

Erie County Legal Journal

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In the United States District Court for the Western District of Pennsylvania
Allegheny Coupling Company v. Betts Industries, Inc.

Erie County Legal Journal

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

Managing Editor: Heidi M. Weismiller
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Erie County Bar Association

Calendar of Events and Seminars

MONDAY, APRIL 18, 2011

The New Federal Estate and Gift Tax - What you need to know

ECBA Lunch-n-Learn Seminar

Bayfront Convention Center

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

\$14 (ECBA member/non-attorney staff)

\$48 (nonmember)

1 hour substantive

TUESDAY, APRIL 19, 2011

Estate Planning Issues Affecting Oil and Gas Leases

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

WEDNESDAY, APRIL 20, 2011

Adoption Law Update: How Act 101 will change adoption practice in Erie County

ECBA Lunch-n-Learn Seminar

The Erie Club

(please note dresscode:

Business casual. Street clothes NOT permitted.)

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

\$32 (ECBA member/non-attorney staff)

\$48 (nonmembers)

1 hour substantive

WEDNESDAY, APRIL 20, 2011

Integrity: Good People, Bad Choices and Life Lessons from the White House

PBI Groupcast Seminar

Erie County Bar Association

12:30 p.m. - 3:45 p.m. (12:00 p.m. reg.)

\$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) 2 hours substantive / 1 hour ethics (Integrated)

THURSDAY, APRIL 21, 2011

Solving Drivers Licensing Problems

PBI Groupcast Seminar

Erie County Bar Association

9:00 a.m. - 4:15 p.m. (8:30 a.m. reg.)

\$254 (member) \$234 (admitted after 1/1/07)

\$274 (nonmember)

Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee: \$229 (member) \$209 (admitted after 1/1/07) \$249 (nonmember)

6 hours substantive

TUESDAY, APRIL 26, 2011

Making Sense of Pennsylvania's New Expungement

Rules and Procedures

ECBA Lunch-n-Learn Seminar

Bayfront Convention Center

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

\$48 (ECBA member/non-attorney staff)

\$72 (nonmember)

1.5 hours substantive

TUESDAY, APRIL 26, 2011

An Attorney's Work & Taran's Wanderings: Lessons for Lawyers from the Chronicles of Prydain

PBI Video Seminar

Erie County Bar Association

9:00 a.m. - 10:00 a.m. (8:30 a.m. reg.)

\$59 (member) \$69 (nonmember)

1 hour ethics

WEDNESDAY, APRIL 27, 2011

What Every Municipal Solicitor Should Know about

Labor and Employment Law

PBI Video Seminar

Erie County Bar Association

9:00 a.m. - 5:00 p.m. (8:30 a.m.)

\$149 (member) \$129 (admitted after 1/1/07)

\$169 (nonmember)

5 hours substantive / 1 hour ethics

2011 BOARD OF DIRECTORS

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Notice – Positions Available 2011

The Erie County Court of Common Pleas has one contract position available for an attorney to provide representation for indigent criminal defendants. The position is one of five and pays \$2,000 per month.

Please direct all letters of interest and/or resume to Thomas C. Aaron, District Court Administrator no later than April 26, 2011.

Apr. 15

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

NOTICE: Court Closure

Please be advised that the Clerk's Office of the United States Bankruptcy Court for the Western District of Pennsylvania will be closed on Friday, April 22, 2011.

John J. Horner
Clerk of Court

Apr. 15

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

PUBLIC ANNOUNCEMENT

Proposed Revisions to the Local Bankruptcy Rules and Forms

The United States Bankruptcy Court for the Western District of Pennsylvania is proposing revisions to the Local Bankruptcy Rules and Forms and is soliciting comments from the bar. The proposed rules and forms are available on the Court's Website at <http://www.pawb.uscourts.gov/lrules.htm>. Comments should be e-mailed to local_rules@pawb.uscourts.gov by April 30, 2011. A public meeting concerning the proposed Local Bankruptcy Rules and Forms will be held on May 13, 2011 at 11:30 a.m. in Pittsburgh at Courtroom D, 54th floor, U.S. Steel Tower, 600 Grant Street, Pittsburgh, PA 15219. Participants may also take part in the meeting by attending the videocast in the Bankruptcy Courtroom in Erie at the U.S. Courthouse, 17 South Park Row, Erie, PA 16501.

John J. Horner
Clerk of Court

Apr. 15

ATTENTION ALL ATTORNEYS

Are you or an attorney you know dealing with personal issues related to drug or alcohol dependency, depression, anxiety, gambling, eating disorders, sexual addiction, other process addictions or other emotional and mental health issues?

— YOU ARE FAR FROM BEING ALONE! —

*You are invited and encouraged to join a small group of fellow attorneys who meet informally in Erie on a monthly basis. Please feel free to contact ECBA Executive Director Sandra Brydon Smith at 814/459-3111 for additional information. Your interest and involvement will be kept **strictly confidential**.*

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ERIE COUNTY BAR ASSOCIATION

ECBA

LIVE
LUNCH-N-LEARN
SEMINAR

Making Sense of Pennsylvania's New Expungement Rules and Procedures

An ECBA Live Lunch-n-Learn Seminar presented
in cooperation with its Criminal Law Section

Tuesday, April 26, 2011

Bayfront Convention Center

Time: Lunch ~ 11:45 a.m.

Seminar ~ 12:15 p.m. - 1:45 p.m.

Cost: \$48 (ECBA member/non-attorney staff)
\$72 (nonmember)

Speaker:

Robert J. Catalde, Esq.

Deputy Clerk of Courts, Erie County Courthouse

*The seminar has been approved by the PA CLE Board
for 1.5 hours substantive law credit.*

If you have looked at Pennsylvania's new expungement rules and procedures, you probably encountered a few questions. The year 2011 brought significant changes to the way expungement is handled in Pennsylvania.

This seminar will cover the new rules and procedures in detail, including an overview of the more stringent rules; specific requirements that must be followed (and what happens if they are not); stricter enforcement policies; expungement for ARD as well as other types of cases; and much more!

The last 15 minutes of the seminar has been reserved for a question and answer period.

Any attorney who does expungement as part of their criminal practice will definitely benefit from this timely and informative seminar.

Reservations due to the ECBA office no later than Friday, April 22.

ALLEGHENY COUPLING COMPANY, Plaintiff

v.

BETTS INDUSTRIES, INC., Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA C.A. No. 06-76 Erie District Judge McLaughlin

MEMORANDUM OPINION

McLaughlin, Sean J., J. March 31, 2011

This matter is before the Court upon Defendant Betts Industries, Inc.’s Motion for Attorney Fees and Costs Pursuant to 15 U.S.C. § 1117(a)(3). An evidentiary hearing on Betts’ Motion was held on November 18, 2010 and December 15 and 16, 2010 (“Evidentiary Hearing”). The following constitute the Court’s Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

A. Background

1. Allegheny Coupling (“Allegheny”), founded in 1955, markets and sells industrial couplings and fittings. (Deposition of Raymond V. Heelan (“Heelan Depo.”), p. 40).
2. Betts Industries (“Betts”), founded in 1901, was originally a foundry and job shop and eventually grew to become a manufacturer of its own proprietary products for the highway cargo tank industry. (Affidavit of Rodney E. Betts, ¶¶ 3-6).
3. On March 24, 2006, Allegheny commenced the instant action against Betts alleging, *inter alia*, trademark and trade dress infringement in violation of the Lanham Trademark Act, 15 U.S.C. § 1051 et seq (“Lanham Act”) and seeking a declaratory judgment as to the ownership of certain equipment, dies and molds which both parties claimed to legally own. (See Doc. 1, Complaint). Allegheny subsequently filed three separate amended complaints, each of which contained claims of trademark and trade dress infringement. (See Doc. 4, Amended Complaint; Doc. 32, Second Amended Complaint; Doc. 45, Third Amended Complaint).

B. Allegheny’s Trade Dress Claim

4. In Count II of the Third Amended Complaint, Allegheny asserted a claim for trade dress infringement relative to Allegheny’s “coupling and fitting products.” (Doc. 45, Third Amended Complaint, ¶¶ 32-34). Specifically, Allegheny alleged that its “coupling and fitting products have a consistent total image and overall appearance featuring size, shape, color and texture characteristics” which constitute “a valid and protectable trade dress configuration.” (*Id.* at ¶¶ 32-33). Allegheny also alleged that its trade dress was “nonfunctional and distinctive.” (*Id.* at ¶ 35).
5. Throughout the discovery stage of this litigation, the parties frequently clashed over the broad nature of Allegheny’s discovery requests. In response to a motion from Betts seeking clarification as to which products formed the basis for Allegheny’s trademark and trade dress infringement claims, the Court ordered Allegheny to supply a list identifying the specific products that formed the basis of those claims. (Betts Ex. 4, Transcript of Hearing on 2/13/08, pp. 5-6).
6. On March 3, 2008, Allegheny served Betts with a list containing 2,267 products

that it claimed were subject to trademark and/or trade dress protection and sought extensive discovery relative to those items. (Betts Ex. 1, Product List; Transcript of Evidentiary Hearing, 11/18/10, pp. 88-91).¹ The product list contained a wide variety of parts including pipes, pipe fittings, strainers, gaskets, hex nuts, flanges, valves and aluminum clips. (*Id.*) Allegheny President Raymond Heelan (“Heelan”) and former Chief Executive Officer Jamie Sitler (“Sitler”) each participated in generating the initial list of 2,267 products. (Trans. 11/18/10, p. 55; Trans. 12/15/10, pp. 60-67).

7. On June 9, 2008, in response to a Motion for a Protective Order filed by Betts, the Court directed Allegheny to “delineate specifically and with sufficient detail” which of those 2,267 parts formed the basis for Allegheny’s trademark and trade dress infringement claims. (Betts Ex. 5, Transcript of Hearing on 6/9/10, p. 49).
8. In response to the Court’s Order of June 9, 2010, Allegheny produced a thirty-five page list containing approximately 2,110 parts that it contended were subject to either trademark or trade dress protection. (Betts Ex. 2; Trans. 11/18/10, pp. 66-70). Included in the list were parts such as pipes, pipe fittings, strainers, gaskets, hex nuts, flanges, valves and aluminum clips. (*Id.*). Next to approximately 2,065 of the 2,110 listed parts, Allegheny marked an “x” to indicate that the part was subject to a claim of trade dress infringement. (*Id.*). Heelan and Allegheny Vice-President and Secretary Cairn Bishop (“Bishop”) each participated in generating this list. (Trans. 11/18/10, p. 55; Trans. 12/15/10, pp. 60-67).
9. On August 1, 2008, Betts deposed Allegheny’s designated Rule 30(b)(6) representative, Jamie Sitler. At that time, Sitler served as Allegheny’s Chief Executive Officer. (Betts Ex. 7, Sitler Depo., p. 7).
10. Sitler identified the purported trade dress of Allegheny’s pipe products as “the weld seam” and the “bells” or “belled ends” of certain pipe fittings:

The trade dress configuration is really a compilation of both the bells, which are unique, and also the seam which you can clearly see. And that is the recognizable feature of those fittings.

(Betts Ex. 7, Sitler Depo., p. 72).
11. Sitler used a 90-degree metal elbow tube with a 6 inch radius to physically demonstrate the welded seam and belled end that Allegheny claimed as trade dress. (Betts Ex. 7, Sitler Depo., p. 72).
12. Sitler admitted that the seam weld and belled edge of the elbow pipe are both functional. He explained that the function of the seam weld is to join together the two pieces of metal that constitute the complete elbow and that the function of the bell is to allow another tube to slide into the belled end so that both tubes can be joined. (Betts Ex. 7, Sitler Depo., p. 73-74). Without the weld or the bell, the product would not work. (*Id.* at 73-74).
13. Although Allegheny asserts that the welded seam on the 6 inch tube was a critical element of the product’s trade dress, Allegheny began producing an otherwise identical

¹ Hereinafter, references to the Evidentiary Hearing transcript will utilize the following format: (“Trans. XX/XX/10, p. X).

- product without the welded seam in or around 2004 because the seamless product was more “state of the art” and represented the direction that the industry was heading. (Betts Ex. 7, Sitler Depo., pp. 87-88).
14. Sitler also attempted to demonstrate the features of a “four-inch diameter flued flange” that Allegheny claimed as trade dress. Sitler asserted that the trade dress of that item was the “flued edge” of the flange. (Betts Ex. 7, Sitler Depo., p. 81).
 15. Sitler admitted that the flued edge of the flange is entirely functional in that its purpose was to “strengthen” the flange and to make it easier to attach the flange to another product. (Betts Ex. 7, Sitler Depo., p. 82).
 16. Upon inspection, Sitler could not identify any trade dress features of a “3-inch diameter aluminum flange” despite that product appearing on the list of products over which Allegheny asserted trade dress protection. (Betts Ex. 7, Sitler Depo., pp. 88-89).
 17. Allegheny never identified any trade dress features for many of the thousands of products that Allegheny claimed were subject to trade dress protection. For example, Allegheny provided no evidence that any of its hex nuts, strainers, gaskets, or aluminum clips had an identifiable trade dress.
 18. Many of Allegheny’s responses, when pressed to identify the trade dress of a specific part or item, were patently frivolous. For example, Heelan stated that the trade dress of a particular 4-inch aluminum flange was the fact that the outer dimensions of the flange failed to meet industry standard specifications. (Trans. 11/18/10, pp. 72-73). Despite his identification of that feature as the product’s trade dress, Heelan indicated that the company was working to improve the manufacturing process so that the flange would meet specifications in the future. (Trans. 11/18/10, pp. 75). Heelan conceded that the flange’s deviation from industry standard dimensions was not noticeable unless someone measured the flange. (Trans. 11/18/10, p. 74).
 19. Neither Heelan nor Bishop could identify a common or unifying trade dress for the hundreds of parts identified by Allegheny as subject to trade dress protection. (Trans. 11/18/10, pp. 64-73; Trans. 12/15/10, pp. 63-66).
 20. Many of the parts that Allegheny claimed were subject to trade dress protection were fundamentally generic. For example, the list of parts over which Allegheny asserted trade dress protection included a “3/8-16 hex nut.” A hex nut is a common, generic piece of hardware that connects to a bolt and is widely available at any hardware store. (Trans. 11/18/10, pp. 124-25; Betts Ex. 39, Hex Nuts).
 21. Allegheny also attempted to assert a trade dress infringement claim over a series of chemical hydraulic valves despite that Betts was the owner of a valid patent for those valves. (Trans. 11/18/10, p. 128).
 22. On March 9, 2009, counsel for Betts sent a letter to Allegheny requesting that Allegheny withdraw its trade dress claim. The letter detailed the functional nature of the few features identified by Allegheny as trade dress and referenced Sitler’s admission that each of the purported trade dress features of Allegheny’s products was entirely functional. (Betts Ex. 11, Letter from Counsel). Allegheny refused to withdraw the claim.
 23. Thereafter, on March 31, 2009, Betts filed a Motion for Summary Judgment. (Doc. 76, Motion for Summary Judgment). The summary judgment motion raised the same

deficiencies in Allegheny's trade dress claim that counsel for Betts had identified in the March 9, 2009 letter.

24. Allegheny responded to Betts' summary judgment motion by withdrawing the trade dress infringement claim without explanation. (Doc. 85, Brief in Opposition to Summary Judgment).
25. Prior to the withdrawal of Allegheny's trade dress claim, Betts' personnel had invested in excess of one hundred hours in responding to discovery requests concerning the extensive list of items over which Allegheny asserted trade dress infringement. (Trans. 11/18/10, pp. 107-112).

C. Allegheny's Trademark Infringement Claim

26. In addition to claiming trade dress protection, each of Allegheny's amended complaints also contained a claim for trademark infringement with respect to the phrases "Allegheny Coupling," "Allegheny Coupling Co." and "Allegheny & Design." (Doc. 45, Third Amended Complaint).
27. On May 10, 2005, Allegheny, through counsel, filed an application with the United States Patent and Trademark Office ("USPTO") seeking to have its mark "Allegheny plus design," Serial No. 78/626,230, placed on the USPTO Principal Register. (Betts Ex. 15, Application for Registration on Principal Register).
28. On March 23, 2006, Allegheny filed three additional applications through counsel to have each of the following trademarks placed on the USPTO Principal Register:
"Allegheny," Serial No. 78/844,533
"Allegheny Coupling Co.," Serial No. 78/844,576
"Allegheny Coupling," Serial No. 78/844,602
(Betts Ex. 12, 13, 14, Applications for Registration on Principal Register). Each trademark application was signed by Heelan as president of Allegheny. (*Id.*).
29. On July 10, 2006, the USPTO issued an official "Office Action" wherein it notified Allegheny that the "Allegheny plus design" mark had been denied registration on the Principal Register because "the mark is primarily geographically descriptive of the origin of applicant's goods and/or services." Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2)." (Betts Ex. 8, USPTO Office Action).
30. On September 7, 2006, the USPTO issued three official Office Actions notifying Allegheny that the "Allegheny," "Allegheny Coupling Co.," and "Allegheny Coupling" marks had each been denied registration on the Principal Register because each mark "is primarily geographically descriptive of the origin of applicant's goods and/or services." Trademark Act Section 2(e)(2), 15 U.S.C. §1052(e)(2)." (Betts Ex. 19, USPTO Office Actions).
31. By letter dated January 15, 2007, Attorney Philip Foret forwarded each of the September 7, 2006 Office Actions to Heelan and explained that the marks had been denied registration and that a response would be due on or before March 8, 2007. (Betts Ex. 20, Letter from Foret).
32. Another attorney engaged by Allegheny to secure registration of the marks, Wayne Lovercheck, also wrote to Heelan to inform him that the USPTO had denied registration of the Allegheny marks. (Betts Ex. 16, Letter from Lovercheck). On

- January 4th and 5th, 2007, Attorney Lovercheck and Heelan spoke on the telephone several times to discuss the USPTO's refusal to register the Allegheny marks. (Betts Ex. 21, Lovercheck Invoice, p. 11).
33. On January 5, 2007, Heelan faxed a letter to another attorney with the December 5, 2006 letter from Attorney Lovercheck attached and explained that it was an "important matter" related to securing registration of the Allegheny marks. (Betts Ex. 17, Heelan Fax).
 34. On January 12, 2007, Attorney Foret faxed a copy of Allegheny's response to the USPTO to Heelan. (Betts Ex. 15, Foret Fax).
 35. On June 12, 2007, the USPTO approved the mark "Allegheny" for registration on the Supplemental Register. The USPTO approved the mark "Allegheny Coupling Co." for registration on the Supplemental Register on June 26, 2007. The USPTO approved the mark "Allegheny Coupling Company" for registration on the Supplemental Register on July 17, 2007. (Betts Ex. 21, "Trademark File").
 36. When a mark has been federally registered on the USPTO Principal Register, there is a rebuttable presumption of validity and ownership of the mark. 15 U.S.C. § 1057(b). In contrast, registration on the USPTO Supplemental Register confers no substantive trademark rights. *See* 15 U.S.C. §§ 1091-96.
 37. On June 25, 2008, Betts served a Request for Production of Documents (Second Set) upon Allegheny seeking:
 - (a) All documents memorializing or relating to any efforts by you to register any trademarks that appear on any one or more of the products listed in your Product List.
 - (b) All documents or tangible things submitted by you to the United States Patent and Trademark Office regarding any alleged trademark that appears on any one or more products listed in your Product List or any request for registration of any alleged trademark appearing on any one or more such products.
 - (c) All documents or tangible things received by you from the United States Patent and Trademark Office in response to any application or claim to trademark protection relative to any one or more of the products in your Product List.
 (Betts Ex. 24, Request for Documents).
 38. Following an initial objection, counsel for Allegheny responded by sending an email wherein he represented that he was "attaching copies of the entirety of Allegheny's Trademark file." (Betts Ex. 25).
 39. The file attached to counsel's email consisted of thirty-two pages of documents. Specifically, the file contained the following documents in the following order:
 - March 24, 2006 letter from Attorney Foret to Heelan indicating that applications to place the "Allegheny," "Allegheny Coupling Co," and "Allegheny Coupling" marks on the USPTO Principal Register had been filed. (Betts Ex. 25, p. 3).
 - USPTO Acknowledgement of Application forms dated March 23, 2006 indicating that applications for placement on the Principal Register had

been successfully filed for the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks. (Betts Ex. 25, pp. 4-12).

- March 21, 2006 letter from Attorney Foret to Heelan indicating that the applications for registration of the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks on the Principal Register were ready for signature. (Betts Ex. 25, p. 13).
- Executed copies of the applications to place the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks on the Principal Register. (Betts Ex. 25, pp. 14-21, 23).
- June 18, 2007 letter from Attorney Lovercheck to Heelan advising Heelan that the “Allegheny” mark had been successfully registered. (Betts Ex. 25, p. 22).
- USPTO Certificate of Registration of “Allegheny” on the Supplemental Register. (Betts Ex. 25, pp. 24-26).
- July 25, 2007 letter from Attorney Lovercheck to Heelan advising Heelan that the “Allegheny Coupling Company” mark had been successfully registered. (Betts Ex. 25, p. 27).
- USPTO Certificate of Registration of “Allegheny Coupling Company” on the Supplemental Register. (Betts Ex. 25, pp.).
- July 2, 2007 letter from Attorney Lovercheck to Heelan advising Heelan that the “Allegheny Coupling Co.” mark had been successfully registered. (Betts Ex. 25, p. 31).
- USPTO Certificate of Registration of “Allegheny Coupling Co.” on the Supplemental Register. (Betts Ex. 25, pp. 32-34).

40. The file forwarded to Betts by counsel for Allegheny did not contain any documents reflective of the fact that Allegheny’s applications for registration on the Principal Register had been rejected by the USPTO on the basis of the geographical descriptiveness of the Allegheny marks. (Betts Ex. 25).

41. I find that the following documents were in the possession, custody or control of Heelan and Bishop but were not produced as part of the trademark file:

- September 7, 2006 notices of official USPTO Office Action denying registration of the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks on the Principal Register on the grounds that the marks are geographically descriptive. (Betts. Ex. 19).
- July 10, 2006 notice of official USPTO Office Action denying registration of the “Allegheny and design” mark on the Principal Register on the ground that the mark was geographically descriptive.
- January 15, 2007 letter from Attorney Foret to Heelan indicating that the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks had been refused registration on the grounds that the marks were geographically descriptive and enclosing copies of the Office Actions. (Betts Ex. 20).
- Responses and Requests for Reconsideration filed by Allegheny with respect to the failed applications for registration of the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks on the Principal Register.

- December 5, 2006 letter from Attorney Lovercheck to Heelan indicating that the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks had been refused registration. (Betts Ex. 16).
- 42. Following this Court’s order granting summary judgment, Betts, via a subpoena, obtained many of the missing documents described above from the law firm that had represented Allegheny in their attempt to register the “Allegheny,” “Allegheny Coupling Co,” and “Allegheny Coupling” marks. (Trans. 12/15/10, pp. 88-90).
- 43. Neither Heelan nor Bishop could offer a credible explanation as to why the trademark file that they produced during discovery omitted all of the documents and correspondence that referenced the geographically descriptive nature of Allegheny’s marks and the USPTO’s denial of registration on that basis. (Trans. 11/18/10, pp. 39-54; Trans. 12/15/10, pp. 44-51).
- 44. I find that Bishop’s suggestion that the documents may have been stolen or removed from the file by a disgruntled employee is completely lacking in any evidentiary support. (Trans. 12/16/10, pp. 83-94).
- 45. I find that Allegheny’s failure to have turned over the documents that were missing from the trademark file was purposeful, rather than inadvertent.
- 46. On March 18, 2010, this Court granted summary judgment in favor of Betts as to Allegheny’s trademark infringement claim on the basis that Allegheny’s asserted trademarks were primarily geographically descriptive and, as such, were only subject to protection upon proof that they had acquired secondary meaning. I further held that Allegheny had failed to supply sufficient evidence to raise a triable issue of fact as to the existence of secondary meaning. (Doc. 86, Memorandum Opinion and Order).

II. CONCLUSIONS OF LAW

Section 35(a) of the Lanham Act provides that “[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party.” 15 U.S.C. §1117(a)(3). The “language of § 35(a) authorizing attorney’s fees to the prevailing party in the discretion of the court is the same for defendants as well as plaintiffs.” *Securacom Consulting, Inc. v. Securacom, Inc.*, 224 F.3d 273, 280 (3rd Cir. 2000).

Determining whether a case is “exceptional” requires the district court to first consider whether the losing party “engaged in any culpable conduct.” *Green v. Fornario*, 486 F.3d 100, 103 (3rd Cir. 2007). “[C]ulpable conduct comes in a variety of forms and may vary depending on the circumstances of a particular case.” *Securacom*, 224 F.3d at 280. Typical examples of culpable conduct include, but are not limited to, “bad faith, fraud, malice, and knowing infringement.” *Id.* (citing *Securacom*, 224 F.3d at 280). When the prevailing party in a trademark infringement case is the defendant, “the plaintiff’s culpable conduct will necessarily center on the act of filing the lawsuit rather than on the infringement.” *Securacom*, 224 F.3d at 280. In addition, the court should consider “the way the losing party handled himself during the litigation.” *Green*, 486 F.3d at 103; *Securacom*, 224 F.3d at 280.

If the court finds culpable conduct, it next “must decide whether the circumstances are ‘exceptional’ enough to warrant a fee award.” *Green*, 486 F.3d at 103. Factors to consider in determining whether a case is “exceptional” include whether the plaintiff’s pursuit of a claim

was “unjustified, groundless, or frivolous” and whether “the plaintiff’s subjective conduct throughout the litigation” was “vexatious or involving other misconduct.” *J&J Snack Foods, Corp. v. Earthgrains*, 2003 WL 21051711, *3 (D.N.J. 2003) (internal footnotes omitted). Vexatious misconduct includes litigation techniques that are “oppressive and harassing” or which unreasonably increase the costs of litigation. *S. Industries, Inc. v. Centra 2000, Inc.*, 249 F.3d 625, 626 (7th Cir. 2001) (affirming fee award where plaintiff pursued a trademark infringement claim for four years without producing evidence of a single infringing sale of merchandise). Unjustified and groundless claims include those which have no legal basis or lack merit. *Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1156 (9th Cir. 2002) (affirming fee award when trademark claim was “groundless and unreasonable because it had no legal basis”); *Yankee Candle Co. v. Bridgewater Candle Co.*, 140 F.Supp.2d 111, 121-22 (D. Mass. 2001) (awarding fees after considering plaintiff’s “aggressive pursuit of unfounded claims”). Moreover, a suit that is “initially brought with good reason and in good faith” may become “‘exceptional’ enough to warrant an award of attorney’s fees” if the litigant continues to pursue the claim once it becomes clear that there is no evidence to support it. *Earthgrains*, 2003 WL 21051711, *4; *Proctor & Gamble Co. v. Amway Corp.*, 280 F.3d 519, 531 (5th Cir. 2002).

District courts have not hesitated to award attorney fees under the Lanham Act when a defendant is forced to defend against a frivolous trade dress claim. For example, in *Ferraris Medical, Inc. v. Azimuth Corporation*, 2002 WL 1728225, *2 (D.N.H. 2002), the court awarded attorney fees after concluding that “Plaintiff’s suit was oppressive in that its Lanham Act claims were completely lacking in merit, to the point of being frivolous.” The court stated:

As to its trade dress claims, Ferraris knew it had to prove both non-functionality and acquisition of secondary meaning in order to prevail, yet it offered no evidence of non-functionality, and even failed to convey any reasonable basis for thinking its harness design was anything but functional.

Id. Similarly, in *Vital Pharmaceuticals, Inc. v. American Body Building Products, LLC*, the district court held that a fee award was warranted because the plaintiff “could not satisfy even one of the elements of a valid trade dress claim, and its case suffered from severe credibility problems and a lack of convincing evidence.” The court observed:

The features of the Redline bottle that Plaintiff claimed as its protected trade dress were very limited, namely its smooth, cylindrical bottle design and neck with vertical lettering of the product name. This trade dress was not inherently distinctive, and despite the fact that courts have held survey evidence to be the most persuasive in establishing secondary meaning, Plaintiff intentionally chose not to present survey evidence.

* * * * *

Plaintiff’s trade dress, aside from the functional element of vertical lettering, was nothing more than a bottle with a neck on it, a purely functional design.

American Body Building, 510 F.Supp.2d 1043, 1049-51 (S.D. Fla. 2007). See also *Bretford Manufacturing, Inc. v. Smith System Manufacturing Company*, 389 F.Supp.2d 983, 986

(N.D. Ill. 2005) (awarding attorney fees to defendant after plaintiff failed to produce any evidence as to a necessary element of its trade dress claim).

Here, Allegheny's filing and continued pursuit of its trade dress claim was patently frivolous and groundless. The Lanham Act requires that a party asserting a trade dress infringement claim must demonstrate that the features or characteristics upon which the claim is based are "nonfunctional." 15 U.S.C. §1125(a)(3). Nonetheless, Allegheny asserted trade dress protection for parts that were fundamentally generic and whose product features were indisputably functional.

In addition, despite the utter lack of merit of its trade dress claim, Allegheny served voluminous discovery on Betts concerning hundreds of parts and products over which it asserted trade dress protection. Numerous hours were spent by Betts personnel attempting to supply discovery responses relative to a trade dress claim that was legally dead on arrival. While it is not unusual for parties to push the discovery "envelope" in attempting to secure information from an opponent, the conduct here, in my view, is qualitatively different. It represents the type of "oppressive and harassing" conduct that lends further support to an award of attorney fees. *See, e.g., Finance Inv. Co. v. Geberit AG*, 165 F.3d 526, 533-34 (7th Cir. 1998) (affirming award of attorney fees to defendant who was forced to endure "oppressive" litigation "including protracted discovery disputes" in a meritless action).

Finally, Allegheny's intentional failure to have turned over any documentation relative to its failed attempt to register the "Allegheny," "Allegheny Coupling Co.," and "Allegheny Coupling" marks on the Principal Register is further evidence of the culpable and abusive conduct engaged in by the plaintiff in this litigation. *See Centra*, 249 F.3d at 627 (affirming an award of fees where plaintiff failed to properly respond to discovery requests); *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551-52 (Fed. Cir. 1989) (affirming an award of fees against a party who engaged in "various discovery . . . abuses") (cited with approval by *Securacom*, 224 F.3d at 281-82).

III. CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to Section 35(a) of the Lanham Act, I find by clear and convincing evidence that the Plaintiff's previously described culpable conduct, when viewed *in toto*, makes this the rare "exceptional" case which supports an award of attorney fees.² Consequently, Defendant's Motion for Attorney Fees is granted. A hearing will be set to determine the amount of the attorney fee award at the convenience of the parties.

² The Third Circuit Court of Appeals has not addressed the issue of whether a party must establish that a case is "exceptional" by clear and convincing evidence in order to succeed on a claim for attorney fees. *See U.S. Olympic Committee v. Tobayhanna Camp Corp.*, 2010 WL 4617429, *6 n. 4 (M.D. Pa. 2010). However, other courts have so held. *See, e.g., CJC Holdings, Inc. v. Wright & Lato, Inc.*, 979 F.2d 60, 65 (5th Cir.1992) ("[W]e agree with the Federal Circuit that the prevailing party must demonstrate the exceptional nature of a case by clear and convincing evidence before a district court should decide whether to make the award."); *U.S. Olympic*, 2010 WL 4617429, *6. I have applied the clear and convincing standard in resolving Betts' motion.

ORDER

AND NOW, this 31st day of March, 2011, and for the reasons set forth in the accompanying Memorandum Opinion,

IT IS HEREBY ORDERED that Defendant Betts Industry's Motion for Attorney Fees and Costs Pursuant to 15 U.S.C. §1117(a)(3) is GRANTED.

It is so ORDERED.

/s/ Sean J. McLaughlin
United States District Judge

BANKRUPTCY NOTICE

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

IN RE: J. WILLIAM PUSTELAK,
INC., Debtor

JOHN C. MELARAGNO, Trustee,

Movant

vs.

NORTHWEST SAVINGS BANK,
Respondent

Bankruptcy Case No. 09-12356-TPA
NOTICE OF SALE

Notice is hereby given that the
Trustee in the above-captioned
proceeding, John C. Melaragno,
Esq., intends to sell all of the
personal property consisting of
the vehicles and equipment of
J. William Pustelak, Inc. at Public
Auction

PRICE: Highest Bidder at Public
Auction

HEARING AND LOCATION:
April 21, 2011 11:30 a.m. before
Chief Judge Thomas P. Agresti, U.S.
Courthouse, Bankruptcy Court, 17
South Park Row, Erie, PA 16501.

OBJECTION DEADLINE: April 11,
2011, or thereafter as the Court
permits, with a copy to Trustee's
undersigned counsel.

PUBLIC AUCTION DATE, TIME
& LOCATION: **9:00 A.M. April
30, 2011 AT 24 Vine Street,
Girard, PA.**

TERMS & CONDITIONS:

(a) "as-is, where is and with all
faults";

(b) all cash, check or credit cards
(Visa or Mastercard) on date of
auction, no financing contingencies,
PROPERTY TO BE SOLD:
BENNU POWER SCAFFOLDING,
Bennu Hydraulic Power Lifts (8
units); Bennu Bridges (4' sections
(12 count), 6' sections (15 count)
and 8' sections (25 count); Bennu
Guard Rails (126 count) Bennu
Tower Sections (5' sections (97
count) and 25' sections (18 count).
Universal scaffolding (6'6" frames
(163 count)); Bill jack scaffolds 6'6"
frames (100 count)); Waco scaffolds
(5'0" frames (20 count); Universal
screw jacks (100 count); Laminated
scaffold planks (325 count); and
Man lift cages (2 count); *Gradalls*

534C6 (3 count) - 6000 lbs. 36' and
554 Lift (1 Count) - 9000 lbs. 45';
Forklifts Yale - 6000 lbs, Clark -
4000 lbs, Snorkel Lift 60' diesel
and Pallet Jack - 5000 lbs; Thomas
Skid Steer Model 1700 and Grout
Hog - Hydraulic 2/4 yard concrete
hopper (2 count), Tip Dumpster -
1 yard (2 count), Garbo Concrete
Hopper - 1 yard, Job Trailers 24' x
8' (6 count), Table Saw - Diamond
Blade, Propane Heaters (5 count),
Kerosene Heaters (5 count), PUP
jobsite trailer, Office furniture
including tables, chairs, file
cabinets, computers etc and any and
all other personal property of the
Debtor.

FOR INFORMATION: Contact
Trustee's undersigned counsel at
(814) 459-5557.

Melaragno & Placidi
John C. Melaragno, Esq.

P.A. I.D. No. 80207

502 West Seventh Street
Erie, PA 16502

johnm@mplegal.com

Phone: (814) 459-5557

Attorney Pro Se for Trustee,

John C. Melaragno, Esq.

Apr. 15

**ARTICLES OF AMENDMENT
AMENDMENT TO ARTICLES
OF INCORPORATION
MILLCREEK TOWNSHIP
SEWER AUTHORITY**

1. The name of the Authority is the Millcreek Township Sewer Authority.

2. The registered office of the Millcreek Township Sewer Authority is 3608 West 26th Street, Erie, Pennsylvania 16506.

3. The Millcreek Township Sewer Authority intends to amend its Articles of Incorporation by extending its term of existence. Specifically, the amendment shall modifying the language added by the May 13, 1975 amendment to read as follows: "The Millcreek Township Sewer Authority shall have a term of existence until March 17, 2061."

4. This Notice and the Articles of Amendment are to be filed under the provisions of the Municipal Authorities Act, 53 Pa C.S.A. §5601 et seq.

5. The Articles of Amendment will be filed with the Secretary of the Commonwealth of Pennsylvania on or after April 21, 2011.

Timothy S. Wachter, Esq.
Knox McLaughlin Gornall
& Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501

Apr. 15

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania
Docket No. 11253-11
In Re: Brandon Szalabawka
Notice is hereby given that a Petition was filed in the above named Court requesting an order to change the name of Brandon Szalabawka to Brandon Michael Jordan.

The Court has fixed the 1st day of June, 2011, at 9:00 a.m. in Courtroom I-217 of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and place for the hearing on said petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Apr. 15

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania
Docket No. 11287-2011
In the Matter of the Change of Name of Jonathon Darrell Waltho
Notice is hereby given that a Petition was filed in the above named Court requesting an order to change the name of Jonathon Darrell Waltho to Jonathon Darrell Milton.

The Court has fixed the 31st day of May, 2011, at 9:30 a.m. in Courtroom 217 of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and place for the hearing on said petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Apr. 15

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania
Docket No. 11286-2011
In the Matter of the Change of Name of Darrell Robert Iain Walton
Notice is hereby given that a Petition was filed in the above named Court requesting an order to change the name of Darrell Robert Iain Walton to Darrell Robert Iain Milton.

The Court has fixed the 31st day of May, 2011, at 9:15 a.m. in Courtroom 217 of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and place for the hearing on said petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Apr. 15

INCORPORATION NOTICE

NOTICE is hereby given that Tiny Tim's Fishing Charters, Inc. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

Craig A. Zonna, Esq.
Elderkin, Martin, Kelly & Messina
150 E. 8th St.
Erie, PA 16501

Apr. 15

INCORPORATION NOTICE

WHG ENTERPRISES, INC. has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

Brian Glowacki, Esquire
Knox McLaughlin Gornall
& Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501

Apt. 15

LEGAL NOTICE

**NOTICE OF WITHDRAWAL OF
FOREIGN CORPORATION**
NOTICE is hereby given that Lamson Pipe Company, incorporated under the laws of Missouri, and having its principal office at 1299 Industrial Park Drive, Mt. Grove, MO 65711, intends to withdraw from doing business in Pennsylvania. The address of the last registered office of Lamson Pipe Company in Pennsylvania was 1422 Irwin Drive, Erie, PA 16505.

John B. Enders, Esq.
Elderkin Law Firm
150 E. 8th St.
Erie, PA 16501

Apr. 15

LEGAL NOTICE

**NOTICE OF SHERIFF'S SALE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA**
NO. 11723-10
NATIONSTAR MORTGAGE,
LLC, F/K/A CENTEX HOME
EQUITY COMPANY, LLC,
F/K/A CENTEX HOME EQUITY
CORPORATION
vs.
CARLYE J. RANKIN, IN
HER CAPACITY AS CO-
ADMINISTRATRIX AND HEIR
OF THE ESTATE OF PEGGY
LEE CARLSON A/K/A PEGGY
L. CARLSON F/K/A PEGGY L.
DAWDY & ET AL.
NOTICE TO: UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS, AND
ALL PERSONS, FIRMS, OR
ASSOCIATIONS CLAIMING
RIGHT, TITLE OR INTEREST
FROM OR UNDER PEGGY L.
CARLSON, DECEASED
NOTICE OF SHERIFF'S SALE

OF REAL PROPERTY
Being Premises: 1288 BAGDAD ROAD, WATERFORD, PA 16441
Being in WATERFORD Township, County of ERIE Commonwealth of Pennsylvania

Parcel Number 1: 47-013-029.0-011.05
Improvements consist of residential property.

Sold as the property of CARLYE J. RANKIN, IN HER CAPACITY AS CO-ADMINISTRATRIX AND HEIR OF THE ESTATE OF PEGGY LEE CARLSON A/K/A PEGGY L. CARLSON F/K/A PEGGY L. DAWDY & ET AL.

Your house (real estate) at 1288 BAGDAD ROAD, WATERFORD, PA 16441 is scheduled to be sold at the Sheriff's Sale on JUNE 17, 2011 at 10:00 AM., at the ERIE County Courthouse to enforce the Court Judgment of \$99,316.15 obtained by, NATIONSTAR MORTGAGE, LLC, F/K/A CENTEX HOME EQUITY COMPANY, LLC, F/K/A CENTEX HOME EQUITY CORPORATION (the mortgagee), against the above premises.

Phelan Hallinan & Schmieg, LLP
Attorney for Plaintiff

Apr. 15

LEGAL NOTICE

Erie County
Court of Common Pleas
Number 15390-2010

Financial Freedom Acquisition,
LLC, Plaintiff
v.

Penelope McChesney, Known
Surviving Heir of Patricia A.
Sproveri, Deceased Mortgagor and
Real Owner

Phillip Sproveri, Known Surviving
Heir of Patricia A. Sproveri,
Deceased Mortgagor and Real Owner
Unknown Surviving Heirs of
Patricia A. Sproveri,
Deceased Mortgagor and Real
Owner, Defendants

TO: UNKNOWN SURVIVING
HEIRS OF PATRICIA A.
SPROVERI, DECEASED
MORTGAGOR AND REAL
OWNER

TYPE OF ACTION: CIVIL
ACTION/COMPLAINT IN
MORTGAGE FORECLOSURE

PREMISES SUBJECT TO
FORECLOSURE: 107 WEST
IRVING STREET, CORRY,
PENNSYLVANIA 16407

NOTICE

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

You should take this 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.

Lawyer Referral Service
PO Box 1792
Erie, Pennsylvania 16507
(814) 459-4411

McCabe, Weisberg and Conway, P.C.
Attorneys for Plaintiff
Terrence J. McCabe, Esq. - ID # 16496
Marc S. Weisberg, Esq. - ID # 17616
Edward D. Conway, Esq. - ID # 34687
Margaret Gairo, Esq. - ID # 34419
123 South Broad Street, Suite 2080
Philadelphia, Pennsylvania 19109
(215) 790-1010

Apr. 15

LEGAL NOTICE

THE SCHOOL DISTRICT
CITY OF ERIE, PA

Dr. James E. Barker Leadership
Center, 148 West 21st Street
Erie, PA 16502

NOTICE TO BIDDERS

The School District of the City of Erie, 148 West 21st Street, Erie, PA 16502 will receive SEALED BIDS for Art Supplies, Regular & Office Supplies, Various Lamps, Pencils & Pens, and School Paper up to Thursday, April 21, 2011 at 12:00 p.m., Daylight Savings Time, and

will be opened in the Board Room at 1:30 p.m. Daylight Savings Time in accordance with the bid forms and specifications to be obtained from the Purchasing Department.

Robin Smith
Secretary

Apr. 8, 15

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property at 268 E. Washington Street, Albion, PA 16401 being more fully described at Erie County Deed Book 128, Page 954.

SAID SALE to be held at the **ERIE COUNTY COURTHOUSE, ROOM 209, ERIE, PA at 9:00 a.m.** prevailing, standard time, on **APRIL 25, 2011**

All those certain tracts of land, together with the buildings, and improvements erected thereon described as Erie County Tax Index Number (1) 2-6-5. Seized and taken in execution as the property of Kenneth W. Kiedaisch and Lynn M. Kiedaisch at the suit of the United States of America, acting through the Under Secretary of Rural Development, on behalf of Rural Housing Service, United States Department of Agriculture, to be sold on Writ of Execution as Civil Action Number 01:07-cv-193. **TERMS OF SALE:** Successful bidder will pay ten percent (10%) by certified check or money order and the remainder of the bid within thirty (30) days from the date of the sale and in the event bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, Room 241, U.S. Post Office & Courthouse, Pittsburgh, PA 15219. Notice is hereby given that a Schedule of Distribution will be filed by me

on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Thomas M. Fitzgerald, United States Marshal. For additional information, please contact Dan Varland at 314-457-5489.

Apr. 1, 8, 15, 22



8th Annual Law Day 5K Run/Walk

SATURDAY, APRIL 30, 2011

**9:00 a.m. - Erie County Courthouse
140 West Sixth Street**

**Entry Fees: \$20.00 (adults)
\$10.00 (12 and under)**

Race Premium: Top-quality long-sleeved t-shirt.
You must be pre-registered to be guaranteed a shirt.

Presented by the



ERIE COUNTY BAR ASSOCIATION

IN COOPERATION WITH
THE ERIE RUNNERS CLUB

**POSTMARK DEADLINE TO PRE-REGISTER
IS FRIDAY, APRIL 15, 2011**

**Event benefits the ECBA's Attorneys & Kids Together Program,
supporting the educational needs of Erie's homeless students, and
the Runners Club Scholarship Fund.**

Print an Application or Register Online at www.eriebar.com.

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Dennis Lagan
27 Years- PSP

Gerald Nichols
30 Years - FBI

Benjamin Suchocki
30 Years - FBI/IRS

Jennifer Mazur
Investigator

NORTHWEST PENNSYLVANIA'S PREMIER INVESTIGATIVE TEAM

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

**ARMSTRONG, CAROL, a/k/a
CAROL L. ARMSTRONG, a/k/a
CARROL ARMSTRONG, a/k/a
CARROL L. ARMSTRONG,
deceased**

Late of the Township of Springfield, County of Erie, State of Pennsylvania

Executor: Gregory A. Armstrong, 12685 Old Albion Road, Albion PA 16401

Attorney: Grant M. Yochim, Esq., Steadman Law Office, 24 Main St. E., Girard, Pennsylvania 16417

**BRANDT, BEATRICE E.,
deceased**

Late of Millcreek, Erie County
Executrix: Mary Sue Longnecker
Attorney: Stanley G. Berlin, Esquire, Shapira, Hutzelman, Berlin, Ely, Smith and Walsh, 305 West 6th Street, Erie, PA 16507

**CRAWFORD, MARGARET C.,
a/k/a MARGARET CLEMENS
CRAWFORD,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Co-Executors: David L. Marcum and Shirley M. Loeslein, 3820 Liberty Street, Erie, PA 16509
Attorney: Richard A. Vendetti, Esq., Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**ECKERT, RITA J.,
deceased**

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

Executor: William H. Eckert, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorneys: Lawrence C. Bolla, Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**GAERTTNER, ANNA K.,
deceased**

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

Administratrix: Shirley Shoup, c/o Eugene C. Sundberg 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

**GRANATO, CARL,
deceased**

Late of the Township of Millcreek, County of Erie, State of Pennsylvania

Executrix: Carla A. Smith, c/o 78 East Main Street, North East, PA 16428

Attorney: Brydon Law Office, John C. Brydon, Esq., 78 East Main Street, North East, PA 16428

**HAURWITZ, HANS, a/k/a
HANS L.F. HAURWITZ,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania

Co-Executors: Ralph K.M. Haurwitz, 7609 Rustling Road, Austin, TX 78731-1363 and Barbara V. Keim, 5318 Castlewood Court, Erie, PA 16509-2587

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

**HOHMAN, MARY ANN,
deceased**

Late of Harborcreek Township, Erie County, Erie, Pennsylvania

Executor: Joseph H. Hohman, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428

Attorneys: Orton & Jeffery, P.C., 33 West Main Street, North East, Pennsylvania 16428

**KNIPP, JAMES H.,
deceased**

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

Administratrix: Nancy Ann Knipp Downey, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

Attorney: Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**MANNARELLI, ISABELA., a/k/a
ISABELLA. MANNARELLI,
deceased**

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

Executrix: Sara Mannarelli Durfee, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

Attorneys: John P. Leemhuis, Jr., Esquire, Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**McKEAN, JOHN A.,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania

Co-Executrices: Catherine D. Seip, 1720 Westwood Drive, Erie, Pennsylvania 16505 and Doreen K. Wishnok, 6138 Footemill Road, Erie, Pennsylvania 16509

Attorney: James R. Steadman, Esq., 24 Main St. E., Girard, Pennsylvania 16417

**PAPARELLI, FRANK, JR.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executor: Christine Paparelli, c/o McCarthy, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507
Attorney: Joseph P. Martone, Esquire, McCarthy, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

**RINDFUSS, BARBARA JUNE,
deceased**

Late of LeBoeuf Township, County of Erie, and Commonwealth of Pennsylvania
Executor: Robert Paul Rindfuss
Attorney: James D. McDonald, Jr., Esq., The McDonald Group, L.L.P., P.O. Box 1757, Erie, PA 16507-1757

**WAHLEN, JOHN JOSEPH,
deceased**

Late of the Township of Harborcreek, County of Erie, and Commonwealth of Pennsylvania
Executrix: Susan Jean Trochowski, c/o Joseph A. Yochim, Esq., Estate Attorney, Yochim, Skiba & Nash, 345 West 6th Street, Erie, PA 16507
Attorney: Joseph A. Yochim, Esq., Yochim, Skiba & Nash, 345 West 6th Street, Erie, PA 16507

**WHITFORD, TERESA M.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: John W. Masterson, 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

SECOND PUBLICATION

**COUNASSE, SHIRLEY A.,
deceased**

Late of the City of Erie, Erie County
Executor: Thomas D. Heberle, Esq., c/o Jeffrey D. Scibetta, 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**DOMBROWSKI, EDITH M.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executor: Casimer C. Dombrowski, 2656 Hazel Street, Erie, PA 16508
Attorney: Brian Glowacki, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**FAHLEN, MURIEL H., a/k/a
MURIEL HELEN FAHLEN,
a/k/a MURIEL HELEN
STEINHOFF FAHLEN,
deceased**

Late of Elk Creek Township, County of Erie, Commonwealth of Pennsylvania
Co-Executors: Kathleen Stevens, 9785 Route 6N East, Albion, PA 16401 and Alfred G. Fahlen, Jr., 9937 Sherman Road, Albion, PA 16401
Attorney: None

**HETRA, MARGARET GREER,
a/k/a MARGARET G. HETRA,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executrix: Jane Peganoff, c/o 150 West Fifth St., Erie, PA 16507
Attorney: Colleen C. McCarthy, Esq., McCarthy, Martone & Peasley, 150 West Fifth St., Erie, PA 16507

**MADARA, ANTOINETTE M.,
deceased**

Late of Millcreek Township, County of Erie, Commonwealth of Pennsylvania
Executor: Thomas Madara
Attorney: Laurie A. Mikielski, Esq., 337 West 6th Street, Erie, Pennsylvania 16507

**MATTHEWS, MARGARET, a/k/a
MARGARET N. MATTHEWS,
deceased**

Late of the Borough of Edinboro, County of Erie and Commonwealth of Pennsylvania
Executor: Dennis Cholak, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508
Attorney: Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**MCCARTY, NEAL G.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Madeliene Trimble
Attorney: David J. Rhodes, Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

**MCCLELLAN, JOSEPH R.,
deceased**

Late of Fairview Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Marilyn McClellan
Attorney: Joseph T. Messina, Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

**McFADDEN, CHARLES J.,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Executor: Charles J. McFadden, Jr.
Attorney: Lawrence L. Kinter, Esquire, 3820 Liberty Street, Erie, PA 16509

**PIERCE, MERRILA.,
deceased**

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

Executrix: Norma Jean Haschalk, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

Attorney: Valerie H. Kuntz, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**SANTI, GENEVIEVE, a/k/a
GENEVIEVE B. SANTI,
deceased**

Late of Greene Township, Erie County, Pennsylvania

Executor: Jeffrey T. Santi, 8194 Wattsburg Road, Erie, PA 16509

Attorney: Brian Glowacki, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**SCHETTER, FRED P. JR.,
deceased**

Late of the Township of Venango, County of Erie, Commonwealth of Pennsylvania

Executrix: Jacqueline M. Parmenter, c/o Crandall G. Nyweide, Esq., PO Box 369, Clymer, New York, 14724

Attorney: Crandall G. Nyweide, Esq., PO Box 369, Clymer, New York 14724

**SINTETOS, PETER,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

Executor: Gary Allen King, c/o James E. Marsh Jr., 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

**SWANSON, DOROTHY L.,
deceased**

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

Executrix: Carolyn Lathrop, 11294 Route 97N, Waterford, Pennsylvania 16441

Attorney: William J. Kelly, Jr., Esquire, 100 State Street, Suite 440, Erie, Pennsylvania 16507

**ZALEWSKI, KAREN H.,
deceased**

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

Executor: Alexandra M. Laughlin, c/o The McDonald Group, L.L.P., Thomas J. Buseck, Esq., P.O. Box 1757, Erie, PA 16507-1757

Attorney: Thomas J. Buseck, Esq., The McDonald Group, L.L.P., P.O. Box 1757, Erie, PA 16507-1757

THIRD PUBLICATION

**BASH, CLIFFORD H.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania

Executrix: Leona Cook, 4537 Tulane Avenue, Erie, Pennsylvania 16506

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

**CASSICK, TRESSA L., a/k/a
TRESSA CASSICK,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania

Administrator: Donald R. Brooks, Jr., 22 Munn Road, Bradford, PA 16701

Attorney: None

**DINGER, PATRICIA A.,
deceased**

Late of the Township of Fairview
Executor: Mark Wirtala, 562 Latempia Drive, Erie, PA 16505

Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**DOMBROWSKI, SALLY A.,
deceased**

Late of Venango Township, Erie County, Pennsylvania

Executor: Irene A. Young, 10767 Young Road, Wattsburg, PA 16442

Attorney: None

**FELLER, GEORGE M. III,
deceased**

Late of the Borough of Wattsburg, County of Erie

Executrix: Dawn M. Feller, c/o Thomas A. Testi, Esq., P.O. Box 413, Fairview, PA 16415

Attorney: Thomas A. Testi, Esq., 3952 Avonia Road, P.O. Box 413, Fairview, PA 16415

**FROEHLICH, MILDRED A.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania

Executor: Gregory A. Baxter, 5401 Grubb Road, Erie, PA 16506

Attorney: Brian Glowacki, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**HUSBAND, AUDREY L. a/k/a
AUDREY L. THOMAS
HUSBAND,
deceased**

Late of the Township of Harborcreek, Commonwealth of Pennsylvania

Executor: Gayle E. Robinson, 3211 Marvin Avenue, Erie, Pennsylvania 16504

Attorney: Richard A. Vendetti, Esq., Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**JENSEN, LOUISE M.,
deceased**

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

Executor: Robert V. Naguszewski, c/o John P. Eppinger, 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

**LANYON, RICHARD L.,
deceased**

Late of the City of Corry, Erie County, Pennsylvania

Executor: Robert F. Lanyon, 20012 SW Jay Street, Aloha, OR 97006

Attorney: William E. Barney, Esq., Attorney-at-Law, 200 N. Center St., P.O. Box 148, Corry, PA 16407

**RIDDLE, DENIS J., a/k/a
DENIS RIDDLE,
deceased**

Late of Erie County, Pennsylvania
Executor: Gregory D. Riddle, c/o Gary D. Bax, Esq., Murphy Taylor, L.L.C., 900 State Street, Suite 202, Erie, PA 16501

Attorney: Gary D. Bax, Esq., Murphy Taylor, L.L.C., 900 State Street, Suite 202, Erie, PA 16501

**SCHAUERMAN, CHARLES J. II,
deceased**

Late of the City of Erie, County of Erie, and State of Pennsylvania
Co-Administrators: Michelle Clark, 105 Frank Ave., Erie, PA 16509 and Robert Foley, 230 Circle Dr., Girard, PA 16417

Attorney: Richard T. Ruth, Esq., 1026 West 26th St., Erie, PA 16508

**WRIGHT, BERNARD R.,
deceased**

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

Co-Executrices: Maureen Gardner and Cynthia Wright, c/o 150 West Fifth St., Erie, PA 16507

Attorney: Colleen C. McCarthy, Esq., McCarthy, Martone & Peasley, 150 West Fifth St., Erie, PA 16507

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Erie, PA 16506 ----- *jimcairnsemail@gmail.com*

NEW EMAIL ADDRESS

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