \$194 (admitted after 1/1/07) Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$189 (member) \$169 (admitted after 1/1/07) \$209 (nonmember) 2 hours substantive

THURSDAY, MARCH 17, 2011

Primer on the Fair Debt Collection Practices Act PBI Video Seminar Erie County Bar Association 9:00 a.m. - 1:30 p.m. (8:30 a.m. reg.) \$129 (member) \$109 (admitted after 1/1/07) \$149 (nonmember) 4 hours substantive

FRIDAY, MARCH 18, 2011

Sophisticated Issues in Foreclosure Proceedings PBI Groupcast Seminar Eric County Bar Association 8:30 a.m. - 3:45 p.m. (8:00 a.m. reg.) Lunch Included \$294 (member) \$274 (admitted after 1/1/07) \$314 (nonmember) Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$269 (member) \$249 (admitted after 1/1/07) \$289 (nonmember) 5 hours substantive / 1 hour ethics

TUESDAY, MARCH 22, 2011

Slicing Up the Pie: Property Distribution in Pennsylvania PBI Video Seminar Erie County Bar Association 9:00 a.m. - 12:30 p.m. (8:30 a.m. reg.) \$219 (member) \$199 (admitted after 1/1/07) \$239 (nonmember) 3 hours substantive

WEDNESDAY, MARCH 23, 2011

24th Annual Civil Litigation Update PBI Groupcast Seminar Erie County Bar Association 9:00 a.m. - 4:30 p.m. (8:30 a.m.) Lunch Included \$274 (member) \$254 (admitted after 1/1/07) \$294 (nonmember) Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$249 (member) \$229 (admitted after 1/1/07) \$269 (nonmember) 5 hours substantive / 1 hour ethics

FRIDAY, MARCH 25, 2011

Business Divorce - Shareholder Relations PBI Groupcast Seminar Erie County Bar Association 9:00 a.m. - 4:15 p.m. (8:30 a.m. reg.) Lunch Included \$274 (member) \$254 (admitted after 1/1/07) Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$249 (member) \$229 (admitted after 1/1/07) \$269 (nonmember) 5 hours substantive / 1 hour ethics

TUESDAY, MARCH 29, 2011

Effective Legal Negotiation Skills: 2011 PBI Groupcast Seminar Erie County Bar Association 9:00 a.m. - 4:45 p.m. (8:30 a.m. reg.) Lunch Included \$324 (member) \$304 (admitted after 1/1/07) \$344 (nonmember) Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$299 (member) \$279 (admitted after 1/1/07) \$319 (nonmember) 5 hours substantive / 1 hour ethics

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In Memoriam



David H. Lund

December 10, 1927 - February 3, 2011

David Harrison Lund, born December 10, 1927 in Erie, Pennsylvania, where he resided most of his life, was the son of Attorney C. Harrison Lund and Gladys Freeman Lund. After graduating from Strong Vincent High School in 1945, he served in the US Army. He was a graduate of the University of Buffalo in 1949 and the University of Buffalo School of Law in 1952. He was a member of the New York State Bar and served with a Buffalo law firm until admission to the Pennsylvania Bar in 1954.

Mr. Lund was in general law practice in Erie for 13 years, first with Harrison Lund followed by Roger Fisher and Gordon Kennedy. Then, in 1967, he was engaged by the J. A. Zurn Manufacturing Company, later "Zurn Industries Inc.", to establish an in-house legal department. He served as Zurn's General Counsel and a Senior Vice President until his retirement in 1993.

During this period Zurn Industries grew as an international public company on the New York Stock Exchange having thirty six manufacturing and construction divisions with over five thousand employees.

Mr. Lund's community activities included service as President of the Greater Erie YMCA, President of the Manufacturer's Association of Northwest Pennsylvania, Chancellor of the Episcopal Cathedral of St. Paul and Corporator of St. Vincent's Hospital. He was an active member and formerly on the Board of the Erie Yacht Club. He was a Member-At-Large of the 2009-2010 Bridge of the Sanibel Captiva Sail & Power Squadron, communicant at St. Michael and All Angels Episcopal Church, Sanibel, FL, and Chair of the Scene Stealers volunteers of the Florida Repertory Theatre.

He was preceded in death by his brother, John Freeman Lund.

He is survived by Sally, his wife of 58 years, four children: Dr. Peter Lund (Amy Sue), Erie, PA, Carrie Lund Cacioppo (Robert), Ft Myers, FL, Amy Lund, Hamburg, NY and David Lund Jr. Esq. (Anne), Kirkland, WA, ten grandchildren: Peter Scott Lund, Katherine Lund, Alan Lund, Calder Epes, Hilary Epes, Robin Epes, Matthew Cacioppo, Julia Cacioppo, Harrison Lund, and Nels Peter Lund, and a sister, Sally Thorn of Cary, NC.

A Memorial Service will be held on March 7, 2011, 2:00 PM at St. Michael and All Angels Episcopal Church, Sanibel Island. In lieu of flowers please send contributions to Hope Hospice, 9470 Health Park Circle, Fort Myers, Fl 33908.







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Mar. 4, 11

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

MOTION COURT DATES FOR CHIEF JUDGE THOMAS P. AGRESTI In Re: ERIE DIVISION SCHEDULING PROCEDURES

MARCH 2011 NOTICE

The following is a list of *March through May 2011* motion court dates and times to be used for the scheduling of motions pursuant to *Local Rule 9013-5(A)* before **Chief Judge Thomas P. Agresti** in the Erie Division of the Court. The use of these dates for scheduling motions consistent with the requirements of *Local Rule 9013-5(A)* is summarized below and on Chief Judge Agresti's website at: *www.pawb.uscourts.gov.* **The motions will be heard** *in the Bankruptcy Courtroom, U.S. Courthouse, 17 South Park Row, Erie, PA 16501.*

ERIE CH. 13 AND CH. 7 CASES

Counsel for a moving party shall select one of the following dates and times for matters subject to the "self-scheduling" provisions of the *Local Rules* (See Court Website at <u>http://www.pawb.uscourts.gov</u> and W.D. PA Local Rule 9013-5(A), insert same on the notice of hearing for the motion, and serve the notice on all respondents, trustee(s) and parties in interest. Where a particular type of motion is listed at a designated time, filers shall utilize that time for the indicated motions(s) *unless:* (a) special arrangements have been approved in advance by the Court, or, (b) another motion in the same bankruptcy case has already been set for hearing at a different time and the moving party chooses to use the same date and time as the previously scheduled matter.

<u>Scheduling of CHAPTER 13 Motions before Chief Judge Thomas P. Agresti</u>

Wednesday, March 16, 2011 Friday, April 8, 2011 Wednesday, April 27, 2011 Wednesday, May 18, 2011 1:30 p.m.: Open for all Erie matters
2:00 p.m.: Open for all Erie matters
2:30 p.m.: Open for all Erie matters*
* ALL Chapter 12 matters are to be scheduled for 2:30 p.m.
Sale, Financing and Extend/Impose Stay Motions also scheduled at 2:30 p.m.

<u>Scheduling of CHAPTER 7 Motions before Chief Judge Thomas P. Agresti</u>

NOTE: As of September 9, all Chapter 7 matters are to be scheduled at 10:30 a.m., 11:00 a.m., or 11:30 a.m.

Thursday, March 10, 2011 Thursday, March 24, 2011 Tuesday, March 29, 2011* Thursday, April 7, 2011 Thursday, April 21, 2011 Thursday, May 10, 2011 Thursday, May 19, 2011

10:30 a.m.: Open for all Erie matters 11:00 a.m.: Open for all Erie matters** 11:30 a.m.: Sale Motions at this time, only

*Please note date change. **All Motions to Extend/Impose Stay are to be scheduled at 11:00 a.m.

ERIE CHAPTER 11 CASES

The Self-scheduling Rule does not apply to Chapter 11 cases. Documents are to be electronically filed with the Clerk's Office. Thereafter, scheduling Orders will be issued from Chambers which schedule any required hearings and, where applicable, outline the specific procedures to be utilized. *Any pleadings in Chapter 11 cases which are self-scheduled will be dismissed upon filing*.

ALL OF THE ABOVE DATES ARE SUBJECT TO REVISION. Please check each month for any changes in the dates that have been published previously. THIS SCHEDULE CAN BE VIEWED ON PACER (Public Access to Court Electronic Records) and on the Court's Web Site (<u>www.pawb.uscourts.gov</u>). John J. Horner Clerk of Court

Feb. 4

IN THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NOTICE

2010 PROFESSIONAL FEES

The Clerk of the U.S. Bankruptcy Court maintains a public record listing fees awarded by the Court to the following individuals:

- Trustees
- Professionals employed by trustees, such as attorneys, accountants, appraisers, and auctioneers
- Examiners appointed by the Court

The public record includes the name and docket number of the case, the name of the individual or firm receiving the fee, and the amount of the fee awarded; the record is maintained alphabetically according to recipient.

The public is welcome to examine the Court's record at no charge either on-site at the Court or on the Court's Website at www.pawb.uscourts.gov. To access the information on the Website, select the "General Information" link and then select the "Professional Fees that have been awarded in cases" link.

John J. Horner Clerk of Court

Mar. 4



MARGARET WISINSKI, Plaintiff

v.

AMERICAN COMMERCE GROUP, INC. AND AMERICAN COMMERCE INSURANCE COMPANY, Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA Civil No. 07-346 Erie

This opinion is continued from last week's issue of the Erie County Legal Journal - Vol. 94 No. 8 - February 25, 2011

Cohill, Maurice B. Jr., J. January 4, 2011 II. Standard of Review

Summary judgment under Federal Rule of Civil Procedure 56(c) is appropriate "if the pleadings, the discovery and disclosure of material on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). In deciding a summary judgment motion, the court must "view the evidence ... through the prism of the substantive evidentiary burden" to determine "whether a jury could reasonably find either that the plaintiff proved [her] case by the quality and quantity of evidence required by the governing law or that [she] did not." *Anderson v. Consolidated Rail Corp.*, 297 F.3d 242, 247 (3d Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986)).

When the non-moving party will bear the burden of proof at trial, the moving party's burden can be "discharged by 'showing' ... that there is an absence of evidence to support the non-moving party's case." *Celotex Corp. v. Catrett,* 477 U.S. 317, 325 (1986). If the moving party has carried this burden, then the burden shifts to the non-moving party who cannot rest on the allegations of the pleadings and must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574 (1986); *Petruzzi's IGA Supermarkets, Inc. v. Darling Delaware Co.,* 998 F.3d 1224, 1230 (3d Cir. 1993). Thus, the non-moving party cannot rest on the pleadings, but instead must go beyond the pleadings and present "specific facts showing that there is a genuine issue of fact for trial." *Simpson v. Kay Jewelers, Div. of Sterling, Inc.,* 142 F.2d 639, 643 n. 3 (3d Cir. 1998) (quoting *Fuentes v. Perskie,* 32 F.3d 759, 762 n. 1 (3d Cir. 1994)).

Moreover, in considering a motion for summary judgment, a district court may not "make credibility determinations or engage in any weighing of the evidence; instead, the non-moving party's evidence 'is to be believed and all justifiable inferences are to be drawn in [their] favor." *Marino v. Industrial Crating Co.*, 358 F.3d 241, 247 (3d Cir. 2004) (quoting *Anderson*, 477 U.S. at 255)); *see also Doe v. County of Centre*, *Pa.*, 242 F.3d 437, 446 (3d Cir. 2001) (holding that "a court must take the facts in the light most favorable to the nonmoving party, the [plaintiff], and draw all reasonable inferences in their favor") (citation omitted).

III. Discussion

In her Partial Motion for Summary Judgment, Ms. Wisinski seeks judgment as a matter of law on her bad faith and breach of contract claims. ACIC seeks summary judgment on all of Ms. Wisinski's claims. In regard to Ms. Wisinski's bad faith claims, ACIC argues that she has failed to establish by clear and convincing evidence that it engaged in bad faith under 42 Pa. C.S.A. §8371. Specifically, ACIC argues that it acted reasonably in its handling of both Ms. Wisinski's first party income loss claim and her uninsured motorist claim. ACIC also argues that Ms. Wisinski's breach of contract claim is merely a reiteration of her bad faith claim and thus, as she has failed to establish bad faith, she has failed to establish breach of contract. Finally, ACIC argues that Ms. Wisinski's unfair trade practices claims must fail.

A. Bad Faith Claims

Ms. Wisinski alleges that ACIC acted in bad faith in its handling of her income loss claim and ACIC also acted in bad faith with regard to her uninsured motorist claim.

The Pennsylvania Bad Faith Law, 42 Pa.C.S.A. §8371 provides as follows:

In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions:

(1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%.

- (2) Award punitive damages against the insurer.
- (3) Assess court costs and attorney fees against the insurer.

42 Pa.C.S.A. §8371. Although the statute does not define "bad faith," The Pennsylvania Superior court has characterized it as follows:

Any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (for example, good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.

Terletsky v. Prudential Prop. and Cas. Ins. Co., 649 A.2d 680, 688 (Pa. Super. 1994), appeal denied, 659 A.2d 560 (Pa. 1995). In order to prevail on a claim for bad faith, the insured is required to establish by clear and convincing evidence that the insurer has acted unreasonably and intentionally (or recklessly) in the handling of the insured's claim. *Employers Mut. Cas. Co. v. Loos*, 476 F.Supp. 2d 478, 489-90 (W.D. Pa. 2007) (citing *Terletsky*, 649 A.2d at 688). "To support a finding of bad faith, the insurer's conduct must be such as to 'import a dishonest purpose." *Id.* (quoting *Adamski*, 738 F.2d at 1036). "In other words, the [insured] must show that the insurer breached its duty of good faith through some motive of self-interest or ill will." *Id.* The insured's burden in opposing summary judgment "is commensurately high because the court must view the evidence presented in light of the substantive evidentiary burden at trial." *Kosierowski v. Allstate Ins. Co.*, 51 F.Supp. 2d 583, 588 (ED. Pa. 1999).

1. First Party Income Loss Claim

ACIC argues that Ms. Wisinski has failed to establish that it acted in bad faith with respect to her first party income loss claim. Specifically, ACIC argues that there were legitimate questions as to whether Ms. Wisinski was entitled to income loss benefits, and that she also failed to timely provide necessary documentation needed to support her claim. As a result, ACIC argues, it had reasonable and legitimate reasons for non-payment of first party income loss benefits.

In response, Ms. Wisinski argues that ACIC had all of the documentation it needed to properly evaluate the claim, or that ACIC had been given, at minimum, the necessary authorization to obtain all relevant records. Ms. Wisinski further argues that ACIC has unreasonably refused to either challenge Ms. Wisinski's income loss claim or to pay benefits, thereby establishing that ACIC acted in bad faith. We disagree.

The Pennsylvania Bad Faith Law governs claims of bad faith conduct in the handling of an insured's first party income loss claim. *See e.g. Ingraham v. Liberty Mut. Ins. Co.*, Civil Action No. 06-1419, 2009 WL 54262 at *3 (W.D. Pa. Jan. 7, 2009). "[I]n many instances, bad faith allegations arise out of insurance claims having incomplete or unclear facts, and these cases have frequently been resolved in favor of the insurers at summary judgment stage." *Anderson v. Nationwide Ins. Ent.*, 187 F.Supp. 2d 447, 458 (W.D. Pa. 2002) (citing *Quaciari v. Allstate Ins. Co.*, 998 F.Supp. 578, 581 n. 3 (E.D. Pa. 1998), *affirmed*, 172 F.3d 860 (3d Cir. 1998). "Insurers have prevailed, for example, when the factual circumstances of a claim for benefits made a dispute regarding its merits reasonable." *Id.* (citing e.g. *Kosierowski v. Allstate Ins. Co.*, 51 F.Supp. 2d 583, 590-92 (E.D. Pa. 1999) *affirmed*, 234 F.3d 1265 (3d Cir. 2000) (reasonable for insurer to delay evaluating a case when value of injury was unclear due to poor documentation)).

Here, ACIC had a continuing question as to whether Ms. Wisinski actually had a legitimate wage loss claim in relation to the accident. On her initial application Ms. Wisinski indicated that she did have lost wages, but she had crossed out her responses, including the identity of her employer and checked a box indicating that she did not have lost wages. It was not until August 30, 2002, approximately nine months after the accident, that Ms. Wisinski alerted ACIC that she was asserting a wage loss claim.

Once ACIC received Ms. Wisinski's application for wage loss claim, it proceeded to follow through by providing Ms. Wisinski with the necessary forms including a wage loss verification form. On September 20, 2002, Ms. Wisinski filed a second Application for Benefits in which she indicated that she was employed at the time of the accident with the U.S. Postal Service. On November 7, 2002, ACIC sent Ms. Wisinski's doctor a request for verification of Ms. Wisinski's disability as a result of the accident. However, Ms. Wisinski's doctor never responded.

On May 15, 2003, an ACIC claim's specialist informed Ms. Wisinski's attorney that ACIC still needed wage loss information from Ms. Wisinski's employer as well as information from her doctor. Ms. Wisinski's attorney agreed to provide the documentation as soon as possible. On June 5, 2003, he submitted a Wage and Salary Verification form from the United States Post Office indicating that Ms. Wisinski had been granted Social Security Disability Benefits. In a May 19, 2003 letter, from the U.S. Postal Service, ACIC was

informed that Ms. Wisinski had not worked for the Postal Service since January 3, 2001, nearly a year prior to this accident. Ms. Wisinski's attorney also provided notes from her doctor indicating that she is not able to return to work during her treatment. However, ACIC points out that the doctor's information says nothing about whether the wage loss claim was related to the accident.

We find that it was reasonable that ACIC continued to request further documentation to verify Ms. Wisinski's claimed loss. ACIC had incomplete and unclear facts on which to base a determination on Ms. Wisinski's income loss claim. ACIC did know that Ms. Wisinski was on Social Security Disability Income and that she had not worked for the U.S. Postal Service since a year prior to the accident. Based on this information, it appears that ACIC could have reasonably denied the wage loss claim. We can discern no ill will on the part of ACIC and find that ACIC did not act in bad faith with regard to this claim. Ms. Wisinski has failed to present clear and convincing evidence that ACIC did not have a reasonable basis for denying benefits under the policy or that the insurer acted with reckless disregard in denying the claim. *See Terletsky*, 649 A.2d at 688.

For the same reasons we will grant ACIC's Motion for Summary Judgment on first party income loss to the extent it is asserted as a breach of contract.

2. Uninsured Motorist Claim

Both ACIC and Ms. Wisinski seek summary judgment on Ms. Wisinski's bad faith claim regarding her uninsured motorist claim. ACIC argues that Ms. Wisinski has failed to establish that any of the alleged bad faith conduct cited in her Complaint was unreasonable. Ms. Wisinski argues that the evidence shows that ACIC acted in bad faith by misrepresenting the uninsured motorists policy coverage limits; refusing to arbitrate Ms. Wisinski's uninsured motorist claim; and in ACIC's overall handling of the settlement process.

Since the statutory bad faith claim asserted by Ms. Wisinski is based on an entire course of alleged dilatory conduct rather than on a particular incident or denial of a claim, this Court must consider the entire course of conduct in order to determine whether ACIC's handling of Ms. Wisinski's uninsured motorist claim was conducted in bad faith. *See Barry v. Ohio Casualty Groups* 2007 WL 128878, (W.D. Pa.).

a. ACIC's Conduct in Regard to its Representation of the Policy Limits The ACIC Claims Manual indicates:

Upon loss notification, the file handler will verify coverage and check prior losses and document his/her findings in note. This should be accomplished within 24 hours of loss notification. If coverage cannot be confirmed, an action plan should be identified to resolve all coverage issues.

For all liability and un/underinsured motorist claims, a written analysis on coverage will be completed in the file notes or if applicable, in the CFA under the coverage section. If a coverage issue on any policy is not resolved within thirty days of claim creation, the file should be referred to the supervisor for review.

(Pl.'s Exh. FF, pages 33383-84).

Here, several ACIC employees, including two supervisors and a claims examiner, had access to and reviewed Ms. Wisinski's file between December 22, 2001 and February, 2007. ACIC's log notes indicate that the first file handler, Terri West reviewed coverage on December 22, 2001, and incorrectly informed Ms. Wisinski that her coverage policy limit was \$50,000. Additionally, ACIC's Claims Manual requires that a supervisor review the file and the policy limit, however there is no indication in ACIC's records that a supervisor ever reviewed the file. In any event, Ms. West's error was not corrected by a supervisor.

The correct policy limit was not discovered until Ms. Wisinski's attorney reviewed the policy on March 2, 2006, over four years after the accident, and discovered that ACIC had under-reported the policy limit by \$50,000. Ms. Wisinski had a \$50,000 policy limit, but because her policy also included stacking benefits, her total policy limit was actually \$100,000. Ms. Wisinski's stacking benefits appeared on the face of the Declarations page. Ms. Wisinski's counsel immediately informed ACIC of the stacking benefits and the resulting \$100,000 policy limit. Two months later ACIC's outside counsel, Mr. Godshall, confirmed that the correct policy limit was \$100,000, in an internal communication to ACIC on May 10, 2006, stating that "unfortunately" coverage could be stacked. In addition, ACIC independently confirmed that the correct policy limit was \$100,000. However, ACIC did not relay this information to Ms. Wisinski's attorney, and thus did not correct its error, until June 26, 2006.

In support of its motion for summary judgment, Ms. Wisinski relies on *Hollock v. Erie Insurance*, 842 A. 2d 409 (Pa. Super 2004), where that Court found that Erie Insurance intentionally misled its insured for over a year regarding the coverage available. The insurance adjuster in *Hollock* knew the insured's correct policy limit, but never corrected the insured's misunderstanding of the limits. While not as egregious as the conduct in *Hollock*, ACIC's conduct in the instant case in representing the policy limit to Ms. Wisinski is unreasonable and reveals either intentional or reckless conduct on the part of ACIC.

Significantly, ACIC was in possession of the correct policy limit at all times as it appeared in its own policy. ACIC has a duty to correctly evaluate the policy limit and accurately report the information to its client. Here, at least six different ACIC employees worked on Ms. Wisinski's claim, and none of them correctly identified the policy limit. While there is no direct evidence that ACIC intentionally did not inform Ms. Wisinski of the correct policy limit, an insurance company is in the best position to accurately determine the correct policy limit of its own policy. Thus an insurance company that possesses the information to allow them to accurately determine the policy limit but fails to inform the insured of the correct policy limit does so either intentionally or recklessly.

ACIC argues that it did not intentionally conceal the policy limit from Ms. Wisinski because she was provided with the Declarations page of her policy on February 7, 2002. (Defendant's Brief in Support of Motion for Summary Judgment at 9). ACIC explains that the Declarations page of the policy "clearly shows that the Endorsement carries a stacked benefit and that no request was made for election forms [which would indicate a waiver of the stacking benefit]." *Id.* We fail to see how this is significantly different from the insurance adjuster in *Hollock* who also knew that the insured possessed the policy

and presumably the insured could have discovered the correct policy limit from that document. An insurance company's duty does not end by merely providing a complete policy to an insured. In *Hollock* the insurance adjuster always knew the correct policy limit, and failed to correct the insured's misunderstanding of the correct limit. Here, ACIC either knew or should have known the correct policy limit, failed to accurately report it to the insured, and when confronted with the insured's understanding that ACIC had quoted the wrong policy limit, ACIC held off confirming the correct policy limit for nearly four months.

As noted, ACIC's internal procedures require that an adjuster initially determines the policy limit and that a supervisor confirms the limit. As part of this evaluation, an adjuster would necessarily review the Declarations page and presumably note if it "clearly" indicated a stacked benefit. Similarly, an adjuster would also examine the insured's policy to see if the insured completed a form indicating if the insured rejected stacking benefits. If there was no rejection of the stacked benefits, then the insurance adjuster would know that stacking applied. The initial ACIC adjuster here unreasonably and recklessly failed to perform these essential components of properly evaluating a policy and thus reported an incorrect policy limit to Ms. Wisinski. Despite a policy requiring a supervisor to review the initial evaluation and several other ACIC employees also handling the claim, the correct policy limit was never discovered internally by ACIC. Finally, even when ACIC was notified by Ms. Wisinski's attorney that ACIC may have incorrectly identified the policy limit, it took ACIC nearly four more months before it would confirm the correct amount. Under these circumstances we are compelled to conclude that ACIC's conduct was unreasonable and done either intentionally or recklessly.

b. ACIC's Conduct in Regard to the Arbitration of Ms. Wisinski's Claims

Ms. Wisinski also alleges that ACIC acted in bad faith when it refused to arbitrate her claim in accordance with her policy. Ms. Wisinski's attorney, Timothy George, requested arbitration of the uninsured motorist claim on December 9, 2005. ACIC, however, was opposed to arbitration. On December 28, 2005, ACIC's sought outside counsel's advice as to whether ACIC could rightfully object to the request for arbitration. After reviewing the policy provided by ACIC, outside counsel informed ACIC that, in his opinion, ACIC was not required to arbitrate the claim. However, ACIC had provided an outdated policy to its outside counsel that did not include Ms. Wisinski's new Pennsylvania Uninsured Motorists Endorsement that allowed arbitration upon the request of either party. Thus, outside counsel's opinion was based on incorrect and outdated information provided by ACIC.

The original relevant arbitration language provided that "[b]oth parties must agree to arbitration." (Pl.'s Exh. H at 0131.) However, a Pennsylvania Uninsured Motorist Endorsement to the policy changed the applicable relevant arbitration language to provide that "[e]ither party may make a written demand for arbitration." (Pl.'s Exh. A, Bates No. 45.) Ms. Wisinski properly demanded arbitration without seeking the consent of ACIC pursuant to the clear language of the revised policy. In *Anderson*, the Court found that Nationwide's persistent refusal to arbitrate its dispute with the insured, notwithstanding an unambiguous arbitration clause in its policy, was bad faith. 187 F.Supp.2d at 459-460.

The *Anderson* court explained that the conduct at issue is not the insurer's position on the merits of the claim; but rather the insurer's refusal to arbitrate in contradiction to the clause in its policy. *Id.* At 459. Like in *Anderson*, it was clear and unambiguous on the face of ACIC's policy that either party could request arbitration. By refusing to arbitrate upon Ms. Wisinski's request, ACIC acted in bad faith.

Notwithstanding the clear policy language ACIC argues that it was not required to arbitrate because the Pennsylvania Supreme Court has ruled that the Pennsylvania Insurance Commissioner does not have the authority to mandate that all uninsured motorist policies contain mandatory arbitration provisions. *IFP v. Koken*, 889 A.2d 550 (Pa. 2005). The *Koken* decision is irrelevant to the instant case because ACIC's arbitration obligation was not simply mandated by the Pennsylvania Insurance Commissioner but instead was actually a part of ACIC's policy itself. ACIC improperly and unreasonably relied on the *Koken* decision as support for its position that it was not required to arbitrate despite its policy terms.

Finally, ACIC argues that its decision to challenge the requirement of arbitration was not done in bad faith because ACIC sought advice from outside counsel regarding its obligations. Again we fail to see how ACIC's conduct in this regard helps its case. First and foremost it was ACIC which failed to provide outside counsel with a current and complete policy on which to base his opinion. Second, it is undisputed that ACIC informed outside counsel when requesting his opinion regarding arbitration that ACIC did not want to arbitrate the claim. Moreover, Ms. Hericks specifically directed outside counsel to the outdated policy when she told him that "it appears according to our policy wording that we have the option as to whether ACIC has to proceed to arbitration." Finally, ACIC relied on out-of-state counsel who had minimal experience handling Pennsylvania Uninsured Motorist claims. His practice is located in Canton, Ohio and he testified that less than 5% of his practice dealt with Pennsylvania auto insurance claims. Given that ACIC told outside counsel, who had minimal experience with Pennsylvania auto insurance claims, that it did not want to arbitrate Ms. Wisinski's claim and then failed to provide him with accurate policy information, it is no surprise that outside counsel told ACIC what it wanted to hear. We find, that under these circumstances, it was unreasonable for ACIC to rely on the advice of counsel when it did not provide him with the correct policy.

c. ACIC's Conduct in the Settlement of Ms. Wisinski's Uninsured Motorist Claim

Ms. Wisinski also alleges that ACIC's overall course of conduct in the settlement of her claim was done in bad faith. More specifically, Ms. Wisinski points to ACIC's unreasonably low settlement offers, its false threat to appeal an arbitration award, and its unreasonable post-settlement demands resulting in delaying the settlement funds.

Ms. Wisinski initially made a settlement demand on September 23, 2003. (Plaintiff's Exhibit Y). Four months later, on January 30, 2004, ACIC made its first settlement offer of \$7,798. Apparently, no further settlement discussions were held until August 2005, when ACIC was informed that Ms. Wisinski was no longer represented by an attorney. ACIC's response was to ask the now unrepresented Ms. Wisinski if she still wished to pursue her claim. Ms. Wisinski stated that she did wish to pursue the claim and demanded what she believed her policy limit was -- \$50,000, to settle the claim. Three months later, on

December 9, 2005, after having received a report from Ms. Wisinski's orthopedic surgeon documenting the relationship between the accident and Ms. Wisinski's need for bilateral total knee replacements and learning that Ms. Wisinski's medical bills were already in excess of \$50,000, ACIC raised its initial offer by \$1,202, to \$9,000. At that point, Ms. Wisinski's new attorney sought arbitration in accord with the policy language.

After Judge Bozza granted Ms. Wisinski's motion to compel arbitration on February 8, 2006, ACIC was aware that its own policy required that it arbitrate the claim upon Ms. Wisinski's request, that the actual policy limit was \$100,000, that it would inevitably lose arbitration and the award would be at or greater than the policy limit. Despite this knowledge ACIC unreasonably and falsely threatened that it would appeal an arbitration award in order to induce Ms. Wisinski to accept a lower settlement offer.

The Pennsylvania Unfair Practices Act, Section (a)(10)(xi) states that it prohibits an insurer from "making known to insureds or claimants a policy of appealing from arbitration awards in favor of insured or claimants to induce or compel them to accept settlements or compromises less than the amount awarded in arbitration." 40 Pa. C.S.A. 1171.5 (a) (10)(xi). This is exactly what ACIC did in this case. In ACIC's log notes Home Office Examiner, Steve Shiner wrote:

Diane [Hericks] has authorized [outside defense counsel] to make a counteroffer of 20k which would be accompanied by our very persuasive causation arguments, as well as the plan to appeal an adverse arbitrator's award to a jury trial. However, we do not expect [Plaintiff's counsel] to be willing to come off the [policy limit] significantly, if at all, with over 60 k in medical expenses . . . especially with the favorable arb panel they have drawn. If we were to go forward with the arbitration, we will have to undertake two additional expert depositions . . . and an expensive appeal process as the lower court judge is not likely to grant our appeal so we would have to take it to a higher court. In addition, this case is going to boil down to competing experts, and there is no guarantee a jury would accept the aggravation/ acceleration argument. Accordingly, I will extend settlement authorization to the \$100,000 [policy limit]. That said, we should continue negotiating the case as if we have every intention to taking it to arbitration (with plans of appealing an adverse decision) and if necessary, proceed to the next scheduled deposition to demonstrate our commitment to that plan to [Plaintiff's counsel].

(Defendant's Exhibit 6, at 1677.) *See also* Plaintiff's Ex. L, at 1050 ("I will constantly remind opposing counsel that I have an appeal in my back pocket should the award be too high"); and Defendant's Ex. 6, at 1676 ("take the position that arbitration will not necessary resolve (will appeal) & they will also eliminate a lot of time/expense if we resolve now").

As arbitration loomed, on August 30, 2006, without any additional medical information, ACIC unilaterally raised its settlement offer to \$20,000. ACIC's new offer was still less than half of the total amount of medical expenses incurred by Ms. Wisinski, and only one fifth of the policy limit of \$100,000. Even ACIC's home office examiner, Mr. Shiner, acknowledged that \$20,000 was unreasonable when he noted: "we do not expect [Plaintiff's Counsel] to be willing to come off [of] the [policy limit] significantly, if at all, with over \$60K in medical expenses and an alleged permanent disability from her prior employment;

especially with the favorable [arbitration] panel they have drawn." (Def.'s Exhibit 6, Bates No. 1677).

When Ms. Wisinski did not accept the low ball offer, a month later on September 27, 2006, again without any new information, ACIC increased its offer to the policy limit \$100,000. Mr. Shiner explained that the reason ACIC unilaterally increased its settlement offer 400% was the fact that it became clear that Ms. Wisinski's claim would be resolved in her favor at arbitration. (Plaintiff's Exhibit U, at 55)

ACIC asserts that its evaluation of Ms. Wisinski's claim was not unreasonable because it was based, in part, on ACIC's uncertainty as to whether Ms. Wisinski's injuries were caused by the December 20, 2001 accident or were pre-existing. However, the only actual medical documentation that ACIC possessed when they made the first two extremely low settlement offers indicated that Ms. Wisinski's injuries were caused and accelerated by the accident.

ACIC's conduct is similar to the insurer's conduct in *Bonenberger v. Nationwide Mutual Insurance*, 791 A.2d 378 (Pa. Super. 2002). In *Bonenberger*, Nationwide's initial settlement offer was approximately 9% of the actual value of the insured's claim. The Pennsylvania Superior Court found that Nationwide disregarded the plaintiff's medical records and did not perform a reasonable evaluation based upon the facts. Similarly, here, ACIC offered an initial offer that was approximately 7% of the total value of the claim, but ultimately relented and offered the policy limits when arbitration was about to commence.

Once the offer was accepted, ACIC delayed paying the settlement funds until January 18, 2007, because ACIC wanted Ms. Wisinski and her attorney to agree that Medicare would be included as a payee on the settlement check, and ACIC wanted Ms. Wisinski to release any other claims she had against ACIC, specifically her bad faith and wage loss claims she asserts in this lawsuit.

Ms. Wisinski's had exhausted her first party benefits in June 2003. Thereafter, her ongoing treatment was paid for by Medicare, and thus ACIC argued that Medicare must be included as a payee on the settlement check in order to protect ACIC from being liable for future payments to Medicare. However, both Ms. Wisinski and her attorney agreed to personally indemnify ACIC for the Medicare charges. ACIC's counsel agreed with Ms. Wisinski's counsel that indemnification by the insured and her attorney was an accepted industry practice and advised ACIC that Medicare did not need to be included on the check. Nonetheless, ACIC persisted in its demand causing months of delay in paying the settlement funds to Ms. Wisinski.

Finally, ACIC also delayed final resolution of the agreed-upon settlement by insisting that Ms. Wisinski agree to release her wage loss and bad faith claims before distributing the settlement funds. An insurance carrier that attempts to coerce an insurer to release her bad faith claim when the policy limit was offered as settlement constitutes bad faith. *Hayes v. Harleysville*, 841 A.2d 121 (Pa. Super. 2003) Alloc. Denied 870 A.2d 322 (Pa. 2005). This is the exact conduct that ACIC engaged in, and it clearly indicates ill will towards Ms. Wisinski.

Taken together ACIC's conduct in proposing unreasonably low settlement offers, in falsely threatening to appeal an arbitration award, and its unreasonable post-settlement demands supports a finding of bad faith on the part of ACIC.

d. Conclusion

Considering ACIC's entire course of conduct in the settlement of Ms. Wisinski's Uninsured Motorist Claim, we find that ACIC's conduct was intentional and unreasonable and that Ms. Wisinski has shown by clear and convincing evidence that ACIC did act in bad faith in regard to the handling and settlement of her claim. We find that ACIC acted in bad faith by misrepresenting the uninsured motorists policy coverage limits; by refusing to arbitrate Ms. Wisinski's uninsured motorist claim in direct conflict with its own policy language; by misleading Ms. Wisinski regarding their intentions to appeal an arbitration award; by proffering unreasonably low settlement offers; and in unreasonably delaying payment of the settlement funds and attempting to have Ms. Wisinski waive future claims against them for bad faith. In light of ACIC's entire course of conduct we find that ACIC acted in bad faith with regard to Ms. Wisinski's uninsured motorist claim. Accordingly, we will grant summary judgment in favor of Ms. Wisinski on her bad faith claim regarding her uninsured motorist claim.

B. Ms. Wisinski's Breach of Contract Claim

Ms. Wisinski asserts breach of contract claims based on her facts underlying her bad faith claims related to her uninsured motorist claim and her wage loss claim. As noted, because we determined that there was no bad faith in relation to Ms. Wisinski's wage loss claim, there is no breach with regard to this claim either. However, we do find a breach with regard to ACIC's refusal to arbitrate. In *Anderson* the court found that Nationwide's refusal to arbitrate a claim, in contravention of policy language giving the insured the right to arbitrate, was a material breach of the insurance contract. 187 F.Supp.2d at 457. Likewise, ACIC refused to arbitrate the dispute upon Ms. Wisinski's request in contravention of the unambiguous arbitration clause in the policy. We find ACIC's refusal to arbitrate to be a breach of the contract and we will grant summary judgment in favor of Ms. Wisinski.

C. Ms. Wisinski's Unfair Trade Practices Claims

We see no merit in Ms. Wisinski's claim under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 P.S. § 201-1 *et seq. See Anderson*, 187 F.Supp.2d at 461 (private cause of action limited to "unfair or deceptive methods, acts, or practices in the conduct of any 'trade or commerce,' § 201-3, defined as 'the advertising, offering for sale, sale or distribution of any services and any property'", quoting *Katz v. Aetna Cas. & Sur. Co.*, 972 F.2d 53, 55 (3d Cir.1992).) The conduct Ms. Wisinski complains of "is not related to an unfair trade practice but rather concerns [ACIC's] refusal to perform its contractual obligations," and such "conduct is simply not the proper subject matter for a UTPCPL claim." *Anderson*, 187 F.Supp.2d at 461. Accordingly, we will grant summary judgment in favor of ACIC as to this claim.

IV. Conclusion

Our review of the record evidence indicates that there is no genuine issue of material fact as to whether ACIC acted in bad faith in regard to Ms. Wisinski's uninsured motorist claim. As discussed we based our conclusion on ACIC's entire course of conduct in handling the uninsured motorist claim. In addition, we will grant summary judgment in favor of Ms. Wisinski on her claim that ACIC breached the contract by refusing to arbitrate upon her request. We will grant summary judgment in favor of ACIC on the remainder of Ms. Wisinski's claims.

An appropriate Order follows.

<u>ORDER</u>

AND NOW, to-wit, this 4th day of January, 2011, after careful consideration and for the reasons set forth in the Opinion accompanying this Order, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

- 1. Plaintiff's Motion for Partial Summary Judgment, (Doc. No. 36) be and hereby is GRANTED in part, and DENIED in part, as follows:
 - a. Plaintiff's Motion is GRANTED as to her bad faith claim as it relates to Defendant's handling of her uninsured motorist claim, Judgment is entered in favor of Plaintiff on this claim.
 - b. Plaintiff's Motion is GRANTED as to her breach of contract claim as it relates to Defendant's refusal to arbitrate. Judgment is entered in favor of Plaintiff on this claim.
 - c. Plaintiff's Motion is DENIED in all other respects.
- 2. Defendant's Motion for Summary Judgment, (Doc. No. 32) be and hereby is GRANTED in part, and DENIED in part, as follows:
 - a. Defendant's Motion is GRANTED as to Plaintiff's bad faith claim in the handling of her wage loss claim. Judgment is entered in favor of Defendant on this claim.
 - b. Defendant's Motion is GRANTED as to Plaintiff's breach of contract claim as it relates to Plaintiff's wage loss claim. Judgment is entered in favor of Defendant on this claim.
 - c. Defendant's Motion is GRANTED as to Plaintiff's claim asserted under the Pennsylvania Unfair Trade Practices and Consumer Protection Law. Judgment is entered in favor of Defendant on this claim.
 - d. Defendant's Motion is DENIED in all other respects.

/s/ Maurice B. Cohill, Jr. Senior United States District Court Judge

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RICHARD N. LETTIERI, ESQ. E-DISCOVERY COUNSEL

Litigation 2nd Chair
E-Discovery Mediator
E-Discovery Special Master

Lettieri Law Firm, LLC 1620 King James Drive Pittsburgh, Pa. 15237 412-364-7255 (Office) rlettierilaw@live.com www.lettierilaw.com

RICHARD N. LETTIERI, ESQ.

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

1. Fictitious Name: Spiral Stairs and Curved Staircases Unlimited

2. Address of the principal place of business, including street and number: 4344 Cooper Road, Erie, PA 16510

3. The real names and addresses, including street and number, of the persons who are parties to the registration: Mary Guy Findlay, 4344 Cooper Road, Erie, PA 16510 4. An application for registration of a fictitious name under the Fictitious Names Act was filed on December 30, 2010.

Anthony Logue, Esq. 2622 Parade Street Erie, PA 16504

Mar. 4

FICTITIOUS NAME NOTICE

1. Fictitious Name: Sushi and Asian Cuisine Restaurant

2. Address of the principal place of business, including street and number: 1014 State Street, Erie, PA 16501-1804

3. The real names and addresses, including street and number, of the persons who are parties to the registration: Kap Mung, 3729 Hampshire Rd., Erie, PA 16505 and Dim Cing, 3729 Hampshire Rd., Erie, PA 16505

4. An application for registration of a fictitious name under the Fictitious Names Act was filed on February 14, 2011.

Susmarski Hain & Jiuliante Ronald J. Susmarski, Esq. 4030-36 West Lake Road Erie, PA 16505

Mar. 4

FICTITIOUS NAME NOTICE 1. Fictitious Name: WMF SUSTAINABILITY

2. Address of the principal place of business, including street and number: 3230 West Lake Road, Erie, PA 16505

3. The real names and addresses, including street and number, of the persons who are parties to the registration: Douglas R. Hoffman, Charles P. Haynes, D. Richard Fox, Richard H. Speicher, Dennis J. Wilkins and Kim W. Jeffreys, 3230 West Lake Road, Erie, Pennsylvania 16505

4. The application for registration of the fictitious name was filed with the Pennsylvania Department of State under the Fictitious Names Act on or about January 11, 2011. Elliott J. Ehrenreich, Esquire Knox McLaughlin Gornall

& Sennett, P.C. 120 West Tenth Street Erie, PA 16501

Mar. 4

INCORPORATION NOTICE

Delta Sigma Phi Fraternity Gamma Rho Chapter A.C.B. has been incorporated under the provisions of the Non-Profit Corporation Law of 1988, to be operated exclusively as an organization or club within the meaning of Section 501(c)(7) of the Internal Revenue Code, as now in effect or as may hereafter be amended, and to operate in the manner set forth in its Articles of Incorporation.

The Articles of Incorporation were filed with the Pennsylvania Department of State on January 26, 2011.

John P. Leemhuis, Jr., Esquire Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc.

2222 West Grandview Boulevard Erie, Pennsylvania 16506-4508

Mar. 4

LEGAL NOTICE

NOTICE OF ACTION IN MORTGAGE FORECLOSURE IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA CIVIL ACTION - LAW COURT OF COMMON PLEAS CIVIL DIVISION ERIE COUNTY NO. 13302-10 WELLS FARGO BANK, N.A. vs SAMUEL J. RUMBERGER, IN HIS CAPACITY AS ADMINISTRATOR AND HEIR OF THE ESTATE OF JOHN K. RUMBERGER CONNOR HAWES, IN HIS CAPACITY AS HEIR OF THE ESTATE OF JOHN K. RUMBERGER UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT TITLE OR INTEREST FROM OR UNDER JOHN K. RUMBERGER, DECEASED CATHY M. LOJEWSKI, ESO NOTICE

To UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JOHN K. RUMBERGER, DECEASED:

You are hereby notified that on JULY 26, 2010, Plaintiff, WELLS FARGO BANK, N.A., filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of ERIE County Pennsylvania, docketed to No. 13302-10. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 941 WEST 35TH STREET, ERIE, PA 16508 whereupon your property would be sold by the Sheriff of ERIE County. You are hereby notified to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the

COMMON PLEAS COURT

plaintiff. You may lose money or property or other rights important to you.

You should take this notice to your lawyer at once. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer.

If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal services to eligible persons at a reduced fee or no fee.

Erie County Lawyer Referral Service

PO Box 1792 Erie, PA 16507 814-459-4411

Mar. 4

LEGAL NOTICE

NOTICE OF SHERIFF'S SALE IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA NO 13646-10

WELLS FARGO FINANCIAL PENNSYLVANIA, INC.

VS.

STEFANIA SIDOROWICZ, IN HER CAPACITY AS HEIR OF CELINA B. LONG, DECEASED & ET AL. NOTICE TO: UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER CELINA B. LONG, DECEASED

NOTICE OF SHERIFF'S SALE

COMMON PLEAS COURT

OF REAL PROPERTY Being Premises: 3413 WASHINGTON AVENUE. ERIE. PA 16508-2331 Being in CITY OF ERIE Township, County of ERIE, Commonwealth of Pennsylvania Parcel Number 1: 19-061-036.0-124.00 Improvements consist of residential property. Sold property as the of STEFANIA SIDOROWICZ, IN HER CAPACITY AS HEIR OF CELINA B. LONG, DECEASED & ET AL Your house (real estate) at 3413 WASHINGTON AVENUE, ERIE, PA 16508-2331 is scheduled to be sold at the Sheriff's Sale on MAY 20, 2011 at 10:00 AM., at the ERIE County Courthouse to enforce the Court Judgment of \$99,762.03 obtained by, WELLS FARGO FINANCIAL PENNSYLVANIA, INC. (the mortgagee), against the above premises. Phelan Hallinan & Schmieg, LLP Attorney for Plaintiff

Mar. 4

LEGAL NOTICE

THE ORPHANS' COURT IN DIVISION OF THE COURT COMMON OF PLEAS OF WESTMORELAND COUNTY. PENNSYLVANIA IN RE: Adoption of Peyton Allen Thomas (Adoptee's name as on birth certificate) No: 122 of 2010 ATTORNEY: Charles F. Wade NOTICE

(Involuntary Termination) TO: Elizabeth Mary Anne Weimer, birth mother of Peyton Allen Thomas A petition has been filed asking the court to put an end to all rights you have to your child Peyton Allen Thomas. The court has set a hearing to consider ending your rights to your child. That hearing will be held in Courtroom # 10 on the 13th day of April, 2011 at 9:00 A.M. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without your being present.

You have a right to be represented at the hearing by a lawyer. 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. This office can provide you with information about hiring a lawyer. If you cannot afford to hire a lawyer, this office may be able to provide you with information about agencies that may offer legal

about agencies that may offer legal services to eligible persons at a reduced fee or no fee. Lawyer Referral Service Westmoreland Bar Association

P.O. Box 565 Greensburg, PA 15601 (724) 834-8490 Charles F. Wade, Esquire 40 N. Pennsylvania Avenue, Suite 310 Greensburg, PA 15601 (724)830-3300

Feb. 25 and March 4, 11

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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 18, 2011 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 <u>MUST</u> 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. 25 and Mar. 4, 11

SALE NO. 2 Ex. #13107 of 2010 Americo Federal Credit Union

v. Douglas E. Auer and Patricia C. Auer <u>SHERIFF'S SALE</u>

By virtue of a Writ of Execution filed to No. 2010-13107, Americo Federal Credit Union vs Douglas E. Auer and Patricia C. Auer, owners of property situated in the City of Erie, County of Erie and Commonwealth of Pennsylvania being 3006 Brandes Street, Erie, Pennsylvania. Assessment Map Number: (18) 5047-306 Edwin W. Smith, Esq.

305 West Sixth Street

Erie, PA 16507 (814) 452-6800 Feb. 25 and Mar. 4, 11

SALE NO. 3 Ex. #14006 of 2010 **US BANK, NATIONAL** ASSOCIATION AS TRUSTEE FOR JPM ALT 2006-S3, Plaintiff v. AMIN AL-BARKISHI, Defendant(s) SHERIFF'S SALE By virtue of a Writ of Execution filed to No. 14006-10 US BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR JPM ALT 2006-S3 vs. AMIN AL-BARKISHI Amount Due: \$67,947.13 AMIN AL-BARKISHI, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 1036 EAST 26th STREET, ERIE, PA 16504-2910 Dimensions: 40 x 165 Acreage: .1515 Assessment Map number: 18-050-042.0-131.00 Assessed Value: 39,200 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. 25 and Mar. 4, 11

SALE NO. 4 Ex. #14035 of 2010 CITIMORTGAGE, INC., Plaintiff v. DEBBIE A. BEVERIDGE A/K/A

DEBBIE A. BEVERIDGE A/K/A DEBBIE BEVERIDGE A/K/A DEBORAH A. BEVERIDGE, Defendant(s) <u>SHERIFF'S SALE</u>

By virtue of a Writ of Execution filed to No. 2010-14035 CITIMORTGAGE, INC. vs. DEBBIE A. BEVERIDGE A/K/A DEBBIE BEVERIDGE A/K/A DEBORAH A. BEVERIDGE A/K/A DEBBIE BEVERIDGE A/K/A DEBBIE BEVERIDGE A/K/A DEBORAH A. BEVERIDGE, owner(s) of property situated in the TOWNSHIP OF LAWRANCE [sic], Erie County, Pennsylvania being 1059 RANKINE AVENUE. ERIE, PA 16511-2845 Dimensions: 19.4 X 109 Acreage: .0486 Assessment Map number: 29-018-059.0-029.00 Assessed Value: \$49,980.00 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. 25 and Mar. 4, 11

SALE NO. 5 Ex. #13613 of 2009 US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CMLTI 2007-WFHE3, Plaintiff V.

ANTHONY M. DUFALA, Defendant(s) SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 13613-09 US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CMLTI 2007-WFHE3 vs. ANTHONY M. DUFALA Amount Due: \$67,075.33 ANTHONY M. DUFALA, owner(s) of property situated in BOROUGH OF UNION CITY, 2ND WARD, Erie County, Pennsylvania being 42 SOUTH STREET, UNION CITY, PA 16438-1219 Dimensions: 54 Acreage: 165 Assessment Map number: 42-009-032.0-002.00 Assessed Value: 55,380 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. 25 and Mar. 4, 11

SALE NO. 6 Ex. #14800 of 2010 NATIONSTAR MORTGAGE

LLC, Plaintiff v APRIL LYNN ESPY, Defendant(s) SHERIFF'S SALE By virtue of a Writ of Execution filed to No. 14800-10 NATIONSTAR MORTGAGE LLC vs. APRIL LYNN ESPY Amount Due: \$59,255.63 APRIL LYNN ESPY, owner(s) of property situated in CITY OF ERIE, Erie County, Pennsylvania being 3825 PERRY STREET, ERIE, PA 16504-2371 Dimensions: 40 X 130 Acreage: 0.1194 Assessment Map number: 18-053-083.0-126.00 Assessed Value: 58,860.00 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. 25 and Mar. 4, 11

SALE NO. 7 Ex. #13606 of 2008 GMAC MORTGAGE, LLC, S/I/I TO GMAC MORTGAGE CORPORATION, Plaintiff

LEON JACKSON WINNIE L. JACKSON, Defendant(s) <u>SHERIFF'S SALE</u>

v.

By virtue of a Writ of Execution filed to No. 13606-08 GMAC MORTGAGE, LLC, S/I/I GMAC MORTGAGE CORPORATION LEON VS. JACKSON and WINNIE L. JACKSON Amount Due: \$131,832.79 LEON JACKSON and WINNIE L. JACKSON, owner(s) of property situated in Erie County. Pennsylvania being 4110 PINE AVENUE, ERIE, PA 16504-2334 Acreage: 1.6020 Assessment Map number: 18052005010700 Assessed Value: \$87,1000.00 [sic]

Assessed Value: \$87,1000.00 [stc] Improvement thereon: Residential Phelan Hallinan & Schmieg, LLP One Penn Center at Suburban

ERIE COUNTY LEGAL JOURNAL LEGAL NOTICE

Station, Suite 1400 1617 John F. Kennedy Boulevard Philadelphia, PA 19103-1814 (215) 563-7000 Feb. 25 and Mar. 4. 11

SALE NO. 8 Ex. #14153 of 2010 CITIMORTGAGE, INC., Plaintiff v. HEATHER KENNEDY-GONZALEZ, Defendant(s) <u>SHERIFF'S SALE</u> By virtue of a Writ of Execution

filed to No. 14153-10 CITIMORTGAGE. INC HEATHER **KENNEDY**vs GONZALEZ Amount Due: \$84.858.35 HEATHER KENNEDY-GONZALEZ. owner(s) of property situated in TOWNSHIP OF CITY OF ERIE, Erie County, Pennsvlvania being 3912 RASPBERRY STREET, ERIE, PA 16509-1324 Dimensions: 45 X 140 Acreage: 0.1446 Assessment Map number: 19061029010300 Assessed Value: 46.330.00 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. 25 and Mar. 4, 11

SALE NO. 9 Ex. #10556 of 2005 JPMC SPECIALTY MORTGAGE LLC, F/K/A WM SPECIALTY MORTGAGE, LLC, Plaintiff V.

THOMAS L. KESSELRING DOROTHY E. BUREK, Defendant(s) SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 10556-05 JPMC SPECIALTY MORTGAGE LLC, F/K/A WM SPECIALTY MORTGAGE, LLC vs. THOMAS L. KESSELRING and DOROTHY E. BUREK

COMMON PLEAS COURT

Amount Due: \$77,008.81 THOMAS L. KESSELRING and DOROTHY E. BUREK, owner(s) of property situated in the FIRST WARD OF THE BOROUGH OF UNION CITY, Erie County, Pennsylvania being 45 BRIDGE STREET, UNION CITY, PA 16438 Dimensions: 66 X 372.27 Acreage: .2121 Assessment Map number: (41) 13-49-3 Assessed Value: 80,300 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. 25 and Mar. 4, 11

SALE NO. 10 Ex. #13732 of 2010 WELLS FARGO BANK, N.A., S/B/M TO WELLS FARGO HOME MORTGAGE, INC., Plaintiff v

JENNIFER H. KOZLOWSKI, Defendant(s) <u>SHERIFF'S SALE</u>

By virtue of a Writ of Execution filed to No. 13732-10 WELLS FARGO BANK, N.A., S/B/M TO WELLS FARGO HOME MORTGAGE, INC. vs. JENNIFER H. KOZLOWSKI Amount Due: \$48,718.84 JENNIFER H. KOZLOWSKI, owner(s) of property situated in the CITY OF ERIE, Erie County, Pennsylvania being 2121 WEST 34TH STREET, ERIE, PA 16508-1917 Dimensions: 50 X 125 Acreage: 0.1435 Assessment Map number: 19-061-063.0-203.00 Assessed Value: 44,270.00 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. 25 and Mar. 4, 11

SALE NO. 11 Ex. #13982 of 2009 THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK N.A. AS TRUSTEE FOR RASC 2003KS4, Plaintiff

v.

DAWN L. RAINEY, Defendant(s) SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 13982-09 THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO JPMORGAN CHASE BANK N.A. AS TRUSTEE FOR RASC 2003KS4 vs. DAWN L. RAINEY Amount Due: \$93.800.50

DAWN L. RAINEY, owner(s) of property situated in CITY OF ERIE, Erie County, Pennsylvania being 714 EAST 33RD STREET, ERIE, PA 16504 Dimensions: 35 Acreage: 135 Assessment number: Map 18050063012700 Assessed Value: 61,960 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. 25 and Mar. 4, 11

SALE NO. 12 Ex. #14584 of 2010 PHH MORTGAGE CORPORATION, F/K/A CENDANT MORTGAGE CORPORATION, Plaintiff V.

DANIEL J. SIMON, Defendant(s) <u>SHERIFF'S SALE</u> By virtue of a Writ of Execution filed to No. 14584-10

PHH MORTGAGE CORPORATION, F/K/A ERIE COUNTY LEGAL JOURNAL LEGAL NOTICE

CENDANT MORTGAGE CORPORATION vs. DANIEL J. SIMON Amount Due: \$31,445.74 DANIEL J. SIMON, owner(s) of property situated in the City of Erie, Eric County, Pennsylvania being 2229 PROSPECT AVENUE, ERIE, PA 16510-1359. Dimensions: 80 X 120 Acreage: 0.2204 Assessment Map number: 18-051-034.0-212.00 Assessed Value: 46,910.00 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. 25 and Mar. 4, 11 SALE NO. 15 Ex. #13144 of 2010 CITIMORTGAGE, INC., Plaintiff v. MICHAEL WIENCZKOWSKI MELISSA WIENCZKOWSKI, Defendant(s) SHERIFF'S SALE By virtue of a Writ of Execution filed to No. 13144-10 CITIMORTGAGE, INC. vs MICHAEL WIENCZKOWSKI and MELISSA WIENCZKOWSKI Amount Due: \$209,525.00 WIENCZKOWSKI MICHAEL and MELISSA WIENCZKOWSKI, owner(s) of property situated in TOWNSHIP OF CONCORD, Erie County, Pennsylvania being 12804 LOVELL ROAD, CORRY, PA 16407-7704 Acreage: 7.0690 Assessment Map number: 03-003-007 0-003 04 Assessed Value: 124,220 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. 25 and Mar. 4, 11

COMMON PLEAS COURT

SALE NO. 16 Ex. #15639 of 2008 DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR FIRST FRANKLIN MORTGAGE LOAN TRUST 2006-FF11, Plaintiff v. JOHN K. WILLIAMS TINA M. WILLIAMS, Defendant(s) SHERIFF'S SALE By virtue of a Writ of Execution filed to No. 15639-08 DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR FIRST FRANKLIN MORTGAGE LOAN TRUST 2006-FF11 vs. JOHN K. WILLIAMS and TINA M. WILLIAMS Amount Due: \$74,306.07 JOHN K. WILLIAMS and TINA M. WILLIAMS, owner(s) of property situated in CORRY CITY WARD 2/0601, Erie County, Pennsylvania being 419 WRIGHT STREET, CORRY, PA 16407-1221 Dimensions: 50 Acreage: 234 Assessment Map number: 06015024001000 Assessed Value: 37,000 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. 25 and Mar. 4, 11

> SALE NO. 17 Ex. #14746 of 2010 THE BANK OF NEW YORK MELLON, AS TRUSTEE FOR CIT MORTGAGE LOAN TRUST 2007-1 Y.

JENNIFER MCGARVIE <u>ADVERTISING DESCRIPTION</u> ATC piece or parcel of land sit. in Bor. of Wesleyville, Co. of Erie, PA. Beg. at a point in the N. line of Chestnut St., now Edison Ave., 120 ft. E. from the intersection of N. line of Edison Ave., and E. line of Market St.

Front: 40 ft. Depth: 100.375 ft.

BEING known as 3514 Edison Ave.,Wesleyville Borough, Erie, PA 16510 Deed Book Volume 1402 Page 547 PARCEL No. 50002036000600 Gregory Javardian, Esquire Attorney for Plaintiff 1310 Industrial Boulevard 1st Floor, Suite 101 Southampton, PA 18966 (215) 942-9690 Feb. 25 and Mar. 4, 11

SALE NO. 19 Ex. #10170 of 2008 U.S. BANK NATIONAL ASSOCIATION TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff

v.

DIANN M. BUTERBAUGH, Defendants SHERIFF'S SALE

By virtue of a Writ of Execution No. 10170-08 U.S. BANK NATIONAL ASSOCIATION TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY Plaintiff vs. DIANN M. BUTERBAUGH, Defendants Real Estate: 909 EAST 24TH STREET, ERIE, PA Municipality: CITY OF ERIE, Erie County, Pennsylvania Dimensions: 24 x 57 See Deed Book 1342 Page 1276 Tax I.D. (18) 5039-220 Assessment: \$5200 (Land) \$38010 (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. 25 and Mar. 4, 11

SALE NO. 21 Ex. #14934 of 2010 US BANK NATIONAL ASSOCIATION, (TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, PURSUANT TO A TRUST INDENTURE DATED AS OF APRIL 1, 1982,) Plaintiff,

v.

KENNETH H. LONGSTREET AND LINDA A. LONGSTREET, Defendants SHERIFF'S SALE

By virtue of a Writ of Execution filed to No. 14934-10, US Bank National Association, et al vs. Kenneth H. Longstreet and Linda A. Longstreet, owner(s) of property situated in Erie City, Erie County, Pennsylvania being 421 Stafford Ave, Erie, PA 16508. Dimensions: 5300 square feet Assessment Number: Map 19-6049-208 Assess Value figure: 58,170.00 Improvement thereon: Dwelling Louis P. Vitti, Esquire Attorney for Plaintiff 215 Fourth Avenue Pittsburgh, PA 15222 (412) 281-1725

Feb. 25 and Mar. 4, 11

SALE NO. 22 Ex. #14607 of 2010 SRMOF 2009-1 Trust, Plaintiff

v. Linda Sanderson, Defendant SHERIFF'S SALE

By virtue of a Writ of Execution filed to No 14607-10, SRMOF 2009-1 Trust v. Linda Sanderson, Owner(s) of property situated in Erie, Erie County, Pennsylvania, being 3011 Pine Avenue, Erie, PA 16504

ALL THAT CERTAIN piece or parcel of land situate in the City of Erie, County of Erie, and Commonwealth of Pennsylvania, being part of Reserve Tract Number thirty-two (32), bounded and described as follows, to-wit:

BEGINNING at a point in the East line of Pine Avenue at the Northwest corner of land now or formerly owned by Katie May,

THENCE Northwardly along the East line of Pine Avenue, forty-one and 04/100 (41.04) feet;

THENCE in a line parallel to the land now or formerly owned by John Scheloske Eastwardly one hundred ninety-nine and 17/100 (199.17) feet to a point;

THENCE in a line parallel to the East line of Pine Avenue Southwardly Forty-one and 04/100

COMMON PLEAS COURT

(41.04) feet to a point; THENCE in a line parallel to the said South side of the said Land of Scheloske Westwardly one hundred ninety-nine and 17/100 (199.17) feet to a point on the East line of Pine Avenue and the point of beginning. SAID premises have erected thereon a brick flat commonly known as 3009-3011 Pine Avenue, Erie, Pennsylvania, bearing Erie County Tax Index No. (18) 5076-120 Assessment Map number: 18050076012000 Assessed Value figure: \$51,350.00 Improvement thereon: Residential Dwelling Martha E. Von Rosenstiel, Esquire 649 South Avenue, Unit #6 P.O. Box 822 Secane, PA 19018 (610) 328-2887

Feb. 25 and Mar. 4, 11

SALE NO. 23 Ex. #14875 of 2010 WELLS FARGO BANK, N.A., AS TRUSTEE FOR OPTION ONE MORTGAGE LOAN TRUST 2000-B, ASSET-BACKED CERTIFICATES, SERIES 2000-B, Plaintiff

v. THOMAS G. TOZZI JEAN P. TOZZI, Defendant(s) <u>DESCRIPTION</u>

All that certain piece or parcel of land situate in the Borough of Girard, Erie County, Pennsylvania, bearing Erie County Assessment No. (23) 4-18-11, bounded and described as follows, to-wit:

Being known as Lot No. 29 and Lot No. 30 of the Rice Avenue Allotment, having erected thereon a frame dwelling house known as 51 Miles Avenue, Girard, Pennsylvania; and is further identified by Erie County Tax Index No. (23) 4-18-11.

Excepting and reserving a five foot (5) strip of land from the Southwesterly side of Lot No. 30 PROPERTY ADDRESS: 51 Miles Avenue, Girard, PA 16417 Goldbeck McCafferty & McKeever

Attorney for Plaintiff

Suite 5000 - Mellon Independence Center, 701 Market Street

Philadelphia, PA 19106 (215) 627-1322 Feb. 25 and Mar. 4, 11

SALE NO. 24 Ex. #14469 of 2010 The Huntington National F

The Huntington National Bank, Plaintiff v.

Martha C. Keister, Defendant <u>SHERIFF'S SALE</u>

By virtue of a Writ of Execution filed to No. 14469-10 The Huntington National Bank vs. Martha C. Keister, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 2804 Liberty Street, Erie, PA 16508 75 93 x 70 Assessment Map number: (19) 6041-404 Assessed Value figure: \$55,790.00 Improvement thereon: a dwelling Patrick Thomas Woodman, Esq. 436 Seventh Avenue 1400 Koppers Bldg. Pittsburgh, PA 15219 (412) 434-7955 Feb. 25 and Mar. 4, 11

SALE NO. 25 Ex. #14676 of 2010 Wells Fargo Bank, N.A.

v. Angel P. Montalban <u>SHERIFF'S SALE</u>

By virtue of a Writ of Execution file to No. 2010-14676 Wells Fargo Bank, N.A. vs. Angel P. Montalban. owner(s) of property situated in the City of ERIE, County of Erie, Pennsylvania being 516 Hess Avenue, Erie, PA 16507 0.0661 acres Assessment Map Number: 14-1044-201 Improvement thereon: Single Family Dwelling Scott A. Dietterick, Esquire Kimberly A. Bonner, Esquire Joel Ackerman, Esquire Ashleigh L. Levy. Esquire Zucker, Goldberg & Ackerman, LLC 200 Sheffield Street, Suite 101 Mountainside, NJ 07092 (908) 233-8500

Feb. 25 and Mar. 4, 11

COMMON PLEAS COURT

SALE NO. 26 Ex. #12880 of 2010 Self Help Ventures Fund v.

Ishmael V. Trainor; Allana T. Trainor SHERIFF'S SALE

By virtue of a Writ of Execution file to No. 12880-10 Self Help Ventures Fund vs. Ishmael V. Trainor; Allana T. Trainor, owner(s) of property situated in the City of Erie, County of Erie, Pennsylvania being 638 Payne Avenue, Erie, PA 16503 0 1102 acres Assessment Map Number: 14-1102-102 Assessed Value figure: \$42,030.00 Improvement thereon: Single Family Dwelling Scott A. Dietterick, Esquire Kimberly A. Bonner, Esquire Joel Ackerman, Esquire Ashleigh L. Levy, Esquire Zucker, Goldberg & Ackerman, LLC 200 Sheffield Street, Suite 101 Mountainside, NJ 07092 (908) 233-8500 Feb. 25 and Mar. 4, 11

SALE NO. 27 Ex. #12995 of 2010 Beneficial Consumer Discount Company, d/b/a Beneficial Mortgage Co. of Pennsylvania v.

Michael Gallagher LEGAL DESCRIPTION

All that certain piece or parcel of land situate in the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania, being Lot No. Sixty-two (62) as shown on the plan of lots of WESTBURY FARMS, PHASE III, as recorded on October 26, 1994, in Erie County Map 1994-291, to which plan reference is made for a more complete description thereof. Having erected thereon a dwelling commonly known as 5035 Westbury Farms Drive, Erie, Pennsylvania, being further identified and by Erie County Tax Index No. (33) 128-376.2-11. all Subject to restrictions.

Subject to all restrictions, easements, rights-of-way and building lines of record or visible and discoverable upon an inspection of the demised property. BEING the same premises which Lisa E. Gallagher, married, by Quit Claim Deed dated August 21, 1996 and recorded August 22, 1996 in the Office of the Recorder of Deeds in and for Erie County in Deed Book 0457 Page 1274, granted and conveyed unto Michael F. Gallagher, married, in fee. PROPERTY ADDRESS: 5035 Westbury Farms Drive, Erie, PA 16505 PARCEL ID # (33) 128-376.2-11 Attorney for Plaintiff: Steven K. Eisenberg, Esquire Stern and Eisenberg, LLP The Pavilion 261 Old York Road, Suite 410 Jenkintown PA 19046 (215) 572-8111

Feb. 25 and Mar. 4, 11

SALE NO. 28 Ex. #15300 of 2010 Beneficial Consumer Discount Company, d/b/a Beneficial Mortgage Co. of Pennsylvania

v. Michael A. Klan <u>LEGAL DESCRIPTION</u>

All that certain piece or parcel of land situate in the Borough of Wesleyville, County of Erie and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point in the east line of Jackson Place, 128 feet northwardly from the north line of Skellie Avenue;

THENCE northwardly, along the east line of Jackson Place, 34-1/2 feet more or less, to a point, which point is the northwest corner of Lot No. 14 of Peck and Rose Subdivision, as per plot recorded in Map Book 1, page 395;

THENCE eastwardly, along the north line of Lots 12, 13 and 14 of said Peck and Rose Subdivision, 113 feet, more or less, to a point in the west line of land heretofore conveyed to J.W. Herrick;

THENCE southwardly, along the west line of land heretofore conveyed to J.W. Herrick, 44.2 feet; THENCE westwardly, parallel with the north line of Skellie Avenue, 113.35 feet, more or less, to the east line of Jackson Place, the place of beginning. Said premises have erected thereon a two and one-half story frame dwelling commonly known as 2213 Jackson Place, Erie, Pennsylvania. ALSO, all that certain piece or parcel of land situate in the Borough of Wesleyville, County of Erie and State of Pennsylvania, bounded and described as follows, to wit:

BEGINNING at an iron pin on the east line of Jackson Place, said pin being on the property line between Clinton W. Britton, now J. Detrich property, and the Peck and Rose Subdivision, and 325.05 feet west from the west line of Station Road, and approximately 170 feet north from the north line of Skellie Avenue; THENCE, North 28° West, along said Jackson Place, 35 feet to an iron pin:

THENCE. North 52° East, 156.8 feet to an iron pin;

THENCE, South 33° East, 35 feet to an iron pin on the line between Clinton W. Britton, now J. Detrich property, and Peck and Rose Subdivision. THENCE, South 52° West, along said line, 160.05 feet to the place of beginning.

Bearing Erie County Index No. (50) 3-31-19.

Under and Subject to easements, restrictions and rights of way of record and/or those that are visible to a physical inspection.

BEING the same premises which Charles S. Kubaney and Laurie E. Kubaney, husband and wife, by Deed dated January 5, 2006 and recorded January 9, 2006 in the Office of the Recorder of Deeds in and for Erie County in Deed Book 1299 Page 1309, as Instrument Number 2006 000902, granted and conveyed unto Michael A. Klan, in fee.

PROPERTY ADDRESS: 2213 Jackson Place, Erie, PA 16510. PARCEL ID # 50003031001900, Attorney for Plaintiff: Steven K. Eisenberg, Esquire Stern and Eisenberg, LLP The Pavilion 261 Old York Road, Suite 410 COMMON PLEAS COURT

Jenkintown, PA 19046 (215) 572-8111 Feb. 25 and Mar. 4, 11

SALE NO. 29 Ex. #14616 of 2010 HSBC Mortgage Corporation, USA, Plaintiff

v. John R. Ritz and Lynne M. Ritz, Defendant SHORT DESCRIPTION

By virtue of a Writ of Execution filed to No. 201014616 HSBC Mortgage Corporation, USA v. John R. Ritz and Lynne M. Ritz, owners of property situated in the Township of City of Erie, Erie County, Pennsylvania being 1114 West 6th Street, Erie, Pennsylvania 16507. Tax I.D. No. 17040035014300 Assessment: \$56,397.68 Improvements: Residential Dwelling McCabe, Weisberg and Conway, P.C.

123 South Broad Street, Suite 2080 Philadelphia, PA 19109

Feb. 25 and Mar. 4, 11



AUDIT LIST NOTICE BY PATRICK L. FETZNER Clerk of Records, Register of Wills and Ex-Officio Clerk of the Orphans' Court Division, of the Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Monday, February 28, 2011** and confirmed Nisi.

March 24, 2011 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2011</u>	<u>ESTATE</u>	ACCOUNTANT	ATTORNEY
36.	Robert W. Allison	Robert V. Allison and Deborah	
		Allison-Logan, Co-Executors	David J. Rhodes, Esq.
37.	Rona J. Freitas		
	a/k/a Rona Jean Freitas	Jacqueline Meinhart, Executrix	Darlene M. Vlahos, Esq.
38.	Jean Martha Farrah	Bradford P. Farrah, Executor	Shaun B. Adrian, Esq.
39.	Evelyn A. Kosobucki	David M. Kosobucki, Executor	Joseph A. Yochim, Esq.
40.	Willard A. Gustafson, Jr	Nancy Rea, Executrix	Thomas J. Minarcik, Esq.
41.	Ann P. Moon	PNC Bank, Trustee	Jeffrey D. Scibetta, Esq.
	T/W for Mary Ann (Westcott) Juzaitis	

PATRICK L. FETZNER Clerk of Records Register of Wills & Orphans' Court Division

Feb. 25 and Mar. 4

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

BRICKER, JOSEPH R., deceased

Late of the Township of Millcreek *Co-Executors:* Sandra K. Peter and Peter W. Bricker, c/o 332 East 6th Street, Erie, PA 16507-1610 *Attorney:* Evan E. Adair, Esq., Williams & Adair, 332 East 6th Street, Erie, PA 16507-1610

BURTON, RUTH H., deceased

Late of the City of Erie, County of Erie, State of Pennsylvania *Executrix:* Karen Burton Horstman, 448 Shawnee Drive, Erie, Pennsylvania 16505 *Attorney:* James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

CARLSON, MARTIN E.,

deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania *Executor:* Martin C. Carlson, 6202 Whitehill Drive, Mechanicsburg, Pennsylvania 17050

Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

CHRISTIANSEN, ERIC A., deceased

Late of the City of Erie, County of Erie, State of Pennsylvania Administratrix: Beatrice C. Christiansen, c/o 78 East Main Street, North East, PA 16428 Attorney: Brydon Law Office, Attorney John C. Brydon, 78 East Main Street, North East, PA 16428

ELWELL, HOWARD, a/k/a BUD ELWELL, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania *Executrix:* Nancy Eisenman-Elwell, 4646 Wynburne Ave., Erie, PA 16509 *Attorney:* John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

FORD, INEZ MABLE, a/k/a INEZ M. FORD, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania *Executor:* Daniel J. Ford, 4115 Ellsworth Ave., Erie, PA 16509 *Attorney:* John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

HEUBEL, KURT HEINRICH, deceased

Late of the City of Erie, County of Erie *Executor:* Stephen R. Heubel, 10069 Lake Pleasant Road, Waterford, Pennsylvania 16441 *Attorney:* W. Richard Cowell, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

JAVON, CAROL A., deceased

Late of the City of Erie *Executrix:* Bonita McGraw, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501 *Attorney:* Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

KARUBA, NANCY S., a/k/a NANCY KARUBA, a/k/a NANCY SIMON KARUBA.

deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

Co-Executors: Mark K. Karuba and Marcia L. Karuba, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

LANE, EARL E., deceased

Late of the Township of Millcreek, Erie County, Pennsylvania Executor: Frederick E. Lane, 503 Dunn Blvd., Erie, PA 16507 Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall

& Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

MAHONEY, THERESA, deceased

Late of the Township of Millcreek, Erie County, Pennsylvania *Executor:* James J. Mahoney, c/o Raymond A. Pagliari, Esq., 558 West Sixth Street, Erie, Pennsylvania 16507-1129 *Attorney:* Raymond A. Pagliari, Esq., 558 West Sixth Street, Erie, Pennsylvania 16507-1129

MARKS, VERN A., deceased

Late of the City of Erie, County of Erie, Pennsylvania

Executrix: Katrina Marks, c/o 246 West Tenth Street, Erie, PA 16501

Attorney: Scott E. Miller, Esquire, 246 West Tenth Street, Erie, PA 16501

MENGES, AUDREY, a/k/a AUDREY A. MENGES, deceased

Late of Harborcreek Township, County of Erie and Commonwealth of Pennsylvania *Executrix:* Jennifer Menges-Dorsch, c/o 5992 Steubenville Pike Ste. C., Robinson Township, PA 15136 *Attorney:* Aaron M. Tomczak,

Esq., West Hills Law, LLC., 5992 Steubenville Pike Ste. C., Robinson Township, PA 15136

STRONG, PAULAA., deceased

Late of Fairview Township, County of Erie, Commonwealth of Pennsylvania Administrator: David W. Strong Attorney: Jessica A. Fiscus, Esq., 337 West Sixth Street, Erie, PA 16507

SECOND PUBLICATION

BERARDUCCI, DOMINICK P., deceased

Late of the Township of Millcreek, County of Erie, Pennsylvania *Executor:* Americo J. Berarducci, c/o 900 State Street, Suite 215, Erie, PA 16501 *Attorney:* Gregory L. Heidt, Esquire 900 State Street Suite

Esquire, 900 State Street, Suite 215, Erie, PA 16501

BURAWA, MARGARET, deceased

Late of the Township of LeBoeuf, County of Erie, Commonwealth of Pennsylvania *Executor:* John Burawa, 1732 Rt. 6N Edinboro PA 16412

Attorney; Rebecca A. Herman, Esq., Herman & Herman, 412 High Street, Waterford, PA 16441

ORPHANS' COURT

BUTERBAUGH, LUCILLE E., deceased

Late of the City of Erie, County of Erie *Executor:* Larry J. Fenton, 843 East 43rd Street, Erie, Pennsylvania 16504 *Attorney:* W. Richard Cowell, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

DREW, MICHAEL T., deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania Administrator: Bonita R. Voegele, 1204 Davey Hill Rd., Pittsfield, PA 16340 Attorney: John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

GRAHAM, LLOYD D., deceased

Late of the Township of Harborcreek *Executor:* Dale E. Graham, 4407 Carney Avenue, Erie, PA 16510 *Attorney:* Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

KENNEDY, HARRIET E., deceased

Late of Erie County Co-Executors: William C. Kennedy, Susan J. Hamilton, Kay C. Pomeroy, c/o James S. Bryan, Esq., 11 Park Street, North East, PA 16428 Attorney: James S. Bryan, Esq.,

Attorney: James S. Bryan, Esq., Knox McLaughlin Gornall & Sennett, P.C., 11 Park Street, North East, PA 16428

KING, PATRICIA A., deceased

Late of the Township of Fairview *Executor:* Thomas J. King, 631 Avonia Road, Fairview, PA 16415 *Attorney:* Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

MOGEL, MARY E., a/k/a MARY ELIZABETH MOGEL, deceased

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania

Executrix: Gail B. Mogel, 1526 West 25th Street, Erie, Pennsylvania 16502-2215 *Attorney:* Robert E. McBride, Esquire, 32 West 8th Street, Suite 600, Erie, Pennsylvania 16501

PEARSON, RONALD W., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania *Executor:* David V. Pearson *Attorney:* James H. Richardson, Jr., Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

REYNOLDS, JANET E., deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania

Executor: Gregory S. Reynolds, 6730 Clayton Road, Fairview, PA 16415

Attorney: John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

SIWIECKI, DAVID A., SR., deceased

Late of Erie County, Pennsylvania *Executor:* David A. Siwiecki, Jr., c/o E. James Lucht, Esquire, 1001 State Street, Suite 303, Erie, PA 16501

Attorney: E. James Lucht, Esquire, 1001 State Street, Suite 303, Erie, PA 16501

WEBER, CHARLES H., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania *Executor:* BNY Mellon N.A., c/o James E. Marsh, 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

WRIGHT, WENDELL S., a/k/a WENDELL 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

ANDRUS, WILLIAM R., deceased

Late of the Township of Summit, County of Erie and Commonwealth of Pennsylvania *Executor:* James F. Andrus *Attorney:* Thomas J. Minarcik, Esq., Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

COSTELLO, PATRICK A., deceased

Late of the City of Corry, County of Erie and Commonwealth of Pennsylvania *Executor:* James Bryant, c/o 210 ½ Maple Ave., Corry, PA 16407 *Attorney:* None

GUSTAFSON, EVELYN,

deceased

Late of Edinboro, County of Erie, Pennsylvania *Executor:* James Gustafson, 1419 East 29th Street, Erie, PA 16504 *Attorney:* None

KAUS, ELIZABETH P., deceased

Late of Summit Township, County of Erie and Commonwealth of Pennsylvania

Executor: Myrna E. Calabrese, c/o Kevin M. Monahan, 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

ORPHANS' COURT

LOEFFLER, ANN B., deceased

Late of Erie, PA Executor: Robert J. Loeffler, 8141 Grubb Rd., McKean, PA 16426 Attorney: None

MOORE, DOROTHY A., deceased

Late of the City of Erie, County of Erie Administrator: Lynne S. Parker Poyer, 327 Connecticut Drive, Erie, PA 16505

Attorney: Donald J. Rogala, Esq., 246 West Tenth Street, Erie, PA 16501



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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

Donald F. Fessler, Jr	(814) 874-3460 ext. 113
Marnen Mioduszewski, et al	(f) (814) 874-3476
516 West Tenth Street	
Erie, PA 16502	dfessler@mmbwslaw.com
Joseph J. May	(814) 454-1800
JOSEPH J. MAY Passport Realty, LLC	(814) 454-1800 (f) (814) 464-8930
JOSEPH J. MAY Passport Realty, LLC 240 West 11th Street, Suite 402	(814) 454-1800 (f) (814) 464-8930

New Email

DENISE M. CUNEO	dcuneo@npslaws.com
	ahazi@npslaws.com
MICHAEL J. KOEHLER	mkoehler@npslaws.com
PATRICK SULLIVAN	psullivan@npslaws.com
THOMAS P. WALL, II	twall@npslaws.com
JACK M. GORNALL	jgornall@neo.rr.com

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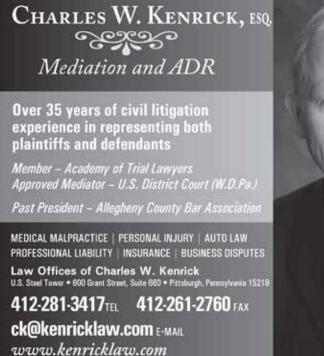
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