

Erie County Legal Journal

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Eastern Steel Constructors, Inc. v. Whipple-Allen Construction Co., et al.

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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Bayfront Convention Center

8:00 a.m. – 10:00 a.m. (7:30 a.m. reg./breakfast)

\$70 (ECBA member/non attorney staff)

\$105 (nonmember) \$49 (member judge not needing CLE)

2 hours substantive

FRIDAY, SEPTEMBER 19, 2014

Overcoming Challenges for Women Lawyers: Myths About Women in the Law;

Why Women Lawyers Leave and How to Survive as Women Lawyers

Sheraton Bayfront Erie Hotel

12:00 p.m. – 1:30 p.m. (11:30 a.m. reg./lunch)

\$45 (ECBA members) \$55 (nonmembers) \$25 (students)

1 hour substantive

THURSDAY, SEPTEMBER 25, 2014

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EASTERN STEEL CONSTRUCTORS, INC., Plaintiff

v.

**WHIPPLE-ALLEN CONSTRUCTION CO., WHIPPLE-ALLEN REAL ESTATE,
AND SCOTT D. ALLEN, T/A WHIPPLE-ALLEN CONSTRUCTION CO. AND
WHIPPLE-ALLEN REAL ESTATE, Defendants**

CIVIL PROCEDURE / MOTION FOR SUMMARY JUDGMENT

Any party may move for summary judgment whenever there is no genuine issue of any material fact as to a necessary element of the cause of action which would be established by additional discovery or expert report.

CIVIL PROCEDURE / MOTION FOR SUMMARY JUDGMENT

The standard of review of a motion for summary judgment shall be in the light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

CIVIL PROCEDURE / COMMENCEMENT OF ACTION

A claim for breach of contract is limited by a four year statute of limitations which begins to run at the time of the breach under 42 Pa.C.S. §5525.

CIVIL PROCEDURE / JUDGMENT

When a valid and final personal judgment is rendered in favor of a plaintiff, a plaintiff cannot maintain a subsequent action on any part of the original claim.

CIVIL PROCEDURE / JUDGMENT

A judgment concludes all controversial matters between parties prior to its rendition but not for transgressions which had not occurred at the time the judgment was rendered.

CIVIL PROCEDURE / JUDGMENT

For res judicata to apply, a final judgment rendered by a court of competent jurisdiction must have been reached on the merits.

CORPORATIONS / MERGERS AND ACQUISITIONS

A corporation does not succeed to the liabilities of its predecessors merely by purchasing assets, rather the purchaser must expressly or implicitly agree to assume the liability, the transaction must amount to a consolidation or merger, the purchaser is merely a continuation of the selling corporation, the transaction was fraudulently entered to escape liability or the transfer was without adequate consideration and no provisions were made for creditors of the selling corporation.

CORPORATIONS / MERGERS AND ACQUISITIONS

For a de factor merger to occur, there must be continuity of the successor and predecessor corporation evidenced by continuity of ownership, a cessation of ordinary business and dissolution of the predecessor as soon as practically and legally possible, assumption by the successor of the liabilities, a continuity of management, personnel, physical location, aspects and general business operation.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW NO. 10461-2005

Appearances: Brian S. Jablon, Esq., Attorney for Plaintiff
Daniel J. Pastore, Esq., Attorney for Defendants
Sumner E. Nichols, II, Esq., Attorney for Defendants

OPINION

Bozza, J., July, 16, 2014.

This matter comes before the Court on Defendants' Motion for Summary Judgment. Following a review of the record and oral argument, Defendants' Motion for Summary Judgment is **DENIED**.

I. FACTUAL AND PROCEDURAL HISTORY

The instant action stems from a subcontract entered into by Eastern Steel Constructors, Inc. (Plaintiff) and Whipple-Allen Construction Co. (hereinafter, "Whipple-Allen") on January 2, 1993. Under the subcontract, Plaintiff was to erect reinforcing steel for the construction of St. Vincent New South Building in Erie, Pennsylvania. Under this subcontract, Article 15.4 provided as follows:

15.4 ATTORNEY'S FEES. Should either party employ an attorney to institute suit or demand arbitration to enforce any of the provisions hereof, to protect its interest in any matter arising under this Agreement, or to collect damages for the breach of the Agreement or to recover on a surety bond given by a party under this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fee, charges and expenses expended or incurred therein.

(Pl.'s Br. In Supp. of Opp'n to M. for Summary J., Ex 3 at 12.)

As the project was a large, publicly-bid project, Whipple-Allen was required to secure a performance bond. Whipple-Allen obtained a bond in the amount of \$4,237,000.00 from St. Paul Mercury Insurance Company (hereinafter "St. Paul"). Under the performance bond, St. Paul acted as surety to pay Plaintiff if Whipple-Allen did not pay.

Following the completion of the project, a dispute arose between the parties. Whipple-Allen refused Plaintiff's demand for payment, and on July 1, 1994, Plaintiff commenced an arbitration proceeding against Whipple-Allen pursuant to the terms of the subcontract. Subsequently, and as the arbitration proceeding was ongoing, counsel for Plaintiff sent a demand letter to St. Paul on September 29, 1994, making a payment bond claim. After St. Paul refused to make payment to Plaintiff, Plaintiff commenced suit against St. Paul in Montgomery County, Pennsylvania on April 27, 1995.¹ This matter was subsequently transferred to the Erie County Court of Common Pleas on January 22, 1996.

On October 6, 1995, the arbitration panel in the original arbitration proceeding entered an award against Whipple-Allen and for Plaintiff in the amount of \$220,533.72. On October 11, 1995, upon receipt of notice of the arbitration award, Plaintiff demanded that St. Paul pay the award. St. Paul refused.

Subsequently, on November 3, 1995, Plaintiff filed a petition to confirm the arbitration award in the United States District Court for the Western District of Pennsylvania. The district court granted the petition and entered judgment in favor of Plaintiff and against Whipple-Allen on August 5, 1996. On August 15, 1996, Plaintiff filed a motion to amend the federal court judgment to add attorneys' fees incurred since the date of the arbitration hearing, together with pre-judgment and post-judgment interest. In its motion, Plaintiff did not request future attorney's fees it would incur until the date the judgment was

¹ In this action, only St. Paul was named, and neither Whipple-Allen nor the other Defendants were named.

satisfied. On February 4, 1997, the district court granted Plaintiff's motion and amended the judgment, increasing it to \$239,657.71.

Meanwhile, Plaintiff's action against St. Paul proceeded to a jury trial before the undersigned. On February 9, 2001, the jury returned a verdict in favor of Plaintiff and against St. Paul for \$146,069.00 plus \$38,799.93 retainage. It also awarded Plaintiff \$260,000.00 in punitive damages. Judgment was entered by the undersigned on May 9, 2001. Plaintiff subsequently sent a demand letter to Whipple-Allen on June 30, 2001 for attorney fees incurred as a result of the action against St. Paul.

In the meantime, Plaintiff appealed and St. Paul cross-appealed the judgment in the St. Paul action to the Superior Court. The Superior Court affirmed the judgment on August 2, 2002. A petition for allowance of appeal was filed with the Pennsylvania Supreme Court and denied by order of March 18, 2003.

Subsequently, on November 14, 2003, Plaintiff returned to federal court and again moved to amend the judgment against Whipple-Allen to add attorney's fees incurred in pursuing the action on the surety bond. The district court denied that motion with prejudice by oral order issued August 4, 2004.

The instant action was initiated on February 7, 2005 against Whipple-Allen Construction Company, Whipple-Allen Real Estate (hereinafter, "WARE"), and Scott D. Allen. Plaintiff seeks to recover attorneys' fees incurred in the St. Paul Action under Article 15.4 of the subcontract and named Whipple-Allen Real Estate and Scott Allen as defendants under theories of successor liability and alter ego, respectively.² Plaintiff argues that when it became the prevailing party in the St. Paul Action, "it became entitled to attorney's fees, costs charges and expenses relating to said litigation" under Article 15.4 of the subcontract. (Second Am. Compl. at ¶ 55-56.)

II. DISCUSSION

A. Standard for Summary Judgment

Pursuant to Pennsylvania Rule of Civil Procedure 1035.2, "any party may move for summary judgment . . . whenever there is no genuine issue of any material fact as to a necessary element of the cause of action . . . which would be established by additional discovery or expert report." According to our Supreme Court, the record is to be viewed "in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001). Under this standard, this Court shall address each of Defendant's arguments in support of summary judgment in turn.

B. Plaintiff's Claims Are Not Barred by the Statute of Limitations

Defendants first argue that Plaintiff's instant claim is barred by the statute of limitations. Generally, a claim for a breach of contract is limited by a four year statute of limitations that begins to run at the time of the breach. *See* 42 Pa.C.S § 5525.

Defendants claim that Section 15.4 of the contract is limited to claims between the two parties to the contract, namely the Plaintiff and Whipple-Allen, not to a third party, such

² The Second Amended Complaint also contains allegations of successor liability, which need not be addressed further herein. Count 4, which alleged a fraudulent transfer, was voluntarily withdrawn by stipulation on June 7, 2007.

as St. Paul. (See Def.'s Br. in Support of M. to Summary J. at 8) Therefore, the statute of limitations began to run on October 11, 1995, when the parties received notice of the arbitration award and Plaintiff became a "prevailing party" under the contract. (See *id.*). At this time, according to Defendants' theory of the case, all possible claims for attorney's fees and costs accrued.

However, the plain language of the contract contradicts the Defendants' argument. The language employed in Section 15.4 contains a disjunctive and sets forth four separate instances wherein attorney's fees would be available "should either party employ an attorney to institute suit or demand arbitration":

- 1) to enforce any of the provisions hereof
- 2) to protect its interest in any matter arising under this Agreement
- 3) to collect damages for the breach of this Agreement
- 4) to recover on a surety bond given by a party under this Agreement.

(See Ex. 3 at 12).

Under any one of these four instances, either Plaintiff or Whipple-Allen could be a "prevailing party" whether against each other or, in the cause of recovering on a surety bond, against the bondsman. Once one of the parties prevails in any one of these four different instances and the other party refuses to pay, then a claim for breach of contract arises.

In the instant case, there were two causes of action arising from a breach of Section 15.4. The first was the cause of action before the federal court for Whipple-Allen's failure to perform pursuant to the subcontract. Plaintiff was entitled to attorney's fees pursuant to Section 15.4 of the subcontract for employing an attorney to demand arbitration to enforce a provision of the subcontract. The instant second cause of action stems from Plaintiff's action against St. Paul, when Plaintiff employed an attorney to institute suit to recover on a surety bond given by Whipple-Allen. Plaintiff's right to attorney's fees only accrued in the instant case when it became a prevailing party against St. Paul. Plaintiff became a prevailing party on March 18, 2003, when the Pennsylvania Supreme Court denied the allowance of appeal in the St. Paul case, making the judgment therein final. The earliest the statute of limitations can begin to run, therefore, is March 18, 2003. Plaintiffs filed the instant claim on February 7, 2005, well within four years of March 18, 2003. Consequently, the statute of limitations does not bar the instant action and summary judgment on that basis would be improper.

C. Plaintiff's Claim for Attorney's Fees for the St. Paul Action Was Not Merged into the Federal Judgment

Defendants next argue that all of Plaintiff's rights under the contract, including the right to recover attorney's fees, merged into the federal judgment entered by Judge McLaughlin on August 5, 1996 and were extinguished. (See Def.'s Br. in Support of M. to Summary J. at 12). Defendants cite *Commissioners of Sinking Fund of the City of Philadelphia v. City of Philadelphia*, 188 A. 314, 316 (Pa. 1936), for the proposition that "[t]he judgment concludes all controversial matters between the parties *prior to its rendition* and substitutes a sum of money based upon ascertained rights and duties." (*Emphasis added*). Defendants further cite *In re. Schlecht*, 36 B.R. 236, 240 (Bankr. D. Alaska 1983) which sets forth the concept of merger as follows:

The doctrine of merger is one aspect of the larger principle of *res judicata*. 46 AmJr.2d Judgments § 383 (1969). The general rule of merger is that when a valid and final personal judgment is rendered in favor of the plaintiff, the plaintiff cannot maintain a subsequent action on any part of *the original claim*. Restatement, Second Judgments § 18 (1980). *The original claim* merges into the final judgment. The effect of the merger is that the old debt ceases to exist and the new judgment debt takes its place.

(See Def.'s Br. in Support of M. to Summary J. at 15)(*Emphasis added*).

As set forth above, under the doctrine of merger it is the original claim and the attendant rights of a party pursuant to that claim that are merged into a final judgment. For example, in the instant case, Plaintiff's right to attorney's fees based on employing an attorney to demand arbitration to enforce a provision of the subcontract was accrued only when it prevailed against Whipple-Allen in the arbitration proceeding. Therefore, any right to attorney's fees based on that claim would be merged into the judgment entered by the Honorable Sean J. McLaughlin in the federal action on August 5, 1996.

As set forth *supra*, however, Plaintiff's instant claim for attorney's fees is a separate cause of action based upon Plaintiff's right to recover attorney's fees from Whipple-Allen for prevailing against St. Paul in its action to recover on the surety bond. Because the instant action is a separate claim and not a part of the original claim, the doctrine of merger is inapplicable. To put the matter in the language of *Commissioners of Sinking Fund of the City of Philadelphia*, Plaintiff's claim for attorneys' fees for the St. Paul action was not one of the controversial matters between the parties prior to when judgment was rendered in the original federal action. Cf. 188 A. at 316. Under the plain language of the contract, it could not have been because at that time Plaintiff was not a prevailing party against St. Paul in its separate action on the surety bond and therefore not a prevailing party pursuant to paragraph 15.4 of the contract with Whipple-Allen.

In the federal action, without ruling on the underlying entitlement to attorney fees, the Court essentially concluded that amending the federal court judgment was not proper because the state court action on the bond was a separate cause of action and that Eastern Steel was not the prevailing party for purposes of attorney fee determination until it was concluded. The Federal Court noted:

In my view, however, in the state court case, the petitioner became a prevailing party against the surety subsequent to the entry of a judgment in its favor. In short, in my view, utilizing the vehicle of a motion to amend the judgment, I believe that the petitioner is attempting to improperly pin an attorney's fee's tail on the wrong donkey or judgment.

(Pl.'s Br. In Supp. of Opp'n to M. for Summary J., Ex. 23 at 40).

To require a different result would have required Plaintiff to predict the outcome of the St. Paul action at the time the federal judgment was entered on August 5, 1996. Although Plaintiff had instituted its cause of action against St. Paul on April 27, 1995, before the federal judgment was entered, a jury verdict was not returned in the St. Paul matter until February 9, 2001. Subsequently, Plaintiff appealed and St. Paul cross-appealed to the Pennsylvania Superior Court. After the Pennsylvania Superior Court affirmed the judgment

of the trial court on August 2, 2002, St. Paul filed a petition for allowance of appeal to the Pennsylvania Supreme Court, which was denied on March 18, 2003. When judgment was entered in the federal case on August 5, 1996, Plaintiff could not have foreseen the expenses it would incur in instituting suit to recover on the surety bond held by St. Paul, which would incur multiple pre- and post-trial motions before this Court, a jury trial, argument before our Superior Court and, finally, an appeal before the Pennsylvania Supreme Court. These facts further support that the instant action is a separate and distinct claim from the original action of Plaintiff against Whipple-Allen and that Plaintiff could not have set forth this separate claim at the time judgment was entered in the federal action.

The merger doctrine is an expression of a public policy encouraging respect for properly rendered judgments and to bring finality to lawsuits therefore avoiding the waste of judicial resources and vexatious legal proceedings. *Bailey v. Harleysville Mut. Ins. Co.* 341 Pa. Super. 420, 491 A.2d. 888 (1985). The notion is that one should proceed to pursue its claims against a party at one time, and to obtain judgments that reflect a resolution of all the issues in the case. It is an extension of the concept of *res judicata* which encompasses the same rationale. *See, Stevenson v. Silverman* 417 Pa. 187, 208 A.2d.786 (1965).

To apply this conceptual framework to the case before the Court would be to ignore the legal and practical realities of the course, albeit a very long course, of this litigation. It would make little practical sense to have required Eastern Steel to include in its original claim, that was initially resolved through a mandated Arbitration process, and thereafter in its federal judgment, a claim for attorney fees to which it may have been entitled as a result of an entirely separate legal action at an uncertain time in the future. Moreover, there is no legal or jurisprudential benefit to requiring a party to seek financial compensation for a transgression that had not yet occurred, *i.e.*, the failure of Whipple-Allen to pay attorney fees to Eastern Steel for its action against St. Paul. Whether Whipple-Allen's surety was responsible for Whipple-Allen's alleged contractual violations was an entirely separate question involving the applicability of a different contract and esoteric legal principles.

The doctrine of merger is inapplicable to the instant case because Plaintiff's claim for attorney's fees is a separate claim from the one finalized in the federal judgment entered on August 5, 1996. For this reason, Defendants Motion for Summary Judgment will be denied.

D. Plaintiff's Action is Not Otherwise Barred by *Res Judicata* or Claim Preclusion

Defendant also argues that Plaintiff's instant claim is barred by claim preclusion because Plaintiff's second Motion to Amend Judgment in the federal action against Whipple-Allen was dismissed with prejudice by Judge McLaughlin on August 4, 2004. (*See* Def.'s Br. in Support of M. to Summary J at 19). Our Superior Court has explained:

"*Res judicata*" means "a thing adjudged" or a matter settled by judgment. Traditionally, American courts have used the term *res judicata* to indicate claim preclusion, *i.e.*, the rule that a final judgment rendered by a court of competent jurisdiction on *the merits* is conclusive as to the rights of the parties and constitutes for them an absolute bar to a subsequent action involving the same claim, demand or cause of action.

Robinson Coal Co. v. Goodall, 72 A.3d 685, 689 (Pa.Super. 2013) (citing *Stoeckinger v. Presidential Financial Corp of Delaware Valley*, 948 A.2d 828, 832 n. 2 (Pa.Super. 2008)) (*Emphasis added*).

As set forth above, for *res judicata* to apply a final judgment rendered by a court of competent jurisdiction must have been reached on the merits. In the instant case, Judge McLaughlin ruled as follows:

Here, in my view, the request for attorney's fees is not only collateral, but even more so in the sense that the fees which are sought here were not incurred in connection with the litigation which gave rise to the federal judgment here. Indeed, those fees long ago have been paid. The fees that are sought here were fees that were allegedly generated exclusively in the state court action against the surety. Thus, in my view, the 10-day provision found in Rule 59(E) is inapplicable.

That, however, begs, in my view, the larger question as to whether a motion to amend the judgment, such as that which has been filed here, under the unique factual and procedural circumstances of this case is an appropriate vehicle at all to seek the fees which were incurred in a different court in a different action.

First, we note that where attorney's fees are requested subsequent to the entry of a judgment, and that is to say in cases where those fees were incurred in connection with that very litigation, courts utilize equitable considerations to determine whether the motion should be permitted to be filed. (Citation omitted).

In the case before me where the arbitration award was confirmed, the petitioner was a prevailing party within the meaning of the contract against Whipple-Allen. In my view, however, in the state court case, the petitioner became a prevailing party against the surety subsequent to the entry of a judgment in its favor. In short, in my view, utilizing the vehicle of a motion to amend the judgment, I believe that the petitioner is attempting to improperly pin an attorney's fee's tail on the wrong donkey or judgment.

That having been said, inasmuch as the only pleading before me at this time is the motion to amend the judgment, I find it unnecessary, for purposes of disposing of the motion *to reach the other uniquely state law issues of merger – among other, of merger, statute of limitations, res judicata, collateral estoppel*.

...

So, for the foregoing reasons, the motion to amend the judgment to include post-arbitration fees and expenses is denied with prejudice as to any further motion to amend the judgment. So the record is clear, *I did not rule or reach any of those other issues that were unnecessary to a resolution of that claim*.

(Pl.'s Br. In Supp. of Opp'n to M. for Summary J., Ex. 23 at 38-41) (*Emphasis added*).

As demonstrated above, Judge McLaughlin explicitly stated that he did not issue a ruling on the merits of Plaintiff's claim for attorney's fees incurred as a result of its action against St. Paul. Therefore, Judge McLaughlin's August 4, 2004 Order denying Plaintiff's Motion to Amend Judgment was not a final judgment on the merits for purposes of *res judicata*. Summary judgment cannot be granted on this basis.

E. There Exist Issues of Material Fact as to Plaintiff's Claims of Successor Liability against WARE and Scott Allen

Defendant finally argues that Plaintiff cannot present a genuine issue of material fact to support its claims of successor liability against WARE and Scott Allen. (*See* Def.'s B. in Supp. of M. for Summary J. at 22). Plaintiff recognizes that "a corporation does not succeed to the liabilities of its predecessor merely by purchasing its assets." (Pl.'s Br. In Supp. of Opp'n to M. for Summary J. at 37) (*citing Philadelphia Electric Co. v. Hercules, Inc.*, 762 F.2d 303, 308 (3d Cir. 1985)). However, there are five exceptions to this general rule:

(1) the purchaser expressly or implicitly agreed to assume liability, (2) the transaction amounted to a consolidation or merger, (3) the purchasing corporation was merely a continuation of the selling corporation, (4) the transaction was fraudulently entered into to escape liability, or (5) the transfer was without adequate consideration and no provisions were made for creditors of the selling corporation.

Continental Ins. Co. v. Schneider, Inc., 873 A.2d 1286, 1291 (Pa. 2005) (citations omitted).

In the instant case, Plaintiff claims that the following exceptions are applicable: (1), regarding assumption of obligations; (2), regarding "de facto" merger; and (3), regarding continuation. The two theories regarding de facto merger and continuation are frequently analyzed simultaneously. *See, e.g., Fizzano Bros. Concrete Prods. v. XLN, Inc.*, 42 A.3d 951 (Pa. 2012).

In *Fizzano*, our Supreme Court explained:

For a de facto merger to occur, there must be continuity of the successor and predecessor corporation as evidenced by (1) continuity of ownership; (2) a cessation of ordinary business and dissolution of the predecessor as soon as practically and legally possible; (3) assumption by the successor of the liabilities ordinarily necessary for the uninterrupted continuation of the business of the predecessor, and (4) a continuity of management, personnel, physical location, aspects, and general business operation. Not all of these factors are needed to demonstrate a merger; rather, these factors are only indicators that tend to show a de facto merger.

Id. at 962.

As indicated by the briefs submitted in this matter, there are contested facts as to whether there was a de facto merger between Whipple-Allen and WARE. The parties contest Scott Allen's role in running both Whipple-Allen and WARE; at what point Whipple-Allen ceased its business; whether WARE assumed any liabilities of Whipple-Allen; and whether the management, employees and general business operation of Whipple-Allen was continued through WARE. It is in the interest of both parties that these facts be ascertained through a developed record at trial. Again, when considering a motion for summary judgment "all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party." *Jones v. SEPTA, supra*.

III. CONCLUSION

Summary judgment is inappropriate in this case because Plaintiff's claims are not barred by the statute of limitations, the doctrine of merger, or *res judicata*. Additionally, there are genuine issues of material fact related to Plaintiff's claims regarding successor liability. An appropriate order denying Whipple-Allen's Motion for Summary Judgment shall follow.

ORDER

AND NOW, this 16th day of July, 2014, upon consideration of Defendants' Motion for Summary Judgment with Brief in Support, Plaintiff's Brief in Opposition thereto, Defendants' Reply Brief, and after oral argument, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that Defendants' Motion for Summary Judgment is **DENIED**.

BY THE COURT:

/s/ **John A. Bozza, Senior Judge**

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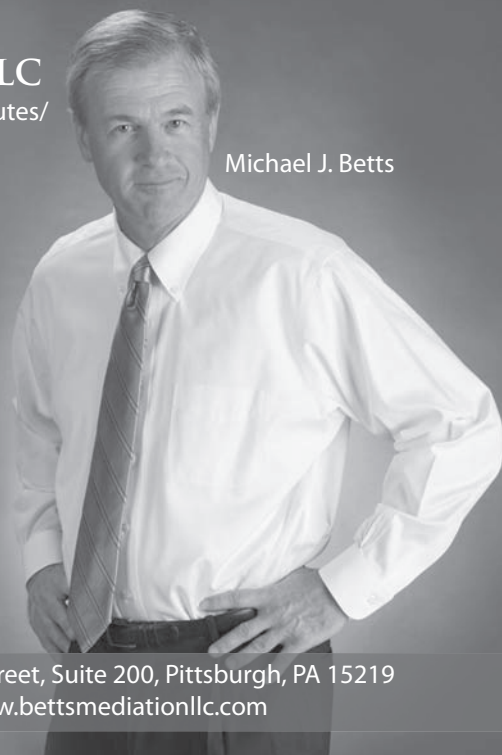
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LEGAL NOTICE

This is legal notice of a motion for Involuntary Transfer of Vehicle Ownership of a 1998 Duchess mobile home, Vin #13734D. Hearing will be held at the Erie County Courthouse on 9/3/14 at 10:00 a.m. in Courtroom C.

Aug. 22

LEGAL NOTICE

In The Court of Common Pleas Of Erie County, Pennsylvania
Civil Action-Law
No. 11141-14

**Notice of Action in Mortgage
Foreclosure**

JPMorgan Chase Bank, National Association, Plaintiff vs. Unknown Heirs, Successors, Assigns and All Persons, firms or Associations claiming right, Title or Interest from or under Laura Tate, Deceased, Defendant(s)

**NOTICE OF SHERIFF'S SALE
OF REAL PROPERTY**

TO: Unknown Heirs, Successors, Assigns and All Persons, firms or Associations claiming right, Title or Interest from or under Laura Tate, Deceased, Defendant(s), whose last known address is 1258 East 37th Street, Erie, PA 16504.

Your house (real estate) at: 1258 East 37th Street, Erie, PA 16504, 180520140227, is scheduled to be sold at Sheriff's Sale on October 17, 2014, at 10:00AM, at Erie County Sheriff's Office, 140 W. Sixth St., Erie, PA 16501, to enforce the court judgment of \$88,584.80, obtained by JPMorgan Chase Bank, National Association (the mortgagee) against you. - **NOTICE OF OWNER'S RIGHTS - YOU MAY BE ABLE TO PREVENT THIS SHERIFF'S SALE** - To prevent this Sheriff's Sale you must take immediate action: 1. The sale will be cancelled if you pay back to JPMorgan Chase Bank, National Association, the amount of the judgment plus costs or the back payments, late charges, costs, and reasonable attorneys fees due. To find out how much you must pay, you may call :(610)278-6800. 2. You may be able to stop the sale by filing a petition asking the Court to strike or open the

judgment, if the judgment was improperly entered. You may also ask the Court to postpone the sale for good cause. 3. You may be able to stop the sale through other legal proceedings. 4. You may need an attorney to assert your rights. The sooner you contact one, the more chance you will have of stopping the sale. (See notice below on how to obtain an attorney.) - **YOU MAY STILL BE ABLE TO SAVE YOUR PROPERTY AND YOU HAVE OTHER RIGHTS EVEN IF THE SHERIFF'S SALE DOES TAKE PLACE** - 5. If the Sheriff's Sale is not stopped, your property will be sold to the highest bidder. You may find out the price bid by calling (610)278-6800. 6. You may be able to petition the Court to set aside the sale if the bid price was grossly inadequate compared to the value of your property. 7. The sale will go through only if the buyer pays the Sheriff the full amount due in the sale. To find out if this has happened you may call (814)451-6007. 8. If the amount due from the buyer is not paid to the Sheriff, you will remain the owner of the property as if the sale never happened. 9. You have a right to remain in the property until the full amount due is paid to the Sheriff and the Sheriff gives a deed to the buyer. At that time, the buyer may bring legal proceedings to evict you. 10. You may be entitled to a share of the money, which was paid for your house. A schedule of distribution of the money bid for your house will be filed by the Sheriff no later than thirty days after the Sheriff Sale. This schedule will state who will be receiving the money. The money will be paid out in accordance with this schedule unless exceptions (reasons why the proposed distribution is wrong) are filed with the Sheriff within ten (10) days after the date of filing of said schedule. 11. You may also have other rights and defenses or ways of getting your house back, if you act immediately after the sale. **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 LISTED BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. Erie County Lawyer Referral Service, Lawyer Referral & Information Service, P.O. Box 1792, Erie, PA 16507, 814.459.4411. **PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT YOU ARE ADVISED THAT THIS LAW FIRM IS DEEMED TO BE A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

Christopher A. DeNardo, Caitlin M. Donnelly, Bradley J. Osborne & Chandra M. Arkema, Attys. for Plaintiff
SHAPIRO & DeNARDO, LLC
3600 Horizon Dr., Ste. 150
King of Prussia, PA 19406
610.278.6800

Aug. 22

LEGAL NOTICE

**IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW
NO.: 13647-13**

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**
Wells Fargo Financial Pennsylvania, Inc., Plaintiff
vs.

The Unknown Heirs and/or Administrators of the Estate of George G. McCammon, et al, Defendant(s)

TO: The Unknown Heirs and/or Administrators of the Estate of George G. McCammon
PRESENTLY OR FORMERLY of 1011 Brown Avenue, Erie, PA 16502. A lawsuit has been filed against you in mortgage foreclosure and against your real estate at 1011 Brown Avenue, Erie, PA 16502 because you have failed to make the regular monthly payments on your mortgage loan and the loan is in default. The lawsuit is an attempt to collect a debt from you owed to the plaintiff, Wells Fargo Financial Pennsylvania, Inc.. A detailed notice to you of your rights under

the Fair Debt Collection Practices Act (15 U.S.C. §1692, et. seq.) is included in the Complaint filed in the lawsuit. The lawsuit is filed in the Erie County Court of Common Pleas, at the above term and number. A copy of the Complaint filed in the lawsuit will be sent to you upon request to the Attorney for the Plaintiff, Scott A. Dietterick, Esquire, P.O. Box 1024, Mountainside, NJ 07092. Phone (908) 233-8500.

IF YOU WISH TO DEFEND, YOU MUST ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AN ATTORNEY AND FILE YOUR DEFENSES OR OBJECTIONS IN WRITING WITH THE COURT. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR 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 LAWYER OR CANNOT AFFORD ONE GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. NOTICE TO DEFEND
Lawyer Referral Service

P.O. Box 1742
Erie, PA 16507
Phone (814) 459-4411
LAWYER REFERRAL
Lawyer Referral Service
P.O. Box 1742
Erie, PA 16507
Phone (814) 459-4411

Aug. 22

LEGAL NOTICE

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at 335 Fireside Court, Girard, PA 16417 being more fully described at Erie County Deed Book Volume 373, Page 1719.

SAID SALE to be held at the **ERIE COUNTY COURTHOUSE, ROOM 209, 140 WEST SIXTH STREET, ERIE, PA at 10:00 a.m.** prevailing, standard time, on **SEPTEMBER 3, 2014.**

All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Map No. 23004038501800. recorded in Erie County, Pennsylvania. Seized and taken in execution as the property of Marsha L. Lubenski and All Unknown Heirs of Charles M. Lubenski, Deceased, at the suit of the United States of America, acting through the Farmers Home Administration, on behalf of United States Department of Agriculture,

to be sold on Writ of Execution as Civil Action No. 1:14-CV-00053-JFM. 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. Steve Frank, United States Marshal. For additional information, please contact Dan Varland at 314-457-5489 or the USDA foreclosure website at www.resales.usda.gov.

Aug. 8, 15, 22, 29

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RVM's Director of Forensics, Greg Cancilla, was recently named Best Individual Expert Witness in Technology for Litigation Support by the *New York Law Journal* Reader Rankings Survey. Greg has performed countless digital forensic investigations and has been called to offer expert testimonies in numerous cases, one of which rendered the largest single plaintiff verdict in the State of Ohio's history - *Ronald Luri v. Republic Services, Inc., et al.*



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723-6120

**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, August 25, 2014** and confirmed Nisi.

September 18, 2014 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.

2014 ESTATE

ACCOUNTANT

ATTORNEY

184. Mary E. Mogel a/k/a

Mary Elizabeth Mogel Gail B. Mogel, Executrix Robert E. McBride, Esquire

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

Aug. 15, 22



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Joseph P. Maloney, CPA, CFE • Michael J. Reed, CPA • James R. Scarpitti, CPA • Rick L. Clayton, CPA

Confidential inquiries by phone or email to mrsinfo@mrs-co.com.

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

**BARBER, JACK D.,
deceased**

Late of the Township of Millcreek, Erie County, PA
Co-Executors: George A. Hanks and Harvey D. McClure, c/o 120 West Tenth Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**COMBE, GERALDINE M.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executor: Colleen Davis, c/o Jason R. Owen, Esq., 345 West Sixth Street, Erie, Pennsylvania 16507
Attorney: Jason R. Owen, Esq., 345 West Sixth Street, Erie, Pennsylvania 16507

**DOMBROWSKI, RICHARD F.,
deceased**

Late of Millcreek Twp., Erie County, PA
Administratrix: Debora A. Stubits c/o John R. Zonarich, Esq., 17 S. 2nd St., 6th Fl., Harrisburg, PA 17101-2039
Attorney: John R. Zonarich, Esq., Skarlatos Zonarich LLC, 17 S. 2nd St., 6th Fl., Harrisburg, PA 17101-2039

**MARTYNA, STANLEY,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executor: Diane M. Krasinski, c/o 3209 East Avenue, Erie, PA 16504
Attorney: Cathy M. Lojewski, Esq., 3209 East Avenue, Erie, PA 16504

**SIMONIAN, ROSEBUD A.,
deceased**

Late of the Township of Millcreek, County of Erie, Pennsylvania
Executor: Ara M. Simonian, c/o 900 State Street, Suite 215, Erie, PA 16501
Attorney: Gregory L. Heidt, Esquire, 900 State Street, Suite 215, Erie, PA 16501

**SMETANA, DANA LOUISE,
deceased**

Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Executor: William Smetana, 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

**TURK, JOSEPHINE C.,
deceased**

Late of the Township of Fairview, County of Erie, State of Pennsylvania
Executrix: Kathleen R. Turk, 3070 Hanna Drive, Fairview, PA 16415
Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

**WASSON, MARY MARGARET,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Joseph A. Yochim
Attorney: Joseph A. Yochim, Esq., Yochim Skiba & Nash, 345 West 6th Street, Erie, PA 16507

**WURST, DAVID A.,
deceased**

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

SECOND PUBLICATION

**BABCOCK, IRENE T.,
deceased**

Late of the City of Erie, County of Erie
Executor: Brenda L. Schwenk, 2318 Downing Avenue, Erie, Pennsylvania 16510
Attorney: Kari A. Froess, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

**CECHO, JAMES P., a/k/a
JAMES CECHO,
deceased**

Late of Millcreek Township, County of Erie and State of Pennsylvania
Executor: Jamie E. Miranda, 2650 Gunnison Road, Erie, PA 16509
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**DAVIS, TERRANCE L., a/k/a
TERRY L. DAVIS, a/k/a
TERRANCE LADD DAVIS,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Administratrix: Marnee R. Davis, c/o Norman A. Stark, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**DONNER, ELIZABETH A.,
deceased**

Late of Conneaut Township, Erie County, Pennsylvania

Executrix: Dolores B. Geer, 12887 Cherry Hill Rd., Albion, PA 16401

Attorney: None

**GRAHAM, KENNETH D.,
deceased**

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

Administratrix, CTA: Peggy Graham, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

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

**HEMPHILL, ROBERT, a/k/a
ROBERT F. HEMPHILL,
deceased**

Late of Greenfield Township, County of Erie

Executor: Karyn M. Hemphill, 10738 Station Road, North East, Pennsylvania 16428

Attorney: John Mir, Esquire, 2530 Village Common Dr., Suite B, Erie, Pennsylvania 16506

**HENRY, GWYNETH E.,
deceased**

Late of Erie, PA

Administrator: Mario Henry

Attorney: John F. Mizner, Esq., 201 German Street, Erie, Pennsylvania 16507

**KNIGHT, GERALD EDWARD,
a/k/a GERALD E. KNIGHT,
deceased**

Late of the Lawrence Park Twp.

Administrator: Gerald E. Knight, c/o Attorney Terrence P. Cavanaugh, 3336 Buffalo Road, Erie, PA 16510

Attorney: Terrence P. Cavanaugh, 3336 Buffalo Road, Erie, PA 16510

**LANDIS, JEFFREY R., SR.,
a/k/a JEFFREY R. LANDIS,
a/k/a JEFFREY RAY LANDIS, SR.,
deceased**

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

Executrix: Linda L. Landis, c/o Sterrett Mott Breski & Shimek, 1001 State Street, Suite 1400, Erie, PA 16501

Attorney: John J. Shimek, III, Esq., Sterrett Mott Breski & Shimek, 1001 State Street, Suite 1400, Erie, PA 16501

**MOSER, PATRICIA A.,
deceased**

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

Administrator: Joseph A. Moser, c/o 78 East Main Street, North East, PA 16428

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

**RICHARDSON, TYREESHA L.,
deceased**

Late of Erie, PA

Administratrix: Alyshia M. Richardson

Attorney: John F. Mizner, 201 German Street, Erie, Pennsylvania 16507

**ROMANSKI, HARRY, a/k/a
HARRY J. ROMANSKI,
deceased**

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

Executor: Victoria Schwindt, 105 Sheridan Avenue, Erie, PA 16509

Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**STEPHENSON, WILLIAM A.,
deceased**

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

Executor: Eric Stephenson, c/o Sterrett Mott Breski & Shimek, 1001 State Street, Suite 1400, Erie, PA 16501

Attorney: John J. Shimek, III, Esq., Sterrett Mott Breski & Shimek, 1001 State Street, Suite 1400, Erie, PA 16501

**VANDERCOY, MARGARET A.,
deceased**

Late of the Borough of Elgin, Erie County, Pennsylvania

Executor: Phillip L. Vandercoy, 18220 N. Main Street, Corry, PA 16407

Attorney: David Vandercoy, 510 Freeman Street, Valparaiso, IN 46383

**YOSTEN, GLENN P.,
deceased**

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

Executrix: Sylvia Yosten, 441 Hillcrest Drive, Girard, Pennsylvania 16417

Attorney: Grant M. Yochim, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

THIRD PUBLICATION

**BURGESS, PATRICIA A.,
deceased**

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

Executor: Richard P. Burgess, c/o Eugene C. Sundberg, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorneys: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Suite 300, 300 State Street, Erie, PA 16507

**COONEY, GEORGE J.,
deceased**

Late of Fairview Township, Erie
County, Pennsylvania
Executor: John C. Cooney, 5750
Ruhl Rd., Fairview, PA 16415
Attorney: None

**DEARBORN, MARY
MARGARET, a/k/a
MARGARET DEARBORN,
deceased**

Late of the City of Erie, Erie
County, PA
Executor: William R. Dearborn,
9323 River Walk Way, Charlotte,
NC 29214
Attorney: Christine Hall McClure,
Esquire, Knox McLaughlin
Gornall & Sennett, P.C., 120 West
Tenth Street, Erie, PA 16501

**DOBSON, PHYLLIS A., a/k/a
PHYLLIS DOBSON,
deceased**

Late of the City of Erie, County
of Erie, State of Pennsylvania
Executor: George P. Dobson,
4838 Old Sterrettania Road, Erie,
Pennsylvania 16506
Attorney: Grant M. Yochim,
Esq., 24 Main St. E., PO Box 87,
Girard, PA 16417

**KUBIAK, ROBERT M.,
deceased**

Late of the Borough of Girard,
County of Erie, State of
Pennsylvania
Executor: Michael Hayes, 3228
W. 13th Street, Erie, PA 16505
Attorney: Grant M. Yochim,
Esq., 24 Main St. E., PO Box 87,
Girard, PA 16417

**STODDARD, CHARLOTTE C.,
deceased**

Late of the Borough of North East,
Erie County, Commonwealth of
Pennsylvania
Co-Executors: Martha Stoddard
Strachan & Ruth Stoddard
Stahlman, c/o Leigh Ann Orton,
Esq., 11 Park Street, North East,
PA 16428
Attorney: Leigh Ann Orton,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 11 Park Street,
North East, PA 16428

**TASSONE, RONALD G., a/k/a
RONALD GARY TASSONE,
a/k/a RONALD GRAY TASSONE,
deceased**

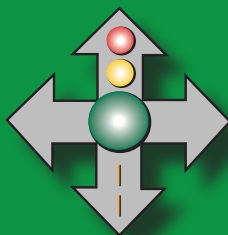
Late of the Township of
McKean, County of Erie, State of
Pennsylvania
Executrix: Natalie A. Tassone,
7209 Grubb Road, Erie, PA 16506
Attorney: James R. Steadman,
Esq., 24 Main St. E., PO Box 87,
Girard, PA 16417

**WERNICKI, THOMAS,
deceased**

Late of the City of Erie, County
of Erie, Commonwealth of
Pennsylvania
Administratrix: Susan M. Merritt,
4825 Knoyle Rd., Erie, PA 16510
Attorney: John E. Gomolchak,
Esq., 3854 Walker Blvd., Erie,
PA 16509

**ZAWISTOSKI, MARY S.,
deceased**

Late of Greene Township, County
of Erie, State of Pennsylvania
Executor: Henry Zawistoski,
8221 Hamot Road, Erie, PA
16509
Attorney: Jerome C. Wegley,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501



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 1200 Koppers Building
 Pittsburgh, PA 15219 ----- mriordan@bglaw-llp.com

SARA L. CARLSON ----- (910) 603-8837
 222 Colony Drive
 Charlottesville, VA 22903 ----- sara.carlson00@gmail.com

CATHERINE J. SPAFFORD ----- (412) 261-5700
 Rawle & Henderson, LLP
 535 Smithfield Street, Suite 1000
 Pittsburgh, PA 15222 ----- cspafford@rawle.com

MALCOLM POLLARD ----- (814) 838-8258
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 Erie, PA 16505 ----- mactk72@gmail.com



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 Robert G. Stout, Jr., MAI rstout@sas-rea.com

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