

*Erie
County
Legal
Journal*

April 22, 2016

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ALBERT CELEC, et al. v. CIGNA CORPORATION, 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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Erie County Bar Association Calendar of Events and Seminars

THURSDAY, APRIL 28, 2016

Law Day Luncheon

Noon

Speaker: Michael Smerconish
\$29/ticket

SATURDAY, APRIL 30, 2016

Law Day 5K

9:00 a.m. - Erie County Court House

registration available online @ www.eriebar.com

THURSDAY, MAY 12, 2016

ECBA Live Seminar

An Economic Development Roundtable:

What resources are available for business in Erie, PA
Sheraton Hotel

7:30 a.m. - 9:30 a.m. (registration - 7:15 a.m.)

Free to local business owners, their attorneys (w/out

CLE), their CFOs and other business advisors

Cost w/ CLE: \$90 (ECBA member/non-attorney staff)

\$116 (nonmember) \$60 (member judge not needing CLE)

2 hours substantive

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**ALBERT CELEC, INDIVIDUALLY AND AS EXECUTOR AND ON BEHALF OF
THE ESTATE OF HIS PARTNER, DR. PHILIP GINNETTI, PLAINTIFF
V.
CIGNA CORPORATION AND LIFE INSURANCE COMPANY OF NORTH
AMERICA, DEFENDANTS**

JOINDER OF AN INDISPENSABLE PARTY AND COORDINATE JURISDICTION

The coordinate jurisdiction doctrine, part of the law of the case doctrine, does not bind a Common Pleas Judge to a prior finding from a federal district court that a party is indispensable when the analysis under Pennsylvania law is different than the federal analysis.

JOINDER OF AN INDISPENSABLE PARTY AND COORDINATE JURISDICTION

The voluntary payment of a life insurance policy to a beneficiary within a named class of beneficiaries under the policy does not make that beneficiary an indispensable party under Pennsylvania law to subsequent litigation filed by a different party claiming to be the beneficiary.

BAD FAITH (INSURANCE)

Pennsylvania has a prevailing interest in resolving a bad faith claim when a life insurance policy was contracted in Pennsylvania, the decedent had significant ties to Pennsylvania and the Defendants do business in Pennsylvania.

BAD FAITH (INSURANCE)

A plaintiff has failed to factually establish a statutory bad faith claim against an insurance company when the insurance company paid the policy to an identified beneficiary asserting a claim consistent with the terms of the policy and existing law (even though the law was subsequently changed).

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL DIVISION NO. 12343 OF 2014

Appearances: John Stember, Esq., Attorney for Plaintiff
James A. Keller, Esq., Attorney for Defendants

OPINION

The Plaintiffs, Albert Celec, individually and as Executor of the Estate of Dr. Philip Ginnetti, filed a Complaint against the Defendant, Cigna Corporation and Life Insurance Company of North America, for failing to pay proceeds under a life insurance policy after the death of his partner, Dr. Philip Ginnetti. This Opinion is in response to the Defendants’ Preliminary Objections, filed November 13, 2015. For the reasons stated herein, the Preliminary Objections are **OVERRULED** in part and **SUSTAINED** in part.

BACKGROUND

Dr. Philip Ginnetti and Albert Celec were domestic partners from 1994 until Dr. Ginnetti’s death in 2012. Dr. Ginnetti and Mr. Celec executed a Shared Living Agreement (“SLA”) in Ohio in 1999. As part of the SLA, each agreed to name the other as beneficiary on any life insurance policy.

In 2010, Dr. Ginnetti accepted a position as Provost and Vice President at Edinboro University (“Edinboro”), largely because of its policy against discrimination based on sexual orientation. Shortly after, Dr. Ginnetti applied for Mr. Celec to be his qualified domestic partner under the Management Benefits Program (“MBP”) through Edinboro. The couple received benefits under the MBP until Dr. Ginnetti’s death on June 29, 2012.

As part of the MBP benefits, Edinboro provided Dr. Ginnetti with \$50,000 in life insurance through Prudential Financial (“Prudential”). Dr. Ginnetti also exercised the option to purchase \$100,000 in additional life insurance coverage from Life Insurance Company of North America (“LICNA”), a subsidiary of Cigna Corporation (“Cigna”) through the MBP. There was no named beneficiary under either policy.

After Dr. Ginnetti’s death, Prudential paid Mr. Celec the \$50,000 under its insurance policy. Mr. Celec also filed a claim for the benefits from the LICNA policy. Under this policy when no beneficiary was named, the proceeds would go to, in order if living at the time of the decedent’s death, a surviving spouse, child(ren), parent(s), sibling(s) and so on. Cigna determined under Ohio law that Mr. Celec did not qualify as a surviving spouse. Further, Dr. Ginnetti had no living children. The \$100,000 was paid to the decedent’s mother, Irene Ginnetti, as the next in line pursuant to the policy’s terms.

On December 5, 2014, the Plaintiffs filed a law suit against Life Insurance Company of North America (“LICNA”), Cigna, its parent company, and Edinboro in the Erie County Court of Common Pleas. The case was removed to the United States District Court for the Western District of Pennsylvania on January 5, 2015.

The parties engaged in motion practice. The claims for breach of contract against Edinboro were dismissed without prejudice by stipulation on May 11, 2015. The Defendants filed a motion to join Irene Ginnetti as an indispensable party and necessary to litigation under F.R.C.P. 19. On September 18, 2015, the Honorable Judge Robert M. Hornak ruled Mrs. Ginnetti was a necessary and indispensable party, without whom the Plaintiffs could not proceed and dismissed the remaining claims against Edinboro. *See Opinion of Judge Hornak, pp. 8-19*. The dismissal of the claims against Edinboro destroyed federal question jurisdiction; joinder of Mrs. Ginnetti would destroy diversity jurisdiction. As a result of Judge Hornak’s rulings, there was no basis for jurisdiction in federal court. Instead of dismissing the Plaintiffs’ action entirely, Judge Hornak remanded the case and all state law claims to this Court. To date, Mrs. Ginnetti has not been joined.

On November 11, 2015, the Defendants filed Preliminary Objections to the Plaintiffs’ Complaint citing a failure to join a necessary and indispensable party; failure to state a claim on which relief can be granted as to bad faith; and the case against Cigna should be dismissed because LICNA bears sole responsibility for the administration of any life insurance benefits.

DISCUSSION

A preliminary objection on the ground of legal insufficiency of the pleading, in the nature of a demurrer, can only be sustained where the complaint is clearly insufficient to establish the Plaintiffs’ right to relief. *Reed v. Dupuis*, 920 A.2d 861, 864 (Pa.Super. 2007). To test the legal sufficiency of a pleading on this basis, a trial court must assume as true all well-pleaded, material, relevant facts, and every inference fairly deducible therefrom, but not conclusions of law, averments, argumentative allegations, or unjustified inferences. *Id.* All

doubts should be resolved against the moving party. *Id.*

Where the preliminary objection will result in the dismissal of the action, the objections may be sustained only in cases that are clear and free from doubt, meaning it must appear with certainty that the law would not permit recovery upon the facts averred. *Swisher v. Pitz*, 868 A.2d 1228 (Pa.Super. 2005). Thus, a preliminary objection on the ground of legal insufficiency in the nature of a demurrer is not to be sustained, and the pleading dismissed, unless the law is clear that no recovery is possible. *Shick v. Shirey*, 716 A.2d 1231 (Pa. 1998).

JOINDER OF IRENE GINETTI

The Defendants claim the entire case should be dismissed for failure to join Irene Ginetti, whom the Defendants argue is a necessary and indispensable party.

The Defendants argue Judge Hornak's finding Mrs. Ginetti is a necessary and indispensable party is the law of the case and should not be disturbed. Separately, the Defendants argue Mrs. Ginetti is a necessary and indispensable party under Pennsylvania law.

The law of the case doctrine refers to a family of rules, each of which embodies the concept "that a court involved in the later phases of a litigated matter should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter." *Commonwealth v. Starr*, 664 A.2d 1326, 1331 (Pa. 1995). The various purposes of the law of the case doctrine rules are to promote judicial economy, protect the settled expectations of the parties, ensure uniformity of decisions, and effectuate the proper and streamlined administration of justice. *Id.*

Among the rules that are included in the law of the case doctrine is the coordinate jurisdiction rule, which states a trial court may not alter the resolution of a legal question previously made by a court of coordinate jurisdiction. *Id.* For the law of the case doctrine and the coordinate jurisdiction rule to apply, the issues that were disposed of in the earlier court's ruling must be the same as those raised in the instant proceedings. *Nicholson Co. v. Pennsy Supply, Inc.*, 524 A.2d 520, 522 (Pa. Super. 1987).

The issue before this Court and the issue determined by Judge Hornak are not the same. Judge Hornak's finding Mrs. Ginetti is a necessary and indispensable party was based on an analysis of F.R.C.P 19. The issue before the Court is whether Irene Ginetti is a necessary and indispensable party, as raised under Pa. R.C.P. No. 1028 and determined by Pa. R.C.P. No. 2227.

While similar, these two issues are distinct. Under F.R.C.P 19, a court is to consider the rights and interests of the absent parties as well as those of the named parties. See F.R.C.P 19(a)(1). When determining whether a party is necessary and indispensable under Pennsylvania law, the focus is on the party to be joined. See Pa. R.C.P. No. 2227; *See Delaware Cty. v. J.P. Morgan Chase & Co.*, 827 A.2d 594, 598 (Pa.Comm. Ct. 2003); *see also Polydyne, Inc. v. City of Philadelphia*, 795 A.2d 495, 496 (Pa.Comm. Ct. 2002), *as amended* (Apr. 30, 2002). Although there is clearly overlap between the two rules, the federal

¹ Whether this Court is a court of coordinate jurisdiction with the United States District Court for the Western District of Pennsylvania is still unclear under Pennsylvania law. However, Pa. R.A.P. 311 is illuminating. The comments note that Rule 311(c), which discusses changes of venue to courts of coordinate jurisdiction, does not apply to 42 Pa. C.S.A. § 5103 because "such a transfer is not to a 'court of coordinate jurisdiction within the meaning of [the] rule. 42 Pa. C.S.A. § 5103 relates to the transfer of erroneously filed matters, including those erroneously filed in federal court, because of improper subject matter jurisdiction.

rule requires more expansive consideration of the parties than the Pennsylvania counterpart. Therefore the issue in the present case is not the same as it was before Judge Hornak and the law of the case doctrine and the rule of coordinate jurisdiction do not apply.

Whether Irene Ginnetti is a necessary and indispensable party under Pennsylvania law is governed by Pa. R.C.P. No. 2227, which states in relevant part: “Persons having only a joint interest in the subject matter of an action must be joined on the same side as plaintiffs or defendants.” A party is indispensable when “his or her rights are so connected with the claims of the litigants that no decree can be made without impairing those rights.” *Polydyne, Inc. v. City of Philadelphia*, 795 A.2d 495, 496 (Pa. Commw. Ct. 2002), as amended (Apr. 30, 2002). Whether an absent party is indispensable is determined by the following criteria:

1. Do absent parties have a right or interest related to the claim?
2. If so, what is the nature of the right or interest?
3. Is that right or interest essential to the merits of the issue?
4. Can justice be afforded without violating due process rights of absent parties?

Delaware Cty., 827 A.2d at 598.

Upon consideration of these four factors, Irene Ginnetti is not an indispensable and necessary party. The Defendants argue Mrs. Ginnetti has a right related to the instant litigation because Cigna paid the proceeds of the life insurance policy to Mrs. Ginnetti. This argument is unavailing.

Cigna chose to pay the proceeds of the life insurance policy to Mrs. Ginnetti. The \$100,000 previously paid by Cigna to Mrs. Ginnetti is not the subject of the present litigation. Mr. Celec is not asserting a claim to the money paid to Mrs. Ginnetti nor is she asserting a claim to the money sought by Mr. Celec. If Mr. Celec were to prevail in this lawsuit, Cigna would be responsible for paying Mr. Celec the policy proceeds, not Mrs. Ginnetti. As a party against whom no redress is sought, Mrs. Ginnetti need not be joined. *See Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988).

Cigna argues it would be at risk of paying the life insurance benefits twice if Mrs. Ginnetti is not joined. However, this risk was created by and is solely born by Cigna. Any outcome in the present case would not bind Mrs. Ginnetti in future litigation and therefore the merits of this case can be determined without prejudice to the rights of Mrs. Ginnetti. *Id.* Hence, Mrs. Ginnetti need not be joined for this case to proceed.

THE PLAINTIFFS HAVE FAILED TO ESTABLISH A CLAIM OF BAD FAITH

In Count IV of the Complaint, the Plaintiffs allege the Defendants acted in bad faith dispersing the life insurance benefits to Mrs. Ginnetti “in violation of Pennsylvania statutory and common law” and/or “in violation of Delaware common law.”² The Defendants argue the Plaintiffs cannot recover under the Pennsylvania statute because neither Mr. Celec nor Dr. Ginnetti were Pennsylvania residents. The Defendants also contend the Plaintiffs

²The Plaintiffs have pled in the Complaint “[t]he choice of law provision in the Cigna policy selecting Delaware is limited to construing the policy. It does not encompass tort claims arising from Cigna’s administration of the policy.” Complaint, para. 93. In Plaintiffs’ Brief in Opposition to Defendants’ Preliminary Objections the Plaintiffs reassert the “bad faith claims are governed by Pennsylvania law.” p. 15. The Plaintiffs go on to explain only Pennsylvania has the sole interest in applying its law in the current suit. By Plaintiffs own contention, Pennsylvania law governs the dispute between the parties. As such, there is no need to address whether Delaware or Ohio law applies.

cannot recover for bad faith under common law because Pennsylvania does not recognize the common law action of bad faith.³ Additionally, the Defendants argue the Plaintiffs have failed to state a factual basis for bad faith on which relief can be granted.

The Plaintiffs seek relief through the Pennsylvania bad faith statute. 42 Pa. C.S.A. §8371(preempted as applied to Employee Retirement Income Security Act of 1974, stated by *Barber v. Unum Life Ins. Co. of Am.*, 383 F.3d 134 (3d Cir. 2004).) The Defendants argue the Plaintiffs cannot recover under the statute as a non-resident. The Defendants cite to numerous federal district court cases, all of which engage in a choice of law analysis prior to concluding the out of state residents could not get relief under the Pennsylvania bad faith statute. *See e.g., Hatchigian v. State Farm Ins. Co.*, 2008 WL 5002957, at *5 (E.D. Pa. Nov. 25, 2008); *Mega Const. Corp. v. Quincy Mut. Fire Ins. Co.*, 42 F. Supp. 3d 645, 654 (E.D. Pa. 2012) *Jaber v. Nationwide Mut. Fire Ins. Co.*, 2005 WL 2031270, at *1 (M.D. Pa. July 20, 2005)(noting the legislature’s purpose was to protect Pennsylvania . . . insureds.) In each of those cases another state had a prevailing interest in the case, such that the case should have been properly brought in another state or the law of another state should apply.

In this case, Pennsylvania has the prevailing interest in adjudicating the case and applying its law. Pennsylvania State System of Higher Education (“PASSHE”) contracted with LICNA to provide life insurance to its employees. Dr. Ginnetti bought the additional insurance through his employer, Edinboro University, a Pennsylvania institution. The insurance policy was issued by the Defendants to Dr. Ginnetti in Pennsylvania. Dr. Ginnetti worked full-time in Pennsylvania. Dr. Ginnetti owned property in Pennsylvania and lived part-time in Pennsylvania. Hence, there is a basis for a bad faith claim pursuant to 42 Pa. C.S.A. § 8371.

However, under the Pennsylvania bad faith statute (or, indeed, Pennsylvania or Delaware common law), the Plaintiffs have failed to factually establish a claim for bad faith. The Plaintiffs contend the Defendants acted in bad faith by refusing to pay despite “clear evidence of Celec’s entitlement,” and “discriminated against Plaintiffs on the basis of sexual orientation and marital status by requiring more and different evidence. . .to establish Celec’s entitlement.” *Plaintiffs’ Complaint December 5, 2014 (“Complaint”), paras 88, 95-96, 101-102.*

Bad faith claims against an insurer are fact specific and depend on the conduct of the insurer in relation to the insured. *Rancosky v. Washington Nat. Ins. Co.*, 130 A.3d 79 (Pa. Super. 2015). To prevail on a bad faith claim, a plaintiff must plead sufficient facts to show “the insurer did not have a reasonable basis for denying benefits under the policy and that the insurer knew of or recklessly disregarded its lack of reasonable basis in denying the claim.” *Berg v. Nationwide Mut. Ins. Co.*, 44 A.3d 1164, 1171 (Pa. Super. 2012). The standard is high and “mere negligence or bad judgment” is not sufficient. *Condio v. Erie Ins. Exchange*, 899 A.2d 1136, 1143 (Pa. Super. Ct. 2006). Prior to the enactment of the bad faith statute in 1990, bad faith was defined as “any frivolous or unfounded refusal to pay proceeds of a policy.” *Berg*, 44 A.3d at 1171. “Bad faith conduct of an insurer includes evasion of the spirit of

³ It is undisputed that Pennsylvania’s bad faith statute subsumes the common law tort of bad faith. *Mishoe v. Erie Ins. Co.*, 824 A.2d 1153, 1160 (Pa. 2003). It remains unsettled whether a common law action for bad faith sounding in contract exists. *See Mishoe v. Erie Ins. Co.*, 573 Pa. 267, 281, 824 A.2d 1153, fn. 11 (Pa. 2003); *Compare Johnson v. Beane*, 664 A.2d 96, 99 fn. 3 (Pa. 1995) *with Johnson v. Beane*, 664 A.2d 96, 101 (Pa. 1995) (Cappy, J. concurring). Because the issues before the Court can be resolved without this determination, it is left for another day.

the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." *Rancosky*, 130 A.3d at 1171. Importantly, bad faith cannot be found where the insurer's conduct is in accordance with a reasonable but incorrect interpretation of the insurance policy and the law. See *J.H. France Refractories Co. v. Allstate Ins. Co.*, 626 A.2d 502, 510 (Pa. 1993).

The Plaintiffs has failed to plead a claim for bad faith under any standard. The Plaintiffs do not dispute there was no named beneficiary to the Cigna life insurance policy. According to the policy, "[i]f there is no named beneficiary or surviving beneficiary, Death Benefits will be paid to the first surviving class of the following living relatives: spouse, child or children, mother, or father; brothers or sisters; or to the executors or administrators of the Insured's estate." *Complaint, para 71; Complaint Exhibit A at p. 14*. The policy also defines "spouse" as a "current lawful spouse." *Complaint Exhibit A at p. 22*.

In determining whether Mr. Celec was a "current lawful spouse" at the time of Dr. Ginnetti's death, Cigna applied Delaware law, as required by the policy, which recognizes legal unions that are validly formed in other jurisdictions. Mr. Celec and Dr. Ginnetti were residents of Ohio. At the time, Ohio had adopted a constitutional amendment precluding recognition of any legal status of same sex domestic partnerships. While this amendment was recently held unconstitutional by *Obergefell v. Hodges*, 135 S. Ct. 2584, 2589 (2015), Cigna applied the law as it existed at the time. Cigna explained its reasoning and analysis of the relevant law and policy provisions that it reviewed in determining Mr. Celec was not entitled to benefits.

Mrs. Ginnetti filed with Cigna a Preference Beneficiary's Affidavit stating no beneficiary was designated under the policy and she was a member of the first class of beneficiaries under the policy. Hence, Cigna had an identifiable beneficiary under the policy terms.⁴

Cigna made a reasonable determination based on its analysis of the policy and the law. Upon finding Mrs. Ginnetti was entitled to the \$100,000 under the policy, Cigna paid her. Regardless of whether this interpretation was correct at the time, or in hindsight in light of the landmark *Obergefell* decision, the interpretation was reasonable and therefore not a basis for bad faith.

DISMISSAL OF CLAIMS AGAINST CIGNA

The Defendants argue all claims against Cigna Corporation should be dismissed because Cigna is not a proper party to the present litigation. Cigna claims the insurance policy was issued by LICNA and LICNA bore the sole responsibility for administration of the claims. P.O., paras 144-146.

Cigna is the parent company of LICNA. Defendants' Preliminary Objections November 13, 2015 ("P.O.") para. 145. Generally, a parent company is not liable for the acts of its subsidiaries. *United States v. Bestfoods*, 524 U.S. 51, 61 (1998). However, in this case Plaintiffs' allegations against Cigna and LICNA are intertwined. Mr. Celec was informed when he filed a claim as beneficiary, if the "insurance benefit is \$5,000 or more, CIGNA will automatically open a free interest bearing account in [the beneficiary's] name," called the "CIGNAssurance

⁴To the extent the Plaintiffs are arguing bad faith by comparing Prudential's decision to pay Mr. Celec, that argument is unhelpful. There is no averment the terms of the Prudential policy were the same as the LICNA policy or that Mrs. Ginnetti filed a Beneficiary Claim. That Prudential came to a different decision from Cigna does not make Cigna's decision unreasonable.

Program.” *Complaint, Exhibit H*. The “Company Name” on the insurance claim referred to CIGNA and the form had a Cigna Group Insurance letter head. *Complaint, Exhibit H*. Celec sent his claim to the benefits under the LICNA policy to Cigna Corporation where it was denied by an employee of Cigna. *Complaint, Exhibit I*. Celec was also instructed that he could appeal the decision to Cigna Group Insurance. *Complaint, Exhibit I*. As the insurance documents reference both Cigna and LICNA, it is not clear that they are distinct and separate entities.

Based on the Complaint, there is sufficient evidence to show Cigna may have been involved in the denial of Mr. Celec’s claim.

CONCLUSIONS

Irene Ginnetti is not a necessary and indispensable party. The Preliminary Objection for failure to join a necessary party is **OVERRULED**. The Plaintiffs have not pled facts sufficient to establish a prima facie case of bad faith. The Preliminary Objection related to bad faith is **SUSTAINED**. The Preliminary Objection to all claims related to Cigna is **OVERRULED** as premature.

BY THE COURT:

/s/ WILLIAM R. CUNNINGHAM, JUDGE

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

IN RE: GARY J. BUJALSKI, Debtor
 GARY J. BUJALSKI, Movant,
 vs.

ERIE COUNTY TAX CLAIM
 BUREAU, CITY OF ERIE
 TREASURER'S OFFICE, and
 RONDA J. WINNECOUR,
 CHAPTER 13 TRUSTEE,

Respondents

Case No. 12-10541-TPA

Chapter 13

Hearing Date: May 11, 2016 at
 11:30 a.m.

NOTICE OF HEARING ON
MOTION TO SELL REAL
PROPERTY, EQUIPMENT AND
LIQUOR LICENSE FREE AND
DIVESTED OF LIENS

TO: Respondents and all creditors
 and parties in interest of the above
 named Debtor:

NOTICE IS HEREBY GIVEN
 THAT *Gary J. Bujalski* has filed a
 Motion to Sell Real Property,
 Equipment and Liquor License
 Free and Divested of Liens for the
 following real property, equipment
 and liquor license:

**1400 East Lake Road, Erie,
 Pennsylvania, 16507, and bearing
 Erie County Tax Identification
 No. (14) 1102-509,** more fully

described in Deed dated August
 1, 2007, and recorded in the Erie
 County Recorder of Deeds Office in
 Record Book 1457, Page 683, and
**Equipment used in conjunction
 with the tavern business located
 on the real property known as the
 Lakeview Tavern, as well as PLCB
 Liquor License No. R-8549 (LID
 No. 43203).**

to **Mary Jean Mitchell and/or
 assigns, 125 Cranch Avenue, Erie,
 PA 16511;** for \$125,000.00 according
 to the terms set forth in the Motion
 for Sale.

You are hereby notified that the
 Movant seeks an Order affecting
 your rights or property. Any
 objections shall be filed with the U.S.
 Bankruptcy Court, U.S. Courthouse,
 Room B160, 17 South Park Row,
 Erie, PA 16501, with a copy served
 on all interested parties no later
 than **April 15, 2016**, i.e. at least
 fourteen (14) days from the date
 of this notice plus an additional
 three (3) days if served by mail, in
 accordance with the Federal Rules of
 Bankruptcy Procedure, Local Rules
 and Procedures of this Court, and the
 procedures of the presiding Judge as
 found on the Judge's Web Page at
www.pawb.uscourts.gov. If you fail
 to timely respond, the Motion may
 be granted by the Court by default
 without a hearing.

A hearing is scheduled for May 11,

2016 at 11:30 a.m., before Judge
 Thomas P. Agresti in the Bankruptcy
 Courtroom, U.S. Courthouse, 17
 South Park Row, Erie, PA 16501, *at
 which time higher/better offers will
 be considered and objections to said
 sale will be heard.*

Date of Mailing or Other service:

March 29, 2016

By: Kurt L. Sundberg, Esquire

Pa I.D. # 56844

Attorneys for Debtor

300 State Street, Suite 300

Erie, PA 16507

(814) 456-5301

ksundberg@marshspaeder.com

**Arrangements for inspection prior
 to said sale hearing may be made
 with:**

Paul Steva

Howard Hanna Commercial Real Estate

4244 West 12th Street

Erie, PA 16505

Telephone: (814) 480-8400, Ext. 305

Telephone: (814) 882-7684

Facsimile: (814) 456-3188

Apr. 22

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

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania
Docket No. 10956-16
In re: Bree Horton, a minor
Notice is hereby given that a Petition has been filed in the above named Court, by Charlene Hanson, requesting an Order to change the name of Bree Louise Horton to Bree Louise Hanson.
The Court has fixed the 17th day of May, 2016 at 3:30 p.m. in Courtroom G, Room 222 of the Erie County Courthouse, 140 West 6th St., Erie, PA 16501 as the time and place for the hearing on said Petition, when and where all interested persons may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Apr. 22

DISSOLUTION NOTICE

Notice is hereby given to all interested parties: (1) that the voluntary dissolution proposal of Erie Physicians Network, P.C. of Erie a Pennsylvania professional corporation with a registered office at 3535 Pine Avenue, Erie, PA 16504, has been recommended and approved by its board of directors, and approved by its shareholders; and (2) that this corporation is now engaged in winding up and settling its affairs so that its corporate existence shall be ended by the issuance of a Certificate of Dissolution by the Department of State of the Commonwealth of Pennsylvania, under the provisions of the PA Professional Corporation Law Act of 7/9/1970 as amended. Any claims should be sent to The McDonald Group, L.L.P., James D. McDonald, Jr., Esquire, 456 West 6th Street, Erie, PA 16507-1216

Apr. 22

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

1. Fictitious Name: Fu Hok Tong Long Kwoon
2. Name and address of the principle place of business: 826 Selinger Avenue, Erie, PA 16505
3. Name and address of the persons who are party to the registration: James W. Long III, 7380 West Ridge Road, Fairview, PA 16415
4. The Application for Registration of the Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on or about February 22, 2016.

Apr. 22

LEGAL NOTICE

In accordance with NPDES permit No. PA 0026301, the Erie Wastewater Treatment Plant has submitted a detailed local limit reevaluation to the U.S. EPA. Local discharge limits set pollutant levels which industrial users of a treatment plant may discharge into the sanitary sewer system.

Interested parties may view the reevaluation package at the Treatment Plan between the hours of 8:30 a.m. and 3:30 p.m., Monday through Friday. Written comments will be submitted to EPA as part of the final package and will be accepted through May 16, 2016. If you have any questions, please contact the following:

Timothy R. Huemmrich
Erie Wastewater Treatment Plant
68 Port Access Road
Erie, PA 16507-2202
Phone: (814) 870-1360
Fax: (814) 454-4737

Apr. 22

LEGAL NOTICE

NOTICE OF ACTION IN MORTGAGE FORECLOSURE IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR AMERIQUEST MORTGAGE SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2002-4

Plaintiff

vs.

JEANETTE LOUISE DICKSON, in her capacity as Administrator d/bn and Heir of the Estate of JULIE ANNE GREEN A/K/A JULIE A. GREEN
NICHOLAS WILLIAM EDSON A/K/A NICHOLAS WILLIAM EDISON, in his capacity as Heir of the Estate and Beneficiary of the Estate of JULIE ANNE GREEN A/K/A JULIE A. GREEN
DEBORAH CHANDLER, in her capacity as Devisee of the Estate of JULIE ANNE GREEN A/K/A JULIE A. GREEN
UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JULIE ANNE GREEN A/K/A JULIE A. GREEN, DECEASED, Defendants
COURT OF COMMON PLEAS CIVIL DIVISION
ERIE COUNTY
No. 12665-2015

NOTICE

To UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER JULIE ANNE GREEN A/K/A JULIE A. GREEN, DECEASED

You are hereby notified that on September 16, 2015, Plaintiff, DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR AMERIQUEST MORTGAGE SECURITIES INC., ASSET-BACKED PASS-THROUGH CERTIFICATES, SERIES 2002-4, filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of ERIE County Pennsylvania, docketed to No. 12665-2015. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 4600 OLD STATE ROAD, MCKEAN, PA 16426-2241 whereupon your property would be sold by the Sheriff of ERIE County. You are hereby notified to plead to

the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

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

Notice to Defend:
Lawyer Referral &
Information Service

P.O. Box 1792
Erie, PA 16507

Telephone (814) 459-4411

Apr. 22

LEGAL NOTICE

FAMILY COURT OF THE STATE OF NEW YORK COUNTY OF CHAUTAUQUA

In the Matter of File #:19040
Docket #:NN-02740-15

A. J.-S. Child under Eighteen Years of Age Alleged to be Neglected by T.S., Respondent. SUMMONS (Publication)

IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK:

To: Eric Johnson address unknown, A petition under Article 10 of the Family Court Act having been filed with this Court requesting the following relief: Neglect; **YOU ARE HEREBY SUMMONED** to appear

before this Court on Date Time: June 6, 2016 at 9:30 AM

Purpose: Return after Publication
Part: 3 Floor/Room: Floor I/Room See Court Officer Presiding:
Hon. Judith S. Claire Location: Community Municipal Building (Old Mayville School) 2 Academy Street, Suite 5, Mayville, NY 14757 to answer the petition and to be dealt with in accordance with Article 10 of the Family Court Act. On your failure to appear as herein directed, a warrant may be issued for your arrest. Dated: April 4, 2016 David E Travis, Deputy Chief Clerk **TO THE ABOVE-NAMED RESPONDENT:** The foregoing summons is served upon you by publication pursuant to an Order of the Hon. Judith S. Claire of the Family Court, Chautauqua County, dated and filed with the petition and other papers in the Office of the Clerk of the Family Court, Chautauqua County.

Apr. 15, 22, 29 and May 6

LEGAL NOTICE

ATTENTION: CALVIN WAYNE INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

IN THE MATTER OF THE ADOPTION OF SAMIYA

LANAE WAYNE
DOB: 06/04/2014

BORN TO: NICHOLE M. STROUP NO. 63 IN ADOPTION 2014

If you could be the parent of the above-mentioned child at the instance of Adam J. Williams, Esq. you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphans' Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Robert A. Sambroak, Jr., Court Room No. 217-1, City of Erie, on May 2, 2016, at 9:30 a.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by Adam J. Williams, Esq. A copy of those documents can be obtained by contacting Adam J. Williams, Esq. at (814) 315-9255.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that

you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the Hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Family/Orphans'
Court Administrator
Room 204-205
Erie County Court House
Erie, Pennsylvania, 16501
(814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: Pa. C.S. §§2731-2742.

This is to inform you of an important option that may be available to you under the Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/ or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact Adam J. Williams, Esq. at (814) 315-9255, or contact your adoption attorney if you have one.

Adam J. Williams, Esq.
425 West Tenth Street
Erie, PA 16502
(814) 315-9255

Apr. 15, 22, 29

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**AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE**

**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 **April 25, 2016** and confirmed Nisi.

May 19, 2016 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.

2016 ESTATE

ACCOUNTANT

ATTORNEY

- 80. Geraldine E. Sibley
- a/k/a Geraldine H. Sibley
- a/k/a Geraldine Hinkle Sibley
- a/k/a Geraldine Sibley Marjorie E. Wagner, Executrix James R. Steadman, Esquire

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

Apr. 15, 22

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ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION**ALLEN, RUTH I.,
deceased**

Late of North East Township, Erie County, Commonwealth of Pennsylvania

Executor: Thomas W. Allen, c/o 120 West 10th Street, Erie, PA 16501

Attorney: Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

**BRAEGER, CARL F.,
deceased**

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

Co-Executors: Rosemary J. Konkel and Jeffrey D. Konkel

Attorney: David J. Rhodes, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

**BROWN, JOHN M.,
deceased**

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

Executor: Michael R. Anderson, 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

**FIELDS, GERALDINE LOUISE,
a/k/a GERALDINE L. FIELDS,
deceased**

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

Executor: David Darling, c/o William J. Schaaf, Esq., Suite 300, 300 State Street, Erie, PA 16507

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

**FISCHER, DAVID T.,
deceased**

Late of the City of Erie, County of Erie

Co-Executors: Megan Krivonak, 2522 Heidelberg Avenue, SE, Massillon, OH 44646 and Emily M. Jurges, 506 Sanford Place, Erie, Pennsylvania 16511

Attorney: Kari A. Froess, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

**HAYES, MARY L.,
deceased**

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

Executrix: Barbara Jordan Steele, 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

**LANGE, ONNA L., a/k/a ONNA
LINDA LANGE, a/k/a ONNA
L. DeSANTO, a/k/a ONNA
DeSANTO,
deceased**

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

Executrix: Morgan K. DeSanto, 2247 Stoneybrook Drive, Erie, PA 16510

Attorney: Aaron E. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**MILLER, MARY R., a/k/a MARY
RITA MILLER,
deceased**

Late of Harborcreek Township
Executor: Steven C. Miller, c/o 246 West 10th Street, Erie, PA 16501

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

**RUTKOWSKY, MARY,
deceased**

Late of the County of Erie, Commonwealth of Pennsylvania
Executor: Mark Rutkowski, 5808 Jordan Road, Erie, PA 16510

Attorney: Robert M. Barbatto, Jr., Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**RZYMEK, MARY LOUISE, a/k/a
MARY L. RZYMEK,
deceased**

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

Administrator: Mary Rzymek Wingrove, 4050 Dauphin Parkway, Erie, PA 16506
Attorney: None

**WILKERSON, MARTHA,
deceased**

Late of the City of Erie
Executrix: Carol Bolan, 101 Freeport Road, North East, PA 16428

Attorney: Deanna L. Hasley, Esq., 333 State Street, Suite 203, Erie, PA 16507

SECOND PUBLICATION**BALCZON, ALICE M.,
deceased**

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

Executor: Joseph M. Balczon, 244 Orchard Terrace Drive, New Wilmington, PA 16142

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

**BROWN, MARY L.,
deceased**

Late of Summit Township, Erie County, Pennsylvania
Administrator: Ann Marie Kessler, 6208 Red Pine Lane, Erie, PA 16506
Attorney: None

**DAWSON, ALJESTMUS,
deceased**

Late of the City of Erie
Executor: Earl Dawson, Sr., 1318 Buffalo Road, Erie, PA 16503
Attorney: Larry D. Meredith, Esq., 2021 E. 20th St., Erie, PA 16510

**HAWLEY, PATRICIA L.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administrator: Leslie M. Hawley, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**LEWIS, REGINA M.,
deceased**

Late of Millcreek Township, County of Erie, Commonwealth of Pennsylvania
Executrix: Deborah A. Murnock, 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

**PRZYBYLAK, CHRISTINE G.,
deceased**

Late of the Township of Lawrence Park, County of Erie, State of Pennsylvania
Executor: Mitchell P. Price, 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

**SHARPE, JAMES R., JR.,
deceased**

Late of Girard Township, Erie County, Girard, Pennsylvania
Administratrix: Stephanie L. Duffy, 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

**SWARTZELL, DOROTHY J.,
deceased**

Late of the Township of Fairview
Executrix: Barbara J. Wagner, 5720 West Avenue, Edinboro, PA 16412
Attorney: Michael A. Fetzner, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**TOMCZAK, ANGELINE J., a/k/a
ANGELINE TOMCZAK,
deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania
Executrix: Carol Ann Tomczak, 5655 Winthrop Drive, Erie, PA 16505
Attorney: James R. Steadman, Esq., 24 Main St. E., PO Box 87, Girard, PA 16417

**TREJCHEL, RITA A.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Elizabeth L. Lydic, c/o 504 State Street, 3rd Floor, Erie, PA 16501
Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**WEINHEIMER, PATRICIA S.,
deceased**

Late of North East Borough, Erie County, North East, Pennsylvania
Executor: Dennis C. Weinheimer, 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

**WYBIRAL, JULIE A., a/k/a
JULIE ANNE WYBIRAL,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Co-Executors: Daniel A. Moss and Nancy Moss
Attorney: James H. Richardson, Esquire, Elderkin Law Firm, 150 East 8th Street, Erie, PA 16501

THIRD PUBLICATION

**CASE, ROBERT A.,
deceased**

Late of Summit Township, Erie County, Pennsylvania
Executor: Lynn M. Craker, c/o Dan W. Susi, Esquire, 714 Sassafras Street, Erie, PA 16501
Attorney: Dan W. Susi, Esquire, 714 Sassafras Street, Erie, PA 16501

**MAAS, BETTY N., a/k/a BETTY
KATHERINE MAAS, a/k/a
BETTY K. MAAS,
deceased**

Late of the City of North East, Erie County, Commonwealth of Pennsylvania
Executrix: Sharilyn S. Smith, c/o Leigh Ann Orton, Esquire, 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

**PARSONS, CAROL J.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Nicole Parsons, c/o 300 State Street, Suite 300, Erie, PA 16507
Attorney: Thomas V. Myers, Esquire, Marsh Spaeder Baur Spaeder & Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

TED J. PADDEN----- 814-812-1920
510 Parade Street
Erie, PA 16507 -----*tedpaddenlaw@yahoo.com*

MELISSA L. LARESE ----- 814-314-1042
Quinn Law Firm ----- (f) 814-833-6753
2222 West Grandview Blvd.
Erie, PA 16506 -----*mlarese@quinnfirm.com*

DARLENE M. VLAHOS ----- 814-314-1041
Quinn Law Firm ----- (f) 814-833-6753
2222 West Grandview Blvd.
Erie, PA 16506 -----*dvlahos@quinnfirm.com*

PHONE/EMAIL CHANGE

KENNETH J. GAMBLE ----- (814) 451-6070
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