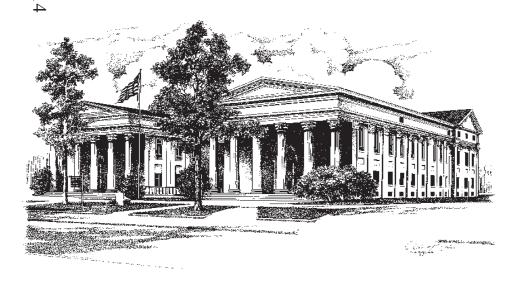
# October 24, 2014

# Erie County Legal Journal

Vol. 97 No. 43 USPS 178-360



# **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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# MARKETING SERVICE AGREEMENTS VIOLATE RESPA

Brett Woodburn, Esq. Oct. 6, 2014

In previous articles, I have questioned whether marketing services agreements (MSA) can be developed in such a way as to comply with the limitations found in Section 8 of the Real Estate Settlement Procedures Act (RESPA). While some have criticized my approach as too conservative, I offer you 200,000 reasons why approaching MSAs conservatively is sound

On September 30, Lighthouse Title, Inc. (title company), a Michigan-based title insurance company, was fined \$200,000 by the Consumer Financial Protection Bureau (CFPB) when it concluded that the MSAs that the title company entered violated RESPA. What did the title company do?

The title company entered MSAs with various real estate brokers asking the brokers and their agents to:

- Market the title company's services to its own employees
- 'Endorse' the title company
- Market the title company to clients
- Include the title company in advertisements and mass emails to clients.

Does this sound familiar? What did the title company do wrong?

The CFPB concluded that the title company entered these MSAs because it anticipated that title work would be referred predominantly to those title companies that participated in a MSA. Additionally, the CFPB determined that neither the title company nor the brokers made any efforts to value the "marketing services" identified in the MSAs. Further, the title company did not provide any metrics to determine whether it was receiving the benefit of the marketing services. In fact, the fees paid under the MSAs were determined by the anticipated quantity of referrals that would be generated; the fees that competitors were paying in the market place; or a combination of these two factors. The CFPB noted that the title company enjoyed a statistically significant increase in title work after it signed the MSAs

Section 8(a) provides "No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding... that business incident to or a part of a real estate settlement service... shall be referred to any person." The CFPB readily concluded these MSAs were poorly disguised payments for referrals.

There's more... and it's a biggie!

The CFPB concluded that "entering a contract is a 'thing of value' within the meaning of Section 8, even if the fees paid under the contract are fair market value for the goods or services provided." (emphasis added). Think about what this means. If you enter into a contract with another settlement service provider, even if the payment is for fair market value, and there is an understanding that settlement services will be referred because of the contract, you have violated RESPA. In other words, a successful business arrangement could be your downfall!

The \$200,000 fine is probably enough to get your attention but there are some other aspects of the Consent Agreement that warrant mention. The title company was ordered to:

- Terminate all existing MSAs.
- Document the exchange of any 'thing of value' that is valued at more than \$5.00.
- Not enter into any other MSAs.
- Maintain records for five years.

Two other major areas of concern are evolving: (1) will the CFPB begin prosecuting the real estate brokers who are paid as part of the MSA; and (2) what impact does this order have on the leases that so often accompany MSAs? The general tenor in the industry is the CFPB will begin targeting the "other side" (e.g., brokers) of the MSA, and soon.

As for the leases... take a close look and make sure that the rental value is objectively accurate. If you pay rent at \$15 per square foot, you better be charging \$15 per square foot. Another take away from this decision is the lease better be for a defined space; i.e. an office. If your business model is to support an open floor plan, leasing space to a mortgage broker or title company is probably a dangerous row to hoe.



About the Author:

### Brett Woodburn, Esq.

Brett Woodburn, Esq. is an attorney with Caldwell & Kearns and serves as general counsel to PAR. A substantial portion of his practice is dedicated to providing advice and counsel to real estate licensees and representing and defending real estate salespersons and brokers in civil lawsuits and licensing claims across the Commonwealth. He routinely counsels employers on employee relations issues as one of the voices of the PAR Legal Hotline.



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LEGAL NOTICE

### COMMON PLEAS COURT

### DISSOLUTION NOTICE

NOTICE OF DISSOLUTION - ERIE LABOR TEMPLE CORPORATION

CORPORATION
1701 State St., Erie, PA 16501
After majority approval of the members of the Erie Labor Temple
Corporation the entity as of present date is filing Articles of Dissolution. All proceedings for winding up the affairs of the Erie Labor Temple Corporation are being complied with under the laws of the Commonwealth of PA.

Oct 24

### FICTITIOUS NAME NOTICE

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

### FICTITIOUS NAME NOTICE

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on September 18, 2014 for New Age Floors located at 9900 Peach Street, Waterford PA 16441. The name and addresses of each individual interested in the business is Gregory B. McAtee, 9900 Peach Street, Waterford, PA 16441. This was filed in accordance with 54 PaC.S. 311.

Oct. 24

### INCORPORATION NOTICE

JEM Charitable Foundation has been incorporated under the provisions of the Pennsylvania Non-Profit Corporation Law of 1988.

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Erie. PA 16501

Oct. 24

### LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA CIVIL ACTION – LAW NO.: 13670-13

NOTICE OF ACTION IN MORTGAGE FORECLOSURE Wells Fargo Bank, NA Successor by Merger to Wells Fargo Home Mortgage, Inc. Formerly Known as Norwest Mortgage, Inc., Plaintiff

The Unknown Heirs and or Administrators of the Estate Howard L Ellis, et al, Defendant(s) The Unknown Heirs and or Administrators of the Estate Howard L Ellis PRESENTLY OR FORMERLY of 2601 Jackson Avenue, Erie, PA 16504-2863. A lawsuit has been filed against you in mortgage foreclosure and against your real estate at 2601 Jackson Avenue, Erie, PA 16504-2863 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 Bank, NA Successor by Merger to Wells Fargo Home Mortgage, Inc. Formerly Known as Norwest Mortgage, 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 YOU AGAINST WITHOUT FURTHER NOTICE RELIEF REQUESTED BY THE PLAINTIFF. YOU

MAY LOSE MONEY PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU. YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE LAWYER OR CANNOT AFFORD ONE GO TO OR TELEPHONE OFFICE SET THE 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

Oct. 24



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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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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 **October 27, 2014** and confirmed Nisi.

**November 20, 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.

<u> 2014</u>	ESTATE	<u>ACCOUNTANT</u>	ALTORNEY
240.	Richard Harry Hime,		
	a/k/a Richard H. Hime	Richelle R. Volgstadt, Administratrix	Robert E. McBride, Esq.
241.	Harold V. Wiser	Christina M. Mohr, Executrix	Nicholas J. Holland, Esquire and
			Michael P. Thomas, Esquire
242.	Harriet N. Hirsch, a/k/a	Mary Ann Curtze and James L.	
	Harriet Hirsch	Hirsch, Co-Executors	Pro Se
243.	Marjorie O. Benjamin,		
	a/k/a Marjorie Ostheimer		
	Benjamin	Bonnie Benjamin Debacker, Co-Trustee	Kari A. Froess, Esquire
244.	Stephen B. McGarvey	Keith T. McGarvey and James Voss	Thomas C. Hoffman, II, Esquire
		Co-Executors	and Guy C. Fustine, Esquire

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

Oct. 17, 24

ATTODNEY

### 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

# EBBRECHT, LUCINDA S., deceased

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

### GIDOS, EMERY J., deceased

Late of the City of Erie, Erie County, PA

Executrix: Margaret M. Fries, 2916 Berkley Road, Erie, PA 16506

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

# GUSTAFSON, DONNA L., deceased

Late of the City of Erie *Executor*: Robert V. Kutterna, Jr., c/o Attorney Terrence P. Cavanaugh, 3336 Buffalo Road, Erie, PA 16510

\*\*Attorney\*\* Terrence P. Cavanaugh

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

### PERINO, EILEEN a/k/a EILEEN A. PERINO,

### deceased

Late of the Township of Millcreek *Executor:* Robert A. Whitney *Attorney:* Michael G. Nelson, Esquire, Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, Pennsylvania 16507

# RYS, JOSEPH T., deceased

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

Co-Executors: Mary Kiehl and Joseph V. Rys, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

# SHADE, WILLIAM L., deceased

Late of Harborcreek Township, Erie County, PA

Executor: William Lee Shade, c/o Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

# STEUDLER, MARIAN CAROLINE,

### deceased

Late of Erie, PA, Erie County, PA *Administrator:* Thomas F. Morris *Attorney:* Gerald J. Villella, Esquire, 900 State Street, Suite 103, Erie, PA 16501.

# TARVER, TERRI R., deceased

Late of the City of Erie, Erie County, Pennsylvania Administrator: Carl Tarver Attorney: Thomas Brasco, Jr., Esq., 305 West Sixth Street, Erie, PA 16507

# WALKER, ROBERT J., deceased

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

Executrix: Anne Marie Walker, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506 Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

### SECOND PUBLICATION

### BORTNER, MARIAN VIRGINIA,

### deceased

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

Administrator D.B.N.C.T.A.:

Honorable Michael M.
Palmisano, Esquire, c/o 3305
Pittsburgh Avenue, Erie,
Pennsylvania 16508

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

### GASS, KAREN M., deceased

Late of Erie, Erie County, PA Administrator: Gary D. Gass Attorney: Richard R. Morelli, Esq., 1901 Wilmington Road, New Castle, PA 16105

# GOSS, KATHRYN L., deceased

Late of the City of Erie, County of Erie

Executor: Norman Goss, 1713 West 14th Street, Erie, PA 16505 Attorney: John C. Melaragno, Esquire, Melaragno, Placidi, Parini & Veitch, 502 West Seventh Street, Erie, Pennsylvania 16502

# GUSTAFSON, CAROLYN A., deceased

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

Executor: David J. Gustafson, 6067 Morning Glory Court, Erie, PA 16509-8219

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

# McCALLION, JOAN C., deceased

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

Administratrix: Kathleen A. Vitale, c/o 504 State Street, 3rd Floor, Erie, PA 16501

Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

### MERCH, MARIAN L., a/k/a MARIAN MERCH, deceased

Late of the Township

Springfield, County of Erie, State of Pennsylvania Executor: Ralph Shaffer, Jr., 5555

Executor: Raiph Shaffer, Jr., 5555 Miller Hill Road, Sugar Grove, PA 16350

Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

# RODEMOYER, ELVA MAE, a/k/a ELVA M. RODEMOYER, deceased

Late of Millcreek Township, Erie County, Pennsylvania Executrix: Kristie L. Wilson, 4532 Amherst Road, Erie, Pennsylvania 16506 Attorney: John R. Falcone, Esq., 4845 West Lake Road. Erie.

# SILKA, CONSTANCE P., deceased

Pennsylvania 16505

Late of the City of Erie Executrix: JoAnn Klein, 14321 Murray Road, Union City, PA 16438

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

# SMITH, JEROME, deceased

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

Administrator: Lisa A. Batkiewicz

Attorney: Stephen Bushinski, Esq., Office of Chief Council, Commonwealth of Pennsylvania, Department of Military & Veterans Affairs, Bldg. 7-36, Fort Indiantown Gap, Annville, PA 17003-5002

# UNDERWOOD, AVERYL W., deceased

Late of the North East Borough Executrix: Sheryl D. Collins, c/o Attorney Terrence P. Cavanaugh, 3336 Buffalo Road, Erie, PA 16510

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

# WASYL, BONNIE L., deceased

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

Administrator: Stephen R. Wasyl, 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

### THIRD PUBLICATION

# BARCZAK, RAYMOND R., deceased

Late of the City of Erie, Erie County, Erie, Pennsylvania Executor: Joseph B. Shallenberger, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428 Attorneys: Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

# BIRKNER, MARGARET E., deceased

Late of Lake City, County of Erie, Commonwealth of Pennsylvania Executor: Mark L. Birkner, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

### BLYSTONE, MILDRED S., a/k/a MILDRED BERDINA BLYSTONE, a/k/a MILDRED BLYSTONE.

### deceased

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

Executrix: Dorothy Grettler, 11050 Cross Station Road, Girard, PA 16417

Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

### DARR, DANNY W., a/k/a DANNY WILLIAM DARR, deceased

Late of the City of Erie, Erie County, PA

Administrator: Jessica M. Darr, c/o Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

# ELLIOTT, DANIEL J., deceased

Late of Erie County, Pennsylvania Administrator: Anna Marie Elliott, c/o David W. Bradford, Esq., 731 French Street, Erie, PA 16501

Attorney: David W. Bradford, Esq., 731 French Street, Erie, PA 16501

# FAIRCHILD, LYLE C., a/k/a LYLE FAIRCHILD,

### deceased

Late of the Township of Fairview, County of Erie, State of Pennsylvania Administratrix: Shelly Rossey,

Administratrix: Shelly Rossey, 1410 Fairfax Avenue, East Springfield, PA 16441
Attorney: Grant M. Yochim, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

# GLENN, RICHARD A., deceased

Late of the Boro of Albion, County of Erie, Commonwealth of Pennsylvania

Executrix: Peggy Hornaman Muck, 6120 Bridlewood Drive, Fairview, PA 16415-2708

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

## HANNOLD, ERIKA,

### deceased

Late of the Borough of North East, County of Erie, State of Pennsylvania

Executrix: Marjorie R. Thompson, 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

# KNAUSS, RUTH M., deceased

Late of the City of Erie, Erie County, PA

Administrator CTA: Christina C. Brown, c/o Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501 Attorney: Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth

Street, Erie, PA 16501

# McKENNA, MARY LOUISE, deceased

Late of Millcreek Township Executor: Robert J. McKenna, c/o 246 West 10th Street, Erie, PA 16501

Attorney: Evan E. Adair, Esq., 246 West 10th Street, Erie, PA 16501

# NELSON, WILLIAM J., deceased

Late of the City of Erie, County of Erie, State of Pennsylvania *Executor:* Timothy W. Nelson, 3551 Sheramy Drive, Fairview, PA 16415

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

# PULAKOS, JOY P., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania Executor: George A. Pulakos Attorney: Gery T. Nietupski, Esq., The Law Offices of Gery T. Nietupski, Esquire, LLC, 818 State Street, Erie, Pennsylvania 16501

# RUHLING, BARBARA JEAN, deceased

Late of the Township of Harborcreek, County of Erie and Commonwealth of Pennsylvania Administratrix D.B.N.C.T.A.:
Darlene M. Vlahos, Esquire, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

Attornay: Darlene M. Vlahos

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

# SPROVERI, LOUIS E., deceased

Late of the City of Corry, Erie County, Pennsylvania Executor: Dean L. Sproveri, PO Box 283, Corry, PA 16407 Attorney: William E. Barney, Esq., 200 North Center Street, Corry, Pennsylvania 16407

# VICTOR, MARGARET E., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania Co-Executors: Michael T. Victor, 4851 Wolf Road, Erie, PA 16505-1337; and Frank B. Victor, 5152 Wolf Road, Erie, PA 16505-1344 Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

# WATKINS, ELIZABETH a/k/a BEA WATKINS,

### deceased

Late of Greene Township, Erie County, Commonwealth of Pennsylvania

Co-Executors: Mary Dean and Richard Watkins, c/o Leigh Ann Orton, Esq., Knox Law Firm, 11 Park Street, North East, PA 16428 Attorney: Leigh Ann Orton, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

# WILE, DALE A., deceased

Late of the Township of Elk Creek, County of Erie, State of Pennsylvania

Executor: James Dunda, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412 Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

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### FIRM NAME CHANGE

Shapira, Hutzelman, Berlin, Ely, Smith & Walsh is now SHAPIRA, HUTZELMAN, SMITH & WALSH

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