

*Erie
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Legal
Journal*

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Gresart v. Buffalo and Pittsburgh Railroad, Inc. et al.

Erie County Legal Journal

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

Managing Editor: Megan E. Black
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Erie County Bar Association

Calendar of Events and Seminars

MONDAY, SEPTEMBER 25, 2017

ECBA Board of Directors Meeting
Noon
ECBA Headquarters

TUESDAY, SEPTEMBER 26, 2017

Estate & Trust Section Leadership Committee Meeting
Noon
ECBA Headquarters

TUESDAY, SEPTEMBER 26, 2017

ECBA Live Seminar
*The Slants - Taking Their Trademark & First
Amendment Rights Case to the U.S. Supreme Court*
Gannon University Palumbo Academic Center
5:30 p.m. - 6:30 p.m.
\$47 (ECBA members wanting CLE)
Free to Gannon Students, the Public and Attorneys not
wanting CLE
1 hour substantive

WEDNESDAY, SEPTEMBER 27, 2017

Defense Bar Meeting
Noon
ECBA Headquarters

WEDNESDAY, SEPTEMBER 27, 2017

Bankruptcy Section Brown Bag Lunch
Noon
Federal Courthouse

WEDNESDAY, SEPTEMBER 27, 2017

Family Law Section Meeting
Noon
Judge Kelly's Courtroom

THURSDAY, SEPTEMBER 28, 2017

Solo/Small Firm Division Meeting
Noon
Plymouth Tavern

THURSDAY, OCTOBER 5, 2017

Young Lawyer Division's Oktoberfest Happy Hour
with the Civil Litigation and
Workers' Compensation Sections
5:30 p.m. - 7:00 p.m.
The Brewerier at Union Station

SATURDAY, OCTOBER 7, 2017

Wills For Heroes
Erie County Public Safety Building
12:00 p.m. - 4:00 p.m.

TUESDAY, OCTOBER 10, 2017

Red Mass
Saint Peter Cathedral
5:15 p.m.
Buffet Dinner immediately following the Mass at
Gannon University's Morosky Center, lower level
\$38/person

MONDAY, OCTOBER 23, 2017

ECBA Board of Directors Meeting
Noon
ECBA Headquarters



Erie County Bar
Association



@eriepabar

To view PBI seminars visit the events calendar
on the ECBA website
<http://www.eriebar.com/public-calendar>

2017 BOARD OF DIRECTORS

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PUBLIC NOTICE FOR REAPPOINTMENT OF A BANKRUPTCY JUDGE

The current term of office of Thomas P. Agresti, United States Bankruptcy Judge for the Western District of Pennsylvania at Erie, Pennsylvania is due to expire on April 4, 2018. The United States Court of Appeals for the Third Circuit is considering the reappointment of Judge Agresti to a new 14-year term of office.

Upon reappointment, the incumbent would continue to exercise the jurisdiction of a bankruptcy judge as specified in United States Code title 28, United States Code title 11, and the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, §§ 101-122, 98 Stat. 333-346. In bankruptcy cases and proceedings referred by the district court, the incumbent would continue to perform the duties of a bankruptcy judge that might include holding status conferences, conducting hearings and trials, making final determinations, entering orders and judgments, and submitting proposed findings of fact and conclusions of law to the district court.

Members of the bar and the public are invited to submit comments for consideration by the Court of Appeals regarding the reappointment of Bankruptcy Judge Thomas P. Agresti to a new term of office. All comments will be kept confidential and should be directed to one of the following addresses:

agresti_reappointment@ca3.uscourts.gov

or to

Margaret A. Wiegand, Circuit Executive

22409 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106

Comments must be received not later than **October 26, 2017**.

Sept. 15, 22

OFFICE SPACE

Office and support staff available, 311 West Sixth Street, Erie, Pennsylvania. Contact Melissa Mizner - 814-454-3889.

Sept. 15, 22

ASSOCIATE POSITION IN LITIGATION

Large, established law firm seeks associate attorney with 0 to 3 years litigation experience. Excellent academic credentials required. Salary commensurate with experience. Send resume, undergraduate and law school transcripts to Sandra Brydon Smith at the Erie County Bar Association, 302 West 9th Street, **Box D**, Erie, PA 16502 or sbsmith@eriebar.com. Equal Opportunity Employer.

Sept. 8, 15, 22, 29



Taking Their Trademark & First Amendment Rights Case to the U.S. Supreme Court

Tuesday, September 26, 2017

Registration 5:00 p.m. | Seminar 5:30 - 6:30 p.m.

Gannon University Palumbo Academic Center Room 2005

Guest Speaker **Simon Tam** of *The Slants*

FREE to Gannon Students, the Public, and Attorneys not wanting CLE

\$47 for ECBA Members wanting CLE

This seminar has been approved by the PA CLE Board for 1 hour Substantive credits.

Background: *The Slants* are an Asian-American rock band. The group's frontman, Simon Tam, filed a lawsuit after the U.S. Patent and Trademark Office prevented the band from registering its name and rejected an appeal based on the Lanham Act. This Act prohibits any trademark that could "disparage... or bring... into contempt(t) or disrepute" any "persons, living or dead."

After a Federal Court agreed with Tam and his band, the Patent and Trademark Office appealed to the United States Supreme Court to avoid being compelled to register *The Slants* name as a trademark. In June of this year, the Supreme Court sided with *The Slants*.

Attorney and Program Moderator Jonathan D'Silva adds "What is interesting about this case is the activism, art, and First Amendment issues surrounding it. The Slants didn't have to fight the issue; they are NOT required to register their trademark to have a trademark. The question for them was why does the government have any right to state that a particular viewpoint crosses an arbitrary and subjective threshold of propriety that makes them unable to grant a status when they have already done so in other contexts?"

At 7:00 p.m., following this program, *The Slants* will be playing at Basement Transmissions – 145 West 11th Street

Tickets \$10 at the door. Proceeds support TEDxErie.

**DEDRA GRESART, as Plenary Guardian of DESTINY M. GRESART,
an adult incapacitated person**

v.

**BUFFALO & PITTSBURGH RAILROAD INC., a Delaware Corporation;
GENESEE & WYOMING, INC., a Delaware Corporation, a/k/a GENESEE
& WYOMING RAILROAD SERVICES, INC.; JAMES MURDOCK;
and HARRY WACHOB**

CIVIL PROCEDURE / PRELIMINARY OBJECTIONS / GENERALLY

Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. The test on preliminary objections is whether it is clear and free from doubt from all the facts pled that the pleader will be unable to prove facts legally sufficient to establish his right to relief. When ruling on preliminary objections in the nature of a demurrer, a court must overrule the objections if the complaint pleads sufficient facts which, if believed, would entitle the petitioner to relief under any theory of law. All material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true for the purpose of this review. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.

*CIVIL PROCEDURE / PRELIMINARY OBJECTIONS /
RES JUDICATA & COLLATERAL ESTOPPEL*

The issues of *res judicata* and/or collateral estoppel are affirmative defenses raised properly as a “New Matter” and are not generally among the grounds allowable for preliminary objections. However, the Pennsylvania Superior Court has allowed the issues of *res judicata* and/or collateral estoppel to be raised as preliminary objections in limited circumstances. Where it is clear that a delay in ruling on preliminary objections asserting *res judicata* and/or collateral estoppel would clearly serve no purpose, a trial court does not err in considering those issues when raised in preliminary objections.

CIVIL PROCEDURE / RES JUDICATA

Technical *res judicata* provides that “where a final judgment on the merits exists, a future lawsuit on the same cause of action is precluded, and requires the coalescence of four (4) factors: [1] identity of the thing sued upon or for; [2] identity of the causes of action; [3] identity of the persons or parties to the action; and [4] identity of the quality or capacity of the parties suing or being sued.

CIVIL PROCEDURE / COLLATERAL ESTOPPEL

Collateral estoppel bars a subsequent lawsuit where (1) an issue decided in a prior action is identical to the issue presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.

*CIVIL PROCEDURE / PRELIMINARY OBJECTIONS /
RES JUDICATA & COLLATERAL ESTOPPEL*

Unless the complaint sets forth in detail, either directly or by reference, the essential facts

and issues pleaded by the prior suit, the affirmative defense of *res judicata* must be raised in a responsive pleading under the heading of new matter and not by preliminary objections.

CIVIL PROCEDURE / RES JUDICATA & COLLATERAL ESTOPPEL

The doctrine of *res judicata*/collateral estoppel applies not only to matters decided, but also to matters that could have, or should have, been raised and decided in an earlier action.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 10646 – 2017

Appearances: Jesse A. Drumm, Esq., on behalf of Dedra Gresart, as Plenary Guardian of Destiny M. Gresart, an adult incapacitated person (Plaintiff)
Scott R. Orndoff, Esq., on behalf of Buffalo & Pittsburgh Railroad, Inc.;
Genesee & Wyoming, Inc.; James Murdock; and Harry Wachob (Defendants)

OPINION

Domitrovich, J.

July 19, 2017

AND NOW, to-wit, this 19th day of July, 2017, upon consideration of the oral arguments on June 30, 2017 regarding the Preliminary Objections to Plaintiff's Complaint and Brief in Support, filed by Buffalo & Pittsburgh Railroad, Inc., Genesee & Wyoming, Inc., James Murdock and Harry Wachob; and the Preliminary Objections to Defendant's Preliminary Objections and Brief in Support, filed by Dedra Gresart, as Plenary Guardian of Destiny M. Gresart, an adult incapacitated person; and after a thorough review of relevant statutory and case law, this Trial Court finds and concludes as follows:

Procedural History

2006 Elk County, Pennsylvania Civil Action

On August 16, 2006, Dedra Gresart, as Plenary Guardian of Destiny M. Gresart, an adult incapacitated person (hereafter referred to as "Plaintiff"), commenced against Buffalo & Pittsburgh Railroad, Inc., Genesee & Wyoming, Inc. and James Murdock (hereafter collectively referred to as "Defendants") in the Court of Common Pleas of Allegheny County, but the civil action was later transferred to Court of Common Pleas of Elk County, Pennsylvania. *See Gresart ex rel. Gresart v. Buffalo & Pittsburgh R.R., Inc.*, 2016 WL 797059, *1 (Pa. Super. 2016).¹ Plaintiff filed an Amended Complaint and, after Senior Judge Michael E. Dunlavey, who was sitting by assignment in Elk County, Pennsylvania, sustained Defendants' Preliminary Objections, Plaintiff filed a Second Amended Complaint on July 30, 2008. *See id.*

Defendants filed a Motion for Summary Judgment on August 29, 2013. *See id.* at *2. After Plaintiff filed a Third Amended Complaint without leave of court and following Defendants' Preliminary Objections, Plaintiff filed a Motion for Leave to File a Third Amended Complaint. *See id.* Following a hearing on December 4, 2013, Senior Judge Dunlavey directed Plaintiff to provide specific record facts supporting "willful or wanton conduct." *See id.* Plaintiff filed a Supplemental Brief, in accordance with Senior Judge Dunlavey's Order, on December 16,

¹ This Pennsylvania Superior Court Opinion, which is an unpublished, non-precedential Opinion, is being cited as relevant under the doctrine of law of the case, *res judicata* and/or collateral estoppel.

2013; thereafter, Senior Judge Dunlavey denied Plaintiff's Motion for Leave to File a Third Amended Complaint on January 9, 2014. *See id.* Following a hearing on Defendants' Motion for Summary Judgment, President Judge Richard A. Masson granted the Motion for Summary Judgment on December 5, 2014. *See id.* Plaintiff appealed timely to the Pennsylvania Superior Court on January 2, 2015, and the Pennsylvania Superior Court affirmed Judge Masson's Order on March 1, 2016. *See id.* at *9. Plaintiff filed an Application for Re-argument on March 15, 2016, which was denied by the Pennsylvania Superior Court on May 10, 2016. Plaintiff filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court on June 9, 2016, which was denied on October 25, 2016.

2017 Erie County, Pennsylvania Civil Action

On March 3, 2017, Plaintiff filed a Complaint for Compensatory and Punitive Damages this time in the Court of Common Pleas in Erie County, Pennsylvania. On April 3, 2017, Defendants filed Preliminary Objections to Plaintiff's Complaint and also filed an Answer and New Matter to Plaintiff's Complaint contemporaneously.² On April 19, 2017, Plaintiff filed Preliminary Objections to Defendants' Preliminary Objections. Plaintiff filed a Reply to Defendants' New Matter on April 28, 2017.

Argument on the parties' respective Preliminary Objections was scheduled for June 30, 2017. This Trial Court heard argument from Plaintiff's counsel, Jesse A. Drumm, Esq., who the Trial Court permitted to participate via telephone, and Defendants' counsel, Scott R. Orndoff, Esq., who appeared in person.

Rationale and Conclusions

Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. *Bourke v. Kazaras*, 746 A.2d 642, 643 (Pa. Super. 2000). The test on preliminary objections is whether it is clear and free from doubt from all the facts pled that the pleader will be unable to prove facts legally sufficient to establish his right to relief. *Id.* When ruling on preliminary objections in the nature of a demurrer, a court must overrule the objections if the complaint pleads sufficient facts which, if believed, would entitle the petitioner to relief under any theory of law. *Gabel v. Cambruzzi*, 616 A.2d 1364, 1367 (Pa. 1992). All material facts set forth in the complaint as well as all inferences reasonably deducible therefrom are admitted as true for the purpose of this review. *Clevenstein v. Rizzuto*, 266 A.2d 623, 624 (Pa. 1970). The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. *Hoffman v. Misericordia Hospital of Philadelphia*, 267 A.2d 867, 868 (Pa. 1970). Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it. *Gabel*, 616 A.2d at 1367 (Pa. 1992).

Pursuant to the Pennsylvania Rules of Civil Procedure, the issues of *res judicata* and/or collateral estoppel are affirmative defenses raised properly as a "New Matter." *See Pa. R. Civ. P. 1030(a)*. The issues of *res judicata* and/or collateral estoppel are not generally among the grounds allowable for preliminary objections. *See Pa. R. Civ. P. 1028(a)*. However,

² Although Plaintiff contends Defendants' filing of an Answer and New Matter to Plaintiff's Complaint waives Defendants' filing of Preliminary Objections and precludes this Trial Court's consideration of Defendants' Preliminary Objections, Defendants' counsel, Scott R. Orndoff, Esq., indicated the Preliminary Objections were filed first and the Answer and New Matter were filed second. According to Attorney Orndoff, the filing of an Answer and New Matter was solely to protect the record.

the Pennsylvania Superior Court has allowed the issues of *res judicata* and/or collateral estoppel to be raised as preliminary objections in limited circumstances. *See Kelly v. Kelly*, 887 A.2d 788 (Pa. Super. 2005) (*res judicata* and/or collateral estoppel are raised properly in preliminary objections where the facts are not in dispute); *see also Dempsey v. Cessna Aircraft Co.*, 653 A.2d 679 (Pa. Super. 1995) (*res judicata* and/or collateral estoppel are raised properly in preliminary objections where neither party objected to those issues being raised in preliminary objections, rather than as a “New Matter”). Where it is clear that a delay in ruling on preliminary objections asserting *res judicata* and/or collateral estoppel would clearly serve no purpose, a trial court does not err in considering those issues when raised in preliminary objections. *See Faust v. Dep’t of Revenue*, 592 A.2d 835, 838 (Pa. Commw. Ct. 1991) (holding that sovereign immunity, which is generally not raised properly in preliminary objections, may be raised in preliminary objections in the nature of a demurrer **when it is clear that delaying a ruling would serve no purpose**).

Res judicata encompasses two (2) related, yet distinct principles: technical *res judicata* and collateral estoppel. *J.S. v. Bethlehem Area School District*, 794 A.2d 936, 939 (Pa. Commw. Ct. 2002) (*citing Henion v. Workers’ Compensation Appeal Board (Firpo & Sons, Inc.)*, 776 A.2d 362 (Pa. Commw. Ct. 2001)). Technical *res judicata* provides that “where a final judgment on the merits exists, a future lawsuit on the same cause of action is precluded.” *Id.* Technical *res judicata* requires “the coalescence of four (4) factors: [1] identity of the thing sued upon or for; [2] identity of the causes of action; [3] identity of the persons or parties to the action; and [4] identity of the quality or capacity of the parties suing or being sued.” *Id.*

Similarly, collateral estoppel “bars a subsequent lawsuit where (1) an issue decided in a prior action is identical to the issue presented in a later action; (2) the prior action resulted in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action.” *Id.* (*citing Rue v. K-Mart Corp.*, 713 A.2d 82 (Pa. 1998)).

After a thorough review and comparison of the Civil Complaint filed in the Court of Common Pleas of Erie County on March 3, 2017, attached to Defendants’ Preliminary Objections as Exhibit A, and the Second Amended Civil Complaint filed in the Court of Common Pleas of Elk County on July 30, 2008, attached to Defendants’ Preliminary Objections as Exhibit D, this Trial Court makes the following analysis as to these two significantly and substantially identical Civil Complaints as to invoke the doctrines of *res judicata* and/or collateral estoppel and bar Plaintiff’s Erie County Civil Complaint, including the claims and issues raised therein, from being litigated in Erie County, Pennsylvania. This Trial Court finds and concludes the following essential facts, claims and issues are present in both Civil Complaints filed in Elk and Erie Counties:

- Plaintiffs Dedra and Destiny Gresart are individuals residing at 222 Blaine Avenue, Johnsonburg, Elk County, Pennsylvania 15845. *See Exhibit A*, ¶¶1-2; *see also Exhibit D*, ¶¶1-2;
- Defendant Buffalo & Pittsburgh Railroad, Inc. is a Delaware corporation with a principal place of business at 1200-C Scottsville Road, Suite 200, Rochester, New York 14624. *See Exhibit A*, ¶3; *see also Exhibit D*, ¶3;

- Defendant Genesee & Wyoming, Inc. is a Delaware corporation with a principal place of business at 20 West Avenue, Darien, Connecticut 06820. *See Exhibit A, ¶4; see also Exhibit D, ¶4;*
- Defendant James Murdock is an adult individual residing at 502 Logan Street, Punxsutawney, Jefferson County, Pennsylvania 15767. *See Exhibit A, ¶5; see also Exhibit D, ¶5;*
- At all relevant times, railroad defendants acted as authorized agents, ostensible agents, servants, employees, contractors, subcontractors, licensees and/or assignees of each other. *See Exhibit A, ¶7; see also Exhibit D, ¶6;*
- At all relevant times, defendant Murdock was an employee, agent, representative and/or servant of defendants, acting within the course and scope of his employment. *See Exhibit A, ¶15; see also Exhibit D, ¶7;*
- At all relevant times, railroad defendants acted by and through their agents, servants, employees, representatives, successors, predecessors, subsidiaries and parents, who were acting in the course and scope of their employment, duties and/or agency. *See Exhibit A, ¶17; see also Exhibit D, ¶8;*
- At all relevant times, railroad defendants owned, possessed, controlled and maintained property along Grant Street near its intersection with Blaine Avenue in Johnsonburg, Elk County, Pennsylvania, upon which it maintained railroad ties and tracks for the purposes of rail transport by locomotive trains. *See Exhibit A, ¶18; see also Exhibit D, ¶9;*
- On August 18, 2004, at or around 1:20 p.m., Destiny Gresart entered onto the railroad tracks. *See Exhibit A, ¶19; see also Exhibit D, ¶10;*
- Destiny Gresart entered onto the railroad tracks from Grant Street near its intersection with Blaine Avenue. *See Exhibit A, ¶21; see also Exhibit D, ¶13;*
- Destiny Gresart did not cross any lines or barricades apprising her of the dangers and risks associated with walking along the railroad tracks along the property. *See Exhibit A, ¶22; see also Exhibit D, ¶14;*
- Destiny Gresart was unaware and unappreciative of any danger or risk associated with walking along the railroad tracks on the property. *See Exhibit A, ¶23; see also Exhibit D, ¶15;*
- As Destiny Gresart traversed the railroad tracks located on the property, she was struck by an oncoming train engine, the same of which was owned by railroad defendants and operated by defendant Murdock. *See Exhibit A, ¶24; see also Exhibit D, ¶16;*
- As a result of the impact, Destiny Gresart was violently thrown several feet into a stone retaining wall abutting the tracks. *See Exhibit A, ¶25; see also Exhibit D, ¶17;*
- At all relevant times, defendants knew, or should have known, of the danger or risk associated with people, including Destiny Gresart and other similarly situated minors, being on or near the railroad tracks located on the property. *See Exhibit A, ¶26; see also Exhibit D, ¶19;*
- As a direct and proximate result of this incident, Destiny Gresart sustained

the following injuries, some or all of which are or may be permanent:

- Severe head trauma that caused her to be in a state of coma;
 - Severe impairment of other major life sustaining functions as a result of the head trauma;
 - Right tibia fracture;
 - Right fibula fracture;
 - Left knee cap fracture;
 - Foot drop as a result of the trauma to her leg;
 - Nervousness, emotional tension anxiety and depression; and
 - Inability to sleep due to constant, sever and persistent pain. *See Exhibit A, ¶39(a), (c)-(f), (h)-(j); see also Exhibit D, ¶20(a), (c)-(i);*
- As a direct and proximate result of this incident, Destiny Gresart sustained the following damages, some or all of which are permanent:
 - She had endured and will continue to endure great pain, suffering, inconvenience, embarrassment, mental anguish and emotional and psychological trauma;
 - She has undergone and will continue to undergo extensive medical treatment for her physical injuries;
 - She has been and in the future will unable to enjoy various pleasures of life that she previously enjoyed;
 - She has been permanently deprived of a vital time of her life. *See Exhibit A, ¶40(a)-(c), (f); see also Exhibit D, ¶21(a)-(d).*
 - **Count I – Plaintiff v. Buffalo & Pittsburgh Railroad, Inc. & Genesee & Wyoming, Inc. – Negligence**
 - Plaintiff’s injuries and damages, as set forth above, were a direct and proximate result of defendants’ negligence in the following particulars:
 - In failing to post warnings of the potential danger of walking on or near train tracks upon which they operated train traffic;
 - In failing to post well-marked signs or markings that would alert Destiny Gresart and others similarly situated of the dangers or walking near train tracks and that the tracks were actively in use;
 - In failing to erect a fence or other barrier to inhibit entry on to the property;
 - In failing to properly train its employees, agents and/or servants to recognize the existence of dangerous conditions on or near the railroad tracks;
 - In allowing its locomotives to operate at an excessive speed in areas that are known to be frequented by children;
 - In failing to erect sufficient signage to make operators of locomotives aware of the existence of potential pedestrian traffic ahead;
 - In allowing the operators of their locomotives to operate them at unsafe speeds;

- In allowing the operators of their locomotives to operate locomotives in residential areas without sounding proper warnings;
- In failing to recognize and likelihood of children being attracted to the train tracks;
- In failing to inform their employee train operators of the risk of children playing on the train tracks. *See Exhibit A, ¶42(a)-(h), (k); see also Exhibit D, ¶24(a)-(e), (h)-(j), (m);*
- **Count II – Plaintiff v. James Murdock – Negligence**
- Plaintiff’s injuries and damages were a direct and proximate result of defendant Murdock’s negligence in the following particulars:
 - In failing to follow protocol for operation of a train engine;
 - In failing to properly check for bystanders on the train tracks;
 - In failing to take proper precautionary measures of slowing the train engine down when entering an area known to be frequented by children;
 - In failing to operate the train engine in a safe and proper manner;
 - In failing to properly warn Destiny Gresart of her immediate danger;
 - In failing to operate the locomotive in a condition which would be safe for bystanders along the train tracks;
 - In failing to stop the train in a reasonable amount of time; and
 - In operating the train at an excessive speed. *See Exhibit A, ¶44(a)-(g), (j); see also Exhibit D, ¶34(a)-(h).*

Clearly, the Civil Complaint filed in the Court of Common Pleas of Elk County included essential facts and issues presented in the Civil Complaint filed in the Court of Common Pleas of Erie County; therefore, Defendants’ Preliminary Objections, raising the issues of *res judicata* and/or collateral estoppel are proper for this Trial Court’s consideration and disposition at this time. *See Kelly, 887 A.2d at 791; see also Del Turco v. Peoples Home Savings Association, 478 A.2d 456, 461 (Pa. Super. 1984)* (unless the complaint sets forth in detail, either directly or by reference, the essential facts and issues pleaded by the prior suit, the affirmative defense of *res judicata* must be raised in a responsive pleading under the heading of new matter and not by preliminary objections).

Plaintiff’s Erie County Civil Complaint is barred by the doctrine of *res judicata*. First, the identity of the “thing” sued upon is identical in both Civil Complaints, i.e. damages for injuries suffered by Destiny Gresart after she was struck by the locomotive. Second, the identity of the cause of action in both Civil Complaints is also identical, i.e. negligence claims against the Defendants. Although Plaintiff’s instant Erie County Civil Complaint amplifies her negligence claim against the Defendants, which was raised identically in her Elk County Civil Complaint, by adding language demonstrating “willful, wanton and reckless” conduct, this is a cause of action that could have, and should have, been raised in the Elk County Civil Complaint. *See BuyFigure.com, Inc. v. Autotrader.com, Inc., 76 A.3d 554, 561 (Pa. Super. 2013)* (the doctrine of *res judicata*/collateral estoppel applies not only to matters decided, **but also to matters that could have, or should have, been raised and**

decided in an earlier action). In fact, Plaintiff attempted to file a Third Amended Civil Complaint amplifying her negligence claims against the Defendants to include “willful, wanton and reckless” conduct, but Senior Judge Dunlavy in Elk County, Pennsylvania denied Plaintiff’s Motion to Amend Complaint, and Senior Judge Dunlavy’s decision was affirmed by the Pennsylvania Superior Court on the basis that the essential facts raised by Plaintiff in her Elk County Civil Complaint did not support a finding of “willful, wanton and reckless” conduct. *See Gresart*, 2016 WL 797059, *3. Third, the identities of the persons or parties in both Civil Complaints is significantly similar – Plaintiffs Dedra Gresart and her daughter, Destiny Gresart, are included in both Complaints, as well as Defendants Buffalo & Pittsburgh Railroad, Inc., Genesee & Wyoming, Inc. and James Murdock. Although Plaintiff now names as Harry Wachob as a defendant in her Erie County Civil Complaint, this does not preclude this Trial Court’s consideration of Defendants’ Preliminary Objections. *See BuyFigure.com, Inc.*, 76 A.3d at 561 (the doctrine of *res judicata* should not be defeated by minor differences of form, parties, or allegations, when these are contrived only to obscure the real purpose – a second trial on the same cause between the same parties). Finally, the quality or capacity of the parties suing or being sued is identical – Plaintiff Dedra Gresart is the guardian of Destiny Gresart in both Civil Complaints and the Defendants have been sued in both Civil Complaints in their individual capacities. Therefore, all four [4] factors have coalesced for *res judicata*. *Bethlehem Area School District*, 794 A.2d at 936.

Moreover, the dismissal of Plaintiff’s Elk County Civil Complaint via summary judgment was appealed to the Pennsylvania Superior Court, who affirmed, and Plaintiff subsequently filed a Petition for Allowance of Appeal before the Pennsylvania Supreme Court, who denied said Petition. As there was a final judgment for Plaintiff’s Elk County Civil Complaint, and as the four [4] above-referenced factors have coalesced positively and successfully, Plaintiff’s Erie County Civil Complaint is barred by the doctrine of *res judicata*, and Plaintiff cannot be permitted to re-litigate her cause of action in the Erie County, Pennsylvania that was fully and finally disposed of in the Elk County, Pennsylvania, as well as the Pennsylvania Superior and Supreme Courts.

Furthermore, Plaintiff’s Erie County Civil Complaint is barred by the doctrine of collateral estoppel. As this Trial Court found and concluded above, the issues presented previously in Plaintiff’s Elk County Civil Complaint were identical to the issues presented currently in Plaintiff’s Erie County Civil Complaint, i.e. negligence claims against the Defendants and damages for injuries suffered by Destiny Gresart after she was struck by a locomotive. The same parties, with the minor exception of Harry Wachob, were present in both Civil Complaints, and any minor differences in parties do not defeat the doctrine of collateral estoppel. *See BuyFigure.com, Inc.*, 76 A.3d at 561. Plaintiff had a full and fair opportunity to litigate the issues presented in the Elk County Civil Complaint, through Preliminary Objections, expert reports and other pertinent discovery, a Motion to Amend Complaint and a Motion for Summary Judgment, and thereafter appealing to two (2) appellate courts – the Pennsylvania Superior Court and the Pennsylvania Supreme Court by virtue of a Petition for Allowance of Appeal. As the Pennsylvania Supreme Court denied Plaintiff’s Petition for Allowance of Appeal and Plaintiff did not appeal to any higher appellate court, the civil action in Elk County, Pennsylvania has resulted in a final judgment on the merits. Therefore, clearly all four [4] factors have been satisfied for collateral estoppel. *Id* (citing *Rue v. K-Mart*

Corp., 713 A.2d 82 (Pa. 1998)). Plaintiff's attempts to re-litigate in Erie County the issues and claims presented and decided previously in Elk County are in contravention of not only both of the decisions of Senior Judge Dunlavey and Judge Masson of Elk County, Pennsylvania, but also the decisions of the appellate court judges of both the Pennsylvania Superior and Supreme Courts. Therefore, Plaintiff's Erie County Civil Complaint is barred by the doctrine of collateral estoppel.

Therefore, for all of the reasons set forth above, this Trial Court sustains Defendants' Preliminary Objections to Plaintiff's Complaint, overrules Plaintiff's Preliminary Objections to Defendant's Preliminary Objections and enters the following Order:

ORDER

AND NOW, to-wit, this 19th day of July, 2017, upon consideration of the oral arguments on June 30, 2017 regarding Defendant's Preliminary Objections to Plaintiff's Complaint and Brief in Support, and Plaintiff's Preliminary Objections to Defendant's Preliminary Objections and Brief in Support, and after a thorough review of relevant statutory and case law as indicated above in this Trial Court's analysis, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

- 1) Plaintiff Dedra Gresart's Preliminary Objections to Defendants' Preliminary Objections are **OVERRULED**; and
- 2) Defendants Buffalo & Pittsburgh Railroad, Inc., Genesee & Wyoming, Inc., James Murdock and Harry Wachob's Preliminary Objections to Plaintiff's Complaint are **SUSTAINED**, and Plaintiff's Civil Complaint is hereby **DISMISSED** with prejudice.

BY THE COURT

/s/ **Stephanie Domitrovich, Judge**

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BANKRUPTCY NOTICE

In re: Vincent Joseph McElhinny, Sr. and Carol Michelle McElhinny Chapter 13 Bankruptcy Case No. 17-10742 TPA

NOTICE IS HEREBY GIVEN THAT the Debtors in the above-referenced Bankruptcy have filed a Motion for Private Sale of Real Property Free and Divested of Liens seeking approval to sell the property located at **341-343 East Sixth Street, Erie, Pennsylvania and 337 East Sixth Street, Erie, Pennsylvania** for the sum of \$250,000.00 according to

the terms set forth in the Motion. A hearing shall take place on October 12, 2017 at 11:30 a.m. in the Bankruptcy Courtroom at the United States Courthouse, 17 South Park Row, Erie, Pennsylvania 16501. The Court will entertain higher offers at the hearing. A successful bidder must deposit hand money of \$5,000.00 at the time of the approval of the sale by the Court, with the balance due to be paid at closing of this sale. Examination of the property can be obtained by contacting the attorney for the Debtor, listed below. Further

information regarding this sale may be found on the Court's EASI Website: <http://www.pawb.uscourts.gov/easi.htm>.

Attorney for Movant/Applicant Michael S. JanJanin, Esquire Quinn, Buseck, Leemhuis, Toohey, & Kroto, Inc. 2222 West Grandview Blvd. Erie, Pennsylvania 16506 (814) 833-2222 PA ID#38880

Sept. 22

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*The Erie County Bar Association
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RED MASS

*celebrated by The Most Reverend
Lawrence T. Persico, JCL, Bishop of Erie*

TUESDAY, OCTOBER 10, 2017

5:15 p.m.

Saint Peter Cathedral

10th & Sassafras Streets

After-dinner speaker

**Reverend Christopher J. Singer,
Chancellor and Cannon Lawyer**

The Interplay Between the Church and the Law

Buffet Dinner immediately following
the Red Mass will be at
Gannon University's Morosky Center,
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Dinner Buffet: \$38/person

RSVP by Tuesday, October 3
by sending payment to the ECBA office
with registration form or by registering
online at www.eriebar.com. Questions?
Call the ECBA at 814-459-3111

RED MASS is an historic tradition dating back to the thirteenth century when it officially opened the term of court for most European countries. It is called "Red Mass" for the color of the vestments worn by the celebrants, signifying the fire of the Holy Spirit as God's blessing and guidance is evoked for judges, attorneys, government officials and all who seek justice.

DISSOLUTION NOTICE

NOTICE is hereby given that **ERIE COUNTY MOBILE HOUSING AND RECREATIONAL ASSOCIATION**, a Non-Profit Corporation, is in the process of winding up and dissolving its business pursuant to applicable Pennsylvania Law. This shall serve as official notice to creditors and taxing authorities. Any claims should be sent to: Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428.

Sept. 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: Dawson North
2. Address of the principal place of business: 901 West 12th Street, Suite 202, Erie, PA 16501
3. The real names and addresses, including street and number, of the persons who are parties to the registration: Dawson International, Inc., 3060 Irving Boulevard, Dallas, Texas 75247
4. An application for registration of a fictitious name under the Fictitious Names Act was filed on or about August 25, 2017.

Sept. 22

FICTITIOUS NAME

1. Fictitious Name: Dawson Truck Parts
2. Address of the principal place of business: 901 West 12th Street, Suite 202, Erie, PA 16501
3. The real names and addresses, including street and number, of the persons who are parties to the registration: Dawson International, Inc., 3060 Irving Boulevard, Dallas, Texas 75247

4. An application for registration of a fictitious name under the Fictitious Names Act was filed on or about August 25, 2017.

Sept. 22

INCORPORATION NOTICE

Notice is hereby given that **HAND UP, INC.** was incorporated under the provisions of the Nonprofit Corporation Law of 1988 on July 28, 2017, for the purpose of furthering charitable and educational goals.

Norman A. Stark, Esquire
Marsh Spaeder Baur Spaeder & Schaaf, LLP
300 State Street, Suite 300
Erie, PA 16507

Sept. 22

LEGAL NOTICE

**NOTICE OF SHERIFF'S SALE
IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA
NO. 10894-2017**

**AMERICAN FINANCIAL
RESOURCES, INC**

Vs.

**DANIEL CONNOLLY, IN
HIS CAPACITY AS HEIR OF
SEAN P. CONNOLLY A/K/A
SEAN PATRICK CONNOLLY,
DECEASED AND UNKNOWN
HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS,
FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR
INTEREST FROM OR UNDER
SEAN P. CONNOLLY A/K/A
SEAN PATRICK CONNOLLY,
DECEASED**

**NOTICE TO: UNKNOWN
HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS,
FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR
INTEREST FROM OR UNDER
SEAN P. CONNOLLY A/K/A
SEAN PATRICK CONNOLLY,
DECEASED**

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

Being Premises: 2703 ATHENS STREET, ERIE, PA 16510-2413

Being in HARBORCREEK TOWNSHIP, County of ERIE, Commonwealth of Pennsylvania, 27046184000100

Improvements consist of residential property.

Sold as the property of DANIEL CONNOLLY, IN HIS CAPACITY AS HEIR OF SEAN P. CONNOLLY A/K/A SEAN PATRICK CONNOLLY, DECEASED AND UNKNOWN HEIRS, SUCCESSORS, ASSIGNS, AND ALL PERSONS, FIRMS, OR ASSOCIATIONS CLAIMING RIGHT, TITLE OR INTEREST FROM OR UNDER SEAN P. CONNOLLY A/K/A SEAN PATRICK CONNOLLY, DECEASED

Your house (real estate) at 2703 ATHENS STREET, ERIE, PA 16510-2413 is scheduled to be sold at the Sheriff's Sale on 11/17/2017 at 10:00 AM, at the ERIE County Courthouse, 140 West 6th Street, Room 18, Erie, PA 16501-1077, to enforce the Court Judgment of \$121,266.57 obtained by, AMERICAN FINANCIAL RESOURCES, INC (the mortgagee), against the above premises.

PHELAN HALLINAN DIAMOND & JONES, LLP

Attorney for Plaintiff

Sept. 22

Erie County Bar Association

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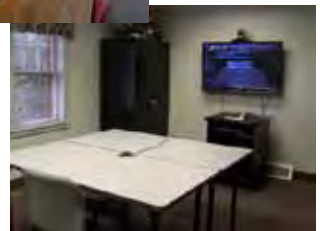
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**AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE**

**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, Agents, 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 **Wednesday, September 6, 2017** and confirmed Nisi.

October 18, 2017 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.

2017 ESTATE

ACCOUNTANT

ATTORNEY

252. Cecilia Pillar, PrincipalRobin Barthelson, Agent..... Michael A. Agresti, Esq.

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

Sept. 15, 22

ATTENTION ALL ATTORNEYS

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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

BAUR, BEVERLY P., a/k/a BEVERLY BAUR, a/k/a BEVERLY PEYTON BAUR, deceased

Late of the City of Erie, Erie County, Pennsylvania
Co-Executors: B. Douglas Baur and Suzanne Plummer Baur, c/o Nadia A. Havard, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501
Attorney: Nadia A. Havard, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

BEMER, RUTH M., deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: John J. Czurzynski, 5665 Southwestern Blvd., Unit 30B, Hamburg, NY 14075-3667
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

CEBE, CHARMAINE, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administratrix: Yvonne J. Cebe, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

DITRICH, SUSAN M., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Vincent H. Ditrich
Attorney: David J. Rhodes, Esquire, ELDERKIN LAW FIRM, 150 East 8th Street, Erie, PA 16501

GARIEPY, PEGGY L., a/k/a PEGGY GARIEPY, deceased

Late of the Borough of Lake City, County of Erie, State of Pennsylvania
Administratrix: Susan Suscheck, 13875 Ridge Road, West Springfield, PA 16443
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

GODDARD, JOHN H., deceased

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania
Administratrix: Richard D. Goddard, 6027 Pebble Creek Drive, Fairview, PA 16415
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

KLIE, THOMAS A., deceased

Late of the City of Erie, County of Erie
Executor: Melissa Klie
Attorney: Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505

MANNARINO, SILVIO J., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Michelle A. Fischer, 1404 West 54th Street, Erie, PA 16509-2432
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

RUTKOWSKI, MARJORIE A., deceased

Late of the City of Erie
Administrator: Paul McLaughlin
Attorney: John Mizner, 311 West Sixth Street, Erie, PA 16507

SCHUBECK, JANET, deceased

Late of Harborcreek Township, Erie County, Pennsylvania
Executor: Andrea F. McKenna, 1525 North Front Street, Unit 103, Harrisburg, PA 17102
Attorney: Andrea F. McKenna, Esq., 1525 North Front Street, Unit 103, Harrisburg, PA 17102

SECOND PUBLICATION

BAGOSI, LOUIE, deceased

Late of Fairview Township, Erie County, Pennsylvania
Executrix: Joan Summerville, c/o Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501
Attorney: Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

BORDEN, KATHLEEN C., a/k/a KATHLEEN CONSTANCE BORDEN, a/k/a KAY BORDEN, a/k/a KATHLEEN KELLY, deceased

Late of the Township of North East
Executor: Paul A. Borden
Attorney: Marsh, Spaeder, Baur, Spaeder & Schaff, LLP, Michael G. Nelson, Esquire, 300 State Street, Suite 300, Erie, Pennsylvania 16507

COCCO, VINCENZA MARIE, a/k/a VINCENZA M. COCCO, deceased

Late of the City of Erie, County of Erie, State of Pennsylvania
Executrix: Marguerite Seymour, 8404 Winding Wood Drive, Port Richey, FL 34668
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**COPELAND, SAMUEL T., JR.,
deceased**

Late of the City of Erie, County of Erie
Administrator: Veronica Lyons, 1341 Timber Ridge Dr., Erie, Pennsylvania 16509
Attorney: None

**JOHNSON, DOROTHY H., a/k/a
DOROTHY HAZEL JOHNSON,
deceased**

Late of Millcreek Township, Erie County
Executrix: Betty L. Holmwood, 4933 School Street, McKean, PA 16426
Attorney: None

**KOHLER, WILLIAM E.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Charlene Antalek, 4630 Diplomat Drive, Stow, OH 44224
Attorney: Thomas S. Kubinski, Esquire, The Conrad - F.A. Brevillier House, 502 Parade Street, Erie, PA 16507

**MCCARTHY, MICHAEL,
deceased**

Late of the Township of Lawrence Park, County of Erie and Commonwealth of Pennsylvania
Executrix: Kathy Krawczyk, c/o Charbel G. Latouf, Esquire, Latouf Law Firm, 246 West 10th Street, Erie, PA 16501
Attorney: Charbel G. Latouf, Esquire, Latouf Law Firm, 246 West 10th Street, Erie, PA 16501

**REYNAUD, LEO H., JR.,
deceased**

Late of the Township of Harborcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Betty Jane Reynaud, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**SHELLITO, HARVEY H.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Lisa J. Danielczyk, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

THIRD PUBLICATION

**CYTERSKI, NORBERT ADAM,
deceased**

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania
Administratrix: Jackie Freeman, c/o John J. Shimek, III, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

**FLICK, MELVA M., a/k/a MELVA
FLICK,
deceased**

Late of Township of Harborcreek, Erie County, Commonwealth of Pennsylvania
Executrix: Elaine A. Zohns, c/o 120 W. 10th Street, Erie, PA 16501
Attorney: Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

**HUCK, MARY LOUISE,
deceased**

Late of the City of Erie, County of Erie
Executor: Barbara Little
Attorney: Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505

**MAROGLIO, TERESA A., a/k/a
TERESA ANN MAROGLIO,
deceased**

Late of North East Township, Erie County, PA
Executrix: Tamara A. Maas, 9300 W. Middle Road, North East, PA 16428
Attorney: Leigh Ann Orton, Esq., Sebald Hackwelder Orton, 68 East Main Street, North East, PA 16428

**SPINELLI, CAROLANN,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Robert D. Spinelli, Jr.
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 150 East 8th Street, Erie, PA 16501

**WEBER, JEAN, a/k/a JEAN H.
WEBER,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Roger Weber, 2923 Post Ave., Erie, PA 16508
Attorney: Gary K. Schonhaler, Esquire, The Conrad - F.A. Brevillier House, 502 Parade Street, Erie, PA 16507

**WEISS, EDWARD W., a/k/a
EDWARD WEISS, a/k/a
WILLIAM WEISS,
deceased**

Late of the Township of Millcreek
Executrix: Nancy J. Brent
Attorney: Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Michael G. Nelson, Esquire, 300 State Street, Suite 300, Erie, Pennsylvania 16507

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