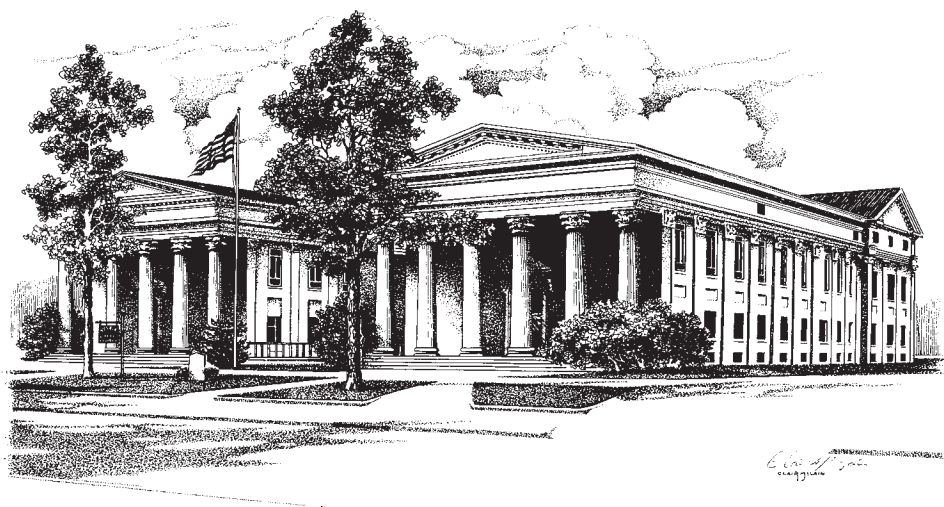


Erie County Legal Journal

March 26, 2021

Vol. 104 No. 13



104 ERIE 24-38

**Deborah A. Lomax, Administratrix for the Estate of Rufus Lomax, deceased
v. Care One, LLC, et al.**

Erie County Legal Journal

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

Managing Editor: Megan E. Anthony

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Erie County Bar Association

Calendar of Events and Seminars

TUESDAY, MARCH 30, 2021

Solo/Small Firm Division Meeting
Noon
via Zoom

WEDNESDAY, MARCH 31, 2021

ECBA Wellness Wednesdays Series
Lunchtime Yoga
Noon
via Zoom

THURSDAY, APRIL 1, 2021

In-house Counsel Division Meeting
Noon
via Zoom

FRIDAY, APRIL 2, 2021

Good Friday Holiday
ECBA Office Closed
Erie County Courthouse Closed

TUESDAY, APRIL 6, 2021

AKT 5K Committee Meeting
Noon
via Zoom

THURSDAY, APRIL 8, 2021

Bankruptcy Section Meeting
Noon
via Zoom

TUESDAY, APRIL 13, 2021

Diversity and Inclusion Division
Membership Support Subcommittee Meeting
Noon
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MONDAY, APRIL 19, 2021

Diversity and Inclusion Division
Data Subcommittee Meeting
Noon
via Zoom

TUESDAY, APRIL 20, 2021

Young Lawyers Division Meeting
Noon
via Zoom

WEDNESDAY, APRIL 21, 2021

ECBA Live Seminar
PA Disciplinary System and Criminal Practice
View Attorney Thomas J. Farrell via Zoom
Conferencing at The Will J. Schaaf & Mary B. Schaaf
Education Center or via Zoom
11:45 a.m. - Registration
Noon - 1:00 p.m. - Seminar
\$47 (ECBA members/their non-attorney staff)
\$60 (non-members)
1 hour ethics

MONDAY, APRIL 26, 2021

ECBA Board of Directors Meeting
Noon
via Zoom

TUESDAY, APRIL 27, 2021

Solo/Small Firm Division Meeting
Noon
via Zoom

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Mar. 26

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**DEBORAH A. LOMAX, ADMINISTRATRIX
FOR THE ESTATE OF RUFUS LOMAX, DECEASED**

v.

**CARE ONE, LLC; 4114 SCHAPER AVENUE OPERATING COMPANY, LLC
D/B/A PRESQUE ISLE REHABILITATION AND NURSING CENTER;
CARE ONE MANAGEMENT, LLC; HEALTHBRIDGE MANAGEMENT, LLC;
DES HOLDING CO., INC.; THCI HOLDING COMPANY, LLC;
THCI COMPANY, LLC; CARE VENTURES, INC.; CARE REALITY, LLC;
SHOLIN J. MONTGOMERY, NHA**

*ALTERNATIVE DISPUTE RESOLUTION / ARBITRATION /
PERFORMANCE, BREACH, ENFORCEMENT, AND CONTEST*

A trial court must permit additional evidence to determine the issue of whether compelling arbitration is appropriate since preliminary objections in the nature of compelling arbitration cannot be resolved from mere pleadings of record.

*ALTERNATIVE DISPUTE RESOLUTION / ARBITRATION /
PERFORMANCE, BREACH, ENFORCEMENT, AND CONTEST*

A trial court must exercise its discretion properly with findings supported by substantial evidence in ruling on preliminary objections in the nature of compelling arbitration.

*ALTERNATIVE DISPUTE RESOLUTION / ARBITRATION /
AGREEMENTS TO ARBITRATE*

Pennsylvania courts employ a two-part test in determining whether to compel arbitration: (1) whether a valid agreement to arbitrate exists; and (2) whether the dispute is within the scope of the agreement.

ALTERNATIVE DISPUTE RESOLUTION / ARBITRATION

The party seeking to compel arbitration has the burden of proving a valid agreement to arbitrate existed between the parties.

CONTRACTS / VALIDITY OF CONTRACT

Trial courts must consider three factors in determining whether an agreement is valid: whether both parties have manifested an intent to be bound by the terms of the agreement, whether the terms are sufficiently definite, and whether consideration existed. If a trial court finds all three factors exist, said agreement shall be considered valid and binding.

CONTRACTS / CAPACITY TO CONTRACT

Under Pennsylvania law, it is presumed that an adult is competent to enter into an agreement, and a signed document gives rise to the presumption that it accurately expresses the state of mind of the signing party. The challenger must present clear, precise and convincing evidence to rebut this presumption.

ALTERNATIVE DISPUTE RESOLUTION / ARBITRATION / WHAT LAW GOVERNS

The intent of the Federal Arbitration Act is to place arbitration agreements upon the same footing as other contracts. Pennsylvania courts also hold arbitration agreements are to be analyzed on the same footing as other contracts. Pennsylvania has a well-established public policy that favors arbitration, and this policy aligns with the federal approach expressed in the Federal Arbitration Act. However, applying state law equally to all contracts is not preempted by the FAA.

CONTRACTS / LEGALITY / DEFENSES / UNCONSCIONABILITY

The doctrine of unconscionability is both a statutory and common law defense to enforcement of an allegedly unfair contract or provision in a contract. Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. The party challenging the agreement bears the burden of proof.

CONTRACTS / LEGALITY / DEFENSES / UNCONSCIONABILITY

An unconscionability analysis requires a two-fold determination: (1) that the contractual terms are unreasonably favorable to the drafter (substantive unconscionability), and (2) that there is no meaningful choice on the part of the other party regarding the acceptance of the provisions (procedural unconscionability).

CONTRACTS / LEGALITY / CONTRACTS OF ADHESION

Pennsylvania case law indicates a contract of adhesion is a standardized contract form offered to consumers of goods and services on essentially ‘take it or leave it’ basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product or services except by acquiescing in form contract. The most distinctive feature of an adhesion contract is that the “weaker party” has no realistic choice as to its terms.

ALTERNATIVE DISPUTE RESOLUTION / ARBITRATION / WHAT LAW GOVERNS

The purpose of the Federal Arbitration Act is to alleviate parties from expensive litigation and to facilitate the already crowded court calendars. Passage of the FAA was intended to enforce arbitration agreements between parties according to the terms of the agreement.

***ALTERNATIVE DISPUTE RESOLUTION / ARBITRATION /
AGREEMENTS TO ARBITRATE***

An agreement to arbitrate and a liberal policy favoring arbitration does not mean a court simply can rubber stamp these disputes as subject to arbitration. A trial court must still determine whether or not to compel arbitration.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

NO. 10167-2017

344 WDA 2020

Appearances: Corey S. Young, Esq., for Plaintiff/Appellee
John C. Eustice, Esq., for Defendants/Appellants

1925(a) OPINION

Domitrovich, J.,

April 30, 2020

Deborah Lomax [hereinafter Appellee] commenced this civil action as Administratrix for her deceased uncle, Rufus Lomax [hereinafter Decedent]. In her Complaint, Appellee alleged Appellants were negligent in their care of Decedent for numerous reasons such as: failing to hire and train sufficient staff, failing to provide adequate hygiene to prevent infection, failing to turn and reposition Decedent once every two hours, failing to render appropriate medical treatment for Decedent’s conditions, failing to provide and administer appropriate medication to Decedent, and failing to notify Decedent’s family and personal representatives

of significant changes in his condition. Appellants filed Preliminary Objections to dismiss Appellee's Complaint under Pa.R.C.P. 1028(a)(6) and compel this instant civil action to arbitration. Appellants alleged a valid agreement to arbitrate exists and that the claims brought by Appellee are subject to the Arbitration Clause signed by Decedent. After making specific Findings of Fact and Conclusions of Law, this Trial Court entered an Order whereby this Trial Court overruled Appellants' Preliminary Objections to compel the instant civil action to arbitration.

On appeal, counsel for Appellants set forth nine (9) paragraphs in their "Defendants' Statement of Errors Complained of on Appeal" which this Trial Court combines into two issues consistent with the two issues below: (1) Whether the Trial Court properly analyzed the validity of this agreement to arbitrate according to the Federal Arbitration Act and Pennsylvania contract law; and (2) Whether this Trial Court properly found and concluded this Arbitration Clause is procedurally and substantively unconscionable under the Federal Arbitration Act and Pennsylvania contract law.

After considering testimony of witnesses and exhibits and reviewing Appellee's Proposed Findings of Fact and Conclusions of Law and Appellants' Proposed Findings of Fact and Conclusions of Law and accompanying Briefs and Rebuttal Briefs as well as pleadings and memoranda of law of record, this Trial Court entered the following specific Findings of Fact:

Rufus Lomax [hereinafter Decedent] is a double amputee below the knee who was completely bedbound and also diagnosed, among other medical issues, with dementia and depression. Decedent had been hospitalized in March of 2015 prior to admission to Presque Isle Rehabilitation and Nursing Center. (77:23-78:1). Thereafter, Decedent voluntarily presented himself for admission at Presque Isle Rehabilitation and Nursing Center on March 27, 2015. (Plaintiffs Ex 1; 42:10-12). Decedent died on September 26, 2015. (See Plaintiff's Complaint).

On December 26, 2016, the Register of Wills of Erie County appointed Decedent's niece, Deborah Lomax [hereinafter Appellee], as Administratrix for the Estate of Decedent. (See Plaintiff's Complaint). Appellee, as Administratrix of the Estate of Decedent, filed a Writ of Summons on January 1, 2017. (See Writ of Summons).

In 2005, Decedent moved to an assisted living facility, Schmid Towers, where he resided in a handicap apartment with bathroom facilities built for a person in a wheelchair. Schmid Towers as a facility had a nurse on duty. (74:9-75:5). While at Schmid Towers, Decedent was cared for by Appellee who made his meals, ran his errands, attended his emergency room and doctors' visits and acted as his "spokesperson." (75:10-19). After Appellee retired, she began working for Decedent through a senior program at Greater Erie Community Action Committee ("GECAC") from 2010 until he entered Presque Isle Rehabilitation and Nursing Center. (75:20-76:24).

Decedent was also an outpatient at the Erie Eye Clinic. Appellee often assisted Decedent due to his poor eyesight. (83:19-84:13). Appellee stated Decedent was supposed to have cataract surgery on his eyes, but "[h]e didn't want it. He said after the surgeries he had had previously, that he did not want no more surgeries." (89:3-13). Appellee stated Decedent had told her he had trouble reading small print during his last year of life. (84:10-13). Appellee recalled Decedent stopped reading the newspaper a few years before Decedent's death. Appellee stated Decedent never read anything including books or sports box scores. Decedent had "a couple of books in his apartment but he never read them. They had a library

in the basement of Schmid and he would pick up a book, but never read it.” (88:4-19). When Appellee attempted to throw his newspapers away, Decedent stopped her from doing so. Decedent told her “[o]h, no, no, no, I’m going to get to it.” (83:24-85:3). Appellee would also “restart [Decedent’s] television” since Decedent was unable to see the buttons on the remote and would “mess the TV up.” (84:4-9).

While Decedent was living at Schmid Towers, Decedent was in a significant amount of pain. He experienced sores on his body as well as he fell and injured his head due to his weakness and other health issues. (77:8-18). Decedent was “depressed a lot, sad. A lot of times.” Decedent was becoming more of a “loner.” (77:3; 77:17-18). In March of 2015, Decedent was hospitalized at Saint Vincent Hospital due to a urinary tract infection and resulting complications. (77:23-78:1). During his time at Saint Vincent Hospital, Decedent made the decision to enter a nursing home. (79:24-80: 10). Presque Isle Rehabilitation and Nursing Center “was one of the only open facilities for [Decedent], due to his insurance.” (95:9-14).

Appellee was not with Decedent on the day of his admission to Presque Isle Rehabilitation and Nursing Center. The first time Appellee saw him after his admission was the following Monday, three days later. (80:14-22). When Decedent was admitted to Presque Isle Rehabilitation and Nursing Center, he was underweight which “made him more weak.” (93:11-25). Since Decedent was “substantially thinner than what he was” at the time of admission to Presque Isle Rehabilitation and Nursing Center, this impacted his physical state. (93:11-94:11).

Several witnesses testified such as Darlene Stokes. Darlene Stokes [hereinafter Ms. Stokes] worked as a Licensed Practical Nurse [hereinafter LPN] at Presque Isle Rehabilitation and Nursing Center for approximately nine (9) years until June 2015. (36:3-37:13). As an LPN at Presque Isle Rehabilitation and Nursing Center, Ms. Stokes regularly administered admission assessments. (44:14-45:7). On March 27, 2015, Ms. Stokes administered the admission assessment on Decedent. (Plaintiff’s Ex 1; 42:10-12). Darlene Stokes does not remember first-hand seeing either Decedent or Plaintiff at Presque Isle Rehabilitation and Nursing Center. (38:1-14).

Ms. Stokes diagnosed Decedent with several conditions, including a bilateral amputation below the knee, dementia, and depression. (Plaintiff’s Exhibit 1; 45:8-23). Ms. Stokes’s notes on the Resident Evaluation Form indicated Decedent was “happy” to be receiving the help he needed at Presque Isle Rehabilitation and Nursing Center. (Plaintiff Exhibit 1; 46:13-16).

Ms. Stokes also analyzed Decedent’s vision and found vision was poor in both eyes. (Plaintiff Exhibit 1; 46:20-47:4). When completing the Resident Evaluation Form, Ms. Stokes defined Decedent’s poor vision as: “Poor, it can be a difference of, you know, when they’re writing something or looking at something that may be difficult for them, but they may recognize faces or, you know, it depends on the proximity of the person that’s in front of them[.]” (47:10-14). When Ms. Stokes administered a “fall risk assessment” on Decedent, Ms. Stokes determined Decedent’s vision was “poor with or without glasses.” (50:19-23). Ms. Stokes stated he had “poor vision” and if Decedent did “have glasses, then his vision would still be poor.” (51:9-11).

Decedent was extremely dependent on the staff at Presque Isle Rehabilitation and Nursing Center to assist him with his daily needs such as: transfer from his bed, using the toilet, dressing himself, daily hygienic needs, and bathing. (55:8-56:11). Presque Isle Rehabilitation

and Nursing Center was responsible for providing Decedent with all levels of assistance that he needed. (57:12-15).

Another witness was Wendy Stockhausen [hereinafter Ms. Stockhausen], the Director of Nursing at Presque Isle Rehabilitation and Nursing Center in March of 2015. (165:23-25). Ms. Stockhausen oversaw the nursing at Presque Isle Rehabilitation and Nursing Center and performed audits of the residents' charts to comply with state and federal regulations. (166:13-168:4). Ms. Stockhausen stated Decedent's vision status was poor based on the Resident Evaluation Form. She indicated: "It means he probably needed glasses. Or, you know, even with his glasses on, he probably didn't see that well." (185:17-22).

Another witness is Kara Calandrelli [hereinafter Ms. Calandrelli], the former admissions coordinator at Presque Isle Rehabilitation and Nursing Center. (101:17-20). During her time as admissions coordinator, Ms. Calandrelli was responsible to "sign people in, give them tours, talk to the families." (104:11-15).

Ms. Calandrelli was responsible for presenting the admissions paperwork with an incoming resident and would admit approximately ten (10) to fifteen (15) residents a week. (104:16-23). When Decedent entered Presque Isle Rehabilitation and Nursing Center, Ms. Calandrelli was the Admissions Coordinator. (101:23-102:16). Ms. Calandrelli had no specific independent recollection of Decedent at this facility. (108:11-109:12). Ms. Calandrelli had no recollection of the day Decedent was admitted and did not recall presenting the admissions agreement to Decedent. (108:11-18). Ms. Calandrelli had no independent recollection of whether Decedent talked to her on the date of his admission or whether Decedent asked any questions during the admissions process. (108:25-109:5).

Upon entering the facility, Ms. Calandrelli would present a resident with a twenty (20) page admissions agreement and additional exhibits. (110:1-10). Ms. Calandrelli presented the admissions agreement to a resident in that resident's room. (111:5-8). This admissions process commenced with Ms. Calandrelli visiting a resident's room and introducing herself. (111:9-11). Ms. Calandrelli testified she would have a resident read each page to themselves and then sign or initial where appropriate. (111:12-15). Ms. Calandrelli looked at what topics were on the page and then would introduce the topics on each page to a resident. Several topics were on each page. (119:12-15). Ms. Calandrelli asked a resident whether he or she had any questions. If a resident did, Ms. Calandrelli answered the questions herself. (111:16-21).

Ms. Calandrelli indicated she worked with residents who had difficulty reading admissions agreements page by page. (111:22-25). The total time to process each resident for admission was approximately forty-five (45) minutes to one (1) hour. (112:1-5). When a resident encountered difficulty reading certain pages of the admissions agreement, Ms. Calandrelli, a non-lawyer, offered her own explanation as to what she thought that page meant. (112:17-21).

Ms. Calandrelli determined whether a resident was not competent to read or could not answer simple questions such as "who are they, what the dates (*sic*) is." In these scenarios, she involved a family member, a power of attorney, or a guardian who was "in charge" of the resident. (113:3-12). However, the record indicates Appellee, a close family member of Decedent, was never involved in Ms. Calandrelli's routine admissions procedure. (80:14-22).

During her time as admissions coordinator, Ms. Calandrelli worked with residents who were visually impaired. (113:17-19). If a resident was visually impaired, Ms. Calandrelli involved a family member to ensure the resident understood the terms of the agreement.

(113:20-23). Although Ms. Calandrelli indicated she would not be able to proceed with the admissions process if a resident was alone “because they [resident] needed somebody to help them,” Ms. Calandrelli proceeded with the admissions process and review of the agreement with Decedent who arrived alone. (113:24-114:1). Ms. Calandrelli explained if a resident was visually impaired and did not have a family member present with them, she could not proceed with the admissions process since the resident would be unable to agree to anything. (114:2-11). However, the record does not explain why Ms. Calandrelli did not incorporate her routine procedure with Decedent.

When a resident did not have any family members, Ms. Calandrelli routinely contacted the Erie Office on Aging for someone to assist the resident. (115:20-24). This record does not demonstrate Ms. Calandrelli contacted the Erie Office on Aging to assist Decedent although no family member was with Decedent. Ms. Calandrelli admitted she would not have gone forward with the admissions process knowing Decedent could not read small print, like the admissions agreement, and was without a family member to support him. (118:17-21). When asked why Ms. Calandrelli still presented the agreement to Decedent, Ms. Calandrelli was unable to answer as she did not independently recall who Decedent was. (118:22-25).

Ms. Calandrelli testified if a resident would not sign the admission agreement, she would then seek direction from her boss, resulting in Presque Isle Rehabilitation and Nursing Center contacting a family member to be present during the time of presentation of the admission agreement with the resident. (120:18-121:3). The record does not indicate she did so in this case. Having admitted ten (10) to fifteen (15) patients per week, Ms. Calandrelli never informed a resident the admissions agreement was optional nor does Ms. Calandrelli remember any resident ever asking if the admissions agreement was mandatory or optional. (121:10-122:7). The admissions agreement contains a clause in which a resident can be involuntarily discharged from this facility for non-payment of fees. (124:1-18). In the admissions agreement, a number of clauses such as inclusion in the facility directory and consent for photography contained options in which a resident can opt-in or opt-out of those specific clauses. (125:24-126:25). Other clauses, such as consent to care and consent to arbitration, did not contain such opt-in or opt-out provisions. (127:1-12; 131:2-7).

As to consent to care, Ms. Calandrelli knew residents did not have to sign the Agreement to receive care as Presque Isle Rehabilitation and Nursing Center is responsible for the resident from the time they arrive. (130:5-9). Regarding the Arbitration Clause, Ms. Calandrelli introduced this section by having a resident read the page to himself or herself and then asking if that resident had any questions. If a resident had questions regarding the page, Ms. Calandrelli would then address that resident’s questions. (130:12-19). If a resident had no questions, Ms. Calandrelli did not offer an explanation. Ms. Calandrelli explained the Arbitration Clause to residents as follows: “So I would say arbitration is where parties meet and an arbitrator would be there to hear both sides. And then the arbitrator would make the decision, just like a judge. And it’s binding and it’s a legal — like whatever the outcome is, it’s a legal finding, so.” (130:20-25). The explanation given by Ms. Calandrelli above is her full and complete routine explanation of this Arbitration Clause she gave to a resident who had questions. (131:20-23). Ms. Calandrelli only provided an explanation to a resident if a resident had a question, but she would not provide an explanation if a resident had no questions regarding the Arbitration Clause. (132:1-13). Ms. Calandrelli did not explain to a

resident the following: a resident could not sue the facility in court; the Arbitration Clause applied even if the facility injured or killed a resident; and that a resident was relinquishing his or her right to a jury trial. (132:23-133:7; 133:19-21).

Furthermore, Ms. Calandrelli did not include topics such as fees or costs associated with arbitration; damages awarded from arbitration; and selection of an arbitrator. (134:2-135:3). Ms. Calandrelli is not familiar with the Commercial Arbitration Rules of the American Arbitration Association and did not include an explanation of these rules when she talked to a resident during the admissions process. (134:24-136:4). Ms. Calandrelli indicated no resident ever negotiated provisions of the agreement and no resident ever provided a counteroffer to this admissions agreement. (144:12-25). When asked whether a resident could have negotiated as to the terms contained in the admissions agreement, Ms. Calandrelli responded “No.” (144:20-145:1). When asked whether she had any reason to believe Decedent understood the admissions agreement, Ms. Calandrelli stated: “Well, he signed the pages.” (146:21-23).

Ms. Calandrelli testified she signed her name on Decedent’s admissions agreement and indicated she printed Decedent’s name on the admissions agreement. (106:21-107:16). However, Appellee stated the signatures and initials on the admission agreement were not Decedent’s signature or initials. (82:14-83:18). Appellee indicated she was very familiar with Decedent’s signature since she had been reimbursed by Decedent for purchases and viewed his signature in the past from documents associated with the visiting nurse, hospitals, and discharge papers. (81:3-16). When a resident signed the admissions agreement, Ms. Calandrelli provided no other basis as to why she believed this Decedent actually understood the contents of the agreement and what he was signing. (146:24-148:12). Ms. Calandrelli determined a resident’s competency to sign the admissions agreement by only reviewing written documentation such as nurse’s assessment records and hospital documents. (154:16-24).

The Arbitration Clause as contained within the admissions agreement reads as follows:

ARTICLE XIV
DISPUTE RESOLUTION AND ARBITRATION

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT AND BROUGHT BY THE RESIDENT, HIS/HER PERSONAL REPRESENTATIVE, HEIRS, ATTORNEYS OR THE RESPONSIBLE PARTY SHALL BE SUBMITTED TO BINDING ARBITRATION BY A SINGLE ARBITRATOR SELECTED AND ADMINISTERED PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. A CLAIM SHALL BE WAIVED AND FOREVER BARRED IF, ON THE DATE THE DEMAND FOR ARBITRATION IS RECEIVED, THE CLAIM (IF ASSERTED IN A CIVIL ACTION) WOULD BE BARRED BY THE APPLICABLE STATE OR FEDERAL STATUTE OF LIMITATIONS. ANY CLAIMANT CONTEMPLATED BY THIS PARAGRAPH HEREBY WAIVES ANY AND ALL RIGHTS TO BRING SUCH CLAIM OR CONTROVERSY IN ANY MANNER NOT EXPRESSLY SET FORTH IN THIS PARAGRAPH INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO A JURY TRIAL.

____ (Initialed on behalf of Resident Parties)

No reciprocal clause is contained within the Admissions Agreement in which Presque Isle Rehabilitation and Nursing Center relinquishes its right to a trial by jury or its right to pursue a legal action in a court of law. No clause requires Presque Isle Rehabilitation and Nursing to submit to arbitration or alternative dispute resolution in pursuing its claims against a resident. (*See* Admissions Agreement).

Appellants' first issue concerns this Trial Court's analysis of the validity of the agreement to arbitrate. First of all, a trial court must permit additional evidence to determine the issue of whether compelling arbitration is appropriate since preliminary objections in the nature of compelling arbitration cannot be resolved from mere pleadings of record. *Davis v. Center Management Group, LLC*, 192 A.3d 173, 183 (Pa. Super. 2018). A trial court must exercise its discretion properly with findings supported by substantial evidence in ruling on preliminary objections in the nature of compelling arbitration. *Washburn v. Northern Health Facilities, Inc.*, 2015 PA Super 168, 121 A.3d 1008, 1012 (2015). In the instant case, this Trial Court permitted additional evidence and made specific Findings of Fact and Conclusions of Law derived from reviewing the testimony of witnesses as well as the exhibits.

This Trial Court then determined the validity of this agreement to arbitrate by citing relevant Pennsylvania contract case law: Pennsylvania courts employ a two-part test in determining whether to compel arbitration: (1) whether a valid agreement to arbitrate exists; and (2) whether the dispute is within the scope of the agreement. *Bair v. Manorcare of Elizabethtown, PA, LLC*, 108 A.3d 94, 96 (Pa. Super. 2015). If a trial court determines a valid agreement to arbitrate exists, said trial court must then determine if the dispute is within the scope of the agreement. *Id.* The party seeking to compel arbitration has the burden of proving a valid agreement to arbitrate existed between the parties. *Id.* Trial courts must consider three factors in determining whether an agreement is valid: "whether both parties have manifested an intent to be bound by the terms of the agreement, whether the terms are sufficiently definite, and whether consideration existed." *Johnston the Florist, Inc. v. TEDCO Const. Corp.*, 657 A.2d 511, 516 (Pa. Super. 1995). If a trial court finds all three factors exist, said agreement "shall be considered valid and binding." *Id.*

Moreover, "[t]here must be a meeting of minds in order to constitute a contract." *Quiles v. Financial Exchange Co.*, 879 A.2d 281, 285 (Pa. Super. 2005) (*citing Cohn v. Penn Beverage Co.*, 169 A. 768-69 (Pa. 1934); *Parsons Brothers Slate Company v. Commonwealth*, 211 A.2d 423, 424 (Pa. 1965)). A meeting of the minds exists when "both parties mutually assent to the same thing, as evidence by an offer and its acceptance." *Prieto Corp. v. Gambone Const. Co.*, 100 A.3d 602, 609 (Pa. Super. 2014) (*citing Refuse Management Systems, Inc. v. Consolidated Recycling and Transfer Systems, Inc.*, 671 A.2d 1140, 1146 (Pa. Super. 1996)). Meeting of the minds is "whether the parties agreed in a clear and unmistakable manner to arbitrate their disputes." *Bair* at 97.

"Under Pennsylvania law, it is presumed that an adult is competent to enter into an agreement, and a signed document gives rise to the presumption that it accurately expresses the state of mind of the signing party." *Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 50 (Pa. Super. 2017). The challenger must present clear, precise and convincing evidence to rebut this presumption. *Id.* "This burden of proof requires that the witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct,

weighty and convincing as to enable the [finder of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.” *Cardinal* at 50 (citing *Evans v. Marks*, 218 A.2d 802, 804 (Pa. 1966)).

In the instant case, Appellee presented evidence to rebut the presumption Decedent knew what he was signing when he signed the Admissions Agreement containing the Arbitration Clause. The evidence indicated Decedent had poor eyesight and difficulty reading with or without glasses. Since Appellee was a very close niece of Decedent and acted as a spokesperson for Decedent at doctors’ appointments, Decedent told her he had trouble reading small print during his last year of life. (84:10-13). Decedent was an outpatient at the Erie Eye Clinic, and Appellee often assisted Decedent due to his poor eyesight. (83: 19-84:13). Appellee stated Decedent was supposed to have cataract surgery on his eyes, but “[h]e didn’t want it. He said after the surgeries he had had previously, that he did not want no more surgeries.” (89:3-13).

Appellee recalled Decedent stopped reading the newspaper a few years before Decedent’s death. Appellee stated Decedent never read anything including books or sports box scores. Decedent had “a couple of books in his apartment but he never read them. They had a library in the basement of Schmid and he would pick up a book, but never read it.” (88:4-19). When Appellee attempted to throw his newspapers away, Decedent stopped her from doing so. Decedent told her “[o]h, no, no, no, I’m going to get to it.” (83:24-85:3). Appellee would also “restart [Decedent’s] television” since Decedent was unable to see the buttons on the remote and would “mess the TV up.” (84:4-9).

This Trial Court’s Findings of Fact indicate Decedent entered Presque Isle Nursing and Rehab Center on March 27, 2015 following a hospitalization at Saint Vincent Hospital. Upon entry to the facility, Decedent was assessed by a Licensed Practical Nurse [LPN] as indicated by Ms. Stokes’s signature on Decedent’s admissions assessment. Ms. Stokes determined Decedent’s vision was “poor” with or without glasses and also diagnosed Decedent with dementia and depression. (45:8-23; 50:19-23)

Ms. Stockhausen was the Director of Nursing at Presque Isle Rehabilitation and Nursing Center in March of 2015. Ms. Stockhausen determined Decedent’s vision was “poor” based on the Resident Evaluation Form. Ms. Stockhausen defined “poor” as: “It means he probably needed glasses. Or, you know, even with his glasses on, he probably didn’t see that well” based on the Resident Evaluation Form. (185:17-22).

Ms. Calandrelli, as the former admissions coordinator at Presque Isle Rehabilitation and Nursing Center, was responsible to “sign people in, give them tours, talk to the families.” (104:11-15). Ms. Calandrelli was responsible for presenting the admissions paperwork to an incoming resident. She would admit approximately ten (10) to fifteen (15) residents a week. (104:16-23). Ms. Calandrelli indicated that if a resident arrived alone, Ms. Calandrelli would contact a family member to be present during the admissions procedure. If a resident had poor eyesight, her normal procedure was to have a family member present to assist with explanation of the Admissions Agreement. Ms. Calandrelli stated she would not move forward with the Admissions Agreement being signed by a resident if she knew a resident could not read small print. The record indicates she did not call a family member to be present to assist with Decedent’s admissions process. If no family member was available, Ms. Calandrelli would have contacted the Erie Office on Aging in her normal routine. The record does not indicate Ms. Calandrelli contacted the Erie Office on Aging to assist Decedent.

During the admissions process, Ms. Calandrelli merely introduced topics on each page of the agreement and residents such as Decedent were expected to read the requisite page of the Admissions Agreement to themselves. Ms. Calandrelli introduced the Arbitration Clause to Decedent as she did with other residents in her normal routine: “So I would say arbitration is where parties meet and an arbitrator would be there to hear both sides. And then the arbitrator would make the decision, just like a judge. And it’s binding and it’s a legal — like whatever the outcome is, it’s a legal finding, so.” (130:20-25). Clearly, this Arbitration Clause refers to the Commercial Arbitration Rules of the American Arbitration Association; however, Ms. Calandrelli never explained the Commercial Arbitration Rules of the American Arbitration Association to a resident during the admissions process because she was not familiar with said rules and their application. (134:24-136:4).

Moreover, Ms. Calandrelli did not seek advice from her boss when the record demonstrates Decedent’s vision was “poor” with or without glasses. Ms. Calandrelli proceeded with the admissions process knowing Decedent was both alone and would have difficulty reading small print such as the Admissions Agreement. Ms. Calandrelli did not incorporate her normal routine practice in administering the Admissions Agreement to Decedent.

Also, Decedent received no consideration for his relinquishment of his right to a trial by jury and his right to pursue a cause of action against Presque Isle Rehabilitation and Nursing in a court of law. Presque Isle Rehabilitation and Nursing Center provided no explanation why Decedent would relinquish his important right to a trial by jury and to pursue his cause of action in court, and yet Presque Isle Rehabilitation and Nursing Center retained its right to a trial by jury and its right to pursue a legal action in a court of law. Presque Isle Rehabilitation and Nursing Center did not agree to arbitrate its own claims against Decedent instead of seeking judicial adjudication. No additional benefit was provided to Decedent for relinquishing his right to a trial by jury. Decedent was a customer and patient who sought medical care and treatment from Presque Isle Rehabilitation and Nursing Center and paid for the medical care and treatment he received.

Therefore, Appellee presented clear, precise and convincing evidence that Decedent was unaware as to the meaning of or the impact on him as to the Arbitration Clause in signing the Admissions Agreement. Decedent had poor eyesight and trouble reading with or without glasses. Decedent was not capable of reading and comprehending this Admissions Agreement which waived his important rights through this Arbitration Clause. Decedent did not manifest an intent or a meeting of the minds to be bound by the terms of this Arbitration Clause. Furthermore, Ms. Calandrelli did nothing to inform fully and completely Decedent of the Arbitration Clause and the repercussions of said Clause. The parties did not agree in a clear and unmistakable manner to arbitrate their disputes, and thus, no meeting of the minds existed with the Decedent.

Furthermore, when analyzing the validity of an arbitration clause, trial courts should generally apply ordinary state-law principles governing the formation of contracts, “but in doing so, must give due regard to the federal policy favoring arbitration.” *Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 53 (Pa. Super. 2017). The intent of the Federal Arbitration Act [hereinafter FAA] is to place arbitration agreements “upon the same footing as other contracts.” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974). Pennsylvania courts also hold arbitration agreements are to be analyzed on the “same footing” as other contracts. *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 501 (Pa. 2016); *Salley*

v. *Option One Mortg. Corp.*, 925 A.2d 115, 118-19 (Pa. 2007); *Kohlman v. Grane Healthcare Company*, No. 114 WDA 2019, --- A.3d --- *3 (Pa. Super, 2020); *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 879 (Pa. Super. 2006).

Pennsylvania law and Federal law require arbitration agreements be enforced as written. *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 880 (Pa. Super. 2006). Moreover, arbitration provisions can “be set aside only for generally recognized contracted defenses such as duress, illegality, fraud and unconscionability.” *Id.* “Pennsylvania has a well-established public policy that favors arbitration, and this policy aligns with the federal approach expressed in the Federal Arbitration Act.” *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 660 (Pa. Super. 2013). However, applying state law equally to all contracts is not preempted by the FAA. *Thibodeau* at 880. As indicated in this Trial Court’s Conclusions of Law at page 15, “Trial courts generally apply state law contract principles, but must give consideration to the federal policy favoring arbitration.” (Trial Court’s Conclusions of Law at p. 15). This Trial Court in the instant case properly considered and analyzed general state contract law principles applicable to all contracts in evaluating the validity of the Arbitration Clause and in due regard to the Federal Arbitration Act. Therefore, Appellants’ first issue is without merit.

Appellants’ second issue concerns this Trial Court’s finding and concluding this Arbitration Clause is procedurally and substantively unconscionable. As recognized by this Trial Court in the instant case in this Trial Court’s Findings of Fact and Conclusions of Law at page 20, under both Pennsylvania law and the Federal Arbitration Act, contract defenses include unconscionability, fraud, or duress and may be invoked to invalidate arbitration agreements. *Salley v. Option One Mortg. Corp.*, 925 A.2d 115, 119 (Pa. 2007).

The doctrine of unconscionability is both a statutory and common law defense to enforcement of an allegedly unfair contract or provision in a contract. *Id.* “Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. The party challenging the agreement bears the burden of proof.” *Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 53 (Pa. Super. Ct. 2017), reargument denied (Apr. 3, 2017), appeal denied, 642 Pa. 620, 170 A.3d 1063 (2017) (internal citations removed). “An unconscionability analysis requires a two-fold determination: (1) that the contractual terms are unreasonably favorable to the drafter (‘substantive unconscionability’), and (2) that there is no meaningful choice on the part of the other party regarding the acceptance of the provisions (‘procedural unconscionability’).” *Id.*

As to substantive unconscionability, the Pennsylvania Superior Court in the *Cardinal* case considered a number of terms within an arbitration agreement to determine whether the contractual terms were unreasonably favorable to the drafter: “(1) the parties shall pay their own fees and costs, similar to civil litigation practice in common pleas court; (2) a conspicuous, large, bolded notification that the parties, by signing, are waiving the right to a trial before a judge or jury; (3) a notification at the top of the agreement, in bold typeface and underlined, that it is voluntary, and if the patient refuses to sign it, ‘the Patient will still be allowed to live in, and receive services’ at the facility; (4) a provision that the facility will pay the arbitrators fees and costs; (5) a statement that there are no caps or limits on damages other than those already imposed by state law; and (6) a provision allowing the patient to rescind within thirty days.” *Cardinal v. Kindred Healthcare, Inc.*, 2017 PA Super 19,

155 A.3d 46, 53 (Pa. Super. Ct. 2017), reargument denied (Apr. 3, 2017), appeal denied, 642 Pa. 620, 170 A.3d 1063 (2017). The holding in *Cardinal* indicates an arbitration agreement lacking these terms is unconscionable. *Id.* at 55.

The instant Arbitration Clause states:

ARTICLE XIV
DISPUTE RESOLUTION AND ARBITRATION

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT AND BROUGHT BY THE RESIDENT, HIS/HER PERSONAL REPRESENTATIVE, HEIRS, ATTORNEYS OR THE RESPONSIBLE PARTY SHALL BE SUBMITTED TO BINDING ARBITRATION BY A SINGLE ARBITRATOR SELECTED AND ADMINISTERED PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. A CLAIM SHALL BE WAIVED AND FOREVER BARRED IF, ON THE DATE THE DEMAND FOR ARBITRATION IS RECEIVED, THE CLAIM (IF ASSERTED IN A CIVIL ACTION) WOULD BE BARRED BY THE APPLICABLE STATE OR FEDERAL STATUTE OF LIMITATIONS. ANY CLAIMANT CONTEMPLATED BY THIS PARAGRAPH HEREBY WAIVES ANY AND ALL RIGHTS TO BRING SUCH CLAIM OR CONTROVERSY IN ANY MANNER NOT EXPRESSLY SET FORTH IN THIS PARAGRAPH INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO A JURY TRIAL.

____ (Initialed on behalf of Resident Parties).

In the instant case as to the issue of substantive unconscionability, this Arbitration Clause **does not** state: the parties shall pay their own fees and costs similar to civil litigation practice in common pleas court; a conspicuous, large, **bolded** notification that the parties, by signing, are waiving the right to a trial before a judge or jury; a notification at the top of the agreement, in **bold typeface** and underlined, that it is voluntary, and if the patient refuses to sign it, the patient is still allowed to live in and receive medical care at the facility; that the facility will pay arbitrators' fees and costs; a statement that no caps or limits on damages other than those already imposed by state law exist; and a provision allowing the patient or resident to rescind within thirty (30) days. In fact, the introduction of the Admission Agreement in the instant case states:

“The Resident Parties acknowledge that they want the Resident to be admitted and receive the services provided by Facility. By signing this Agreement, the Facility and the Resident Parties are legally bound by it.”

Taken as a whole, this Arbitration Clause in the instant case was meant to be a part of the Admissions Agreement, without the ability for Decedent to rescind this clause. On behalf of Appellants, Ms. Calandrelli did not provide Decedent any notice that his acquiescence to this Arbitration Clause was not required to obtain treatment in the facility. Ms. Calandrelli only explained this arbitration clause to a resident if the resident specifically asked questions about this Arbitration Clause and even then Ms. Calandrelli did not sufficiently explain the

significant impact of this Arbitration Clause on Decedent's life as a resident there. Again, Ms. Calandrelli introduced this Arbitration Clause to residents as follows: "So I would say arbitration is where parties meet and an arbitrator would be there to hear both sides. And then the arbitrator would make the decision, just like a judge. And it's binding and it's a legal — like whatever the outcome is, it's a legal finding, so." (130:20-25). Clearly, this Arbitration Clause refers to the Commercial Arbitration Rules of the American Arbitration Association; however, Ms. Calandrelli never explained the Commercial Arbitration Rules of the American Arbitration Association to any residents during the admissions process because she was not familiar with said rules and their application. (134:24-136:4).

After review of the entire Admission Agreement, this Trial Court found this agreement did not require Decedent to initial after every clause, but rather, just a few select clauses chosen by the drafters of the Admissions Agreement such as the Arbitration Clause. Ms. Calandrelli did not make residents aware they were not required to sign said Admission Agreement and still could receive medical care and treatment; residents were not aware they were not required to consent to the Arbitration Clause; and residents were not permitted to rescind their consent to the Arbitration Clause within thirty (30) days. By initialing this Arbitration Clause, residents were forever relinquishing their fundamental rights to a trial by jury and to pursue an action in a court of law. This Arbitration Clause is also not reciprocal in that Presque Isle Rehabilitation and Nursing Center still retained its right to a trial by jury and its right to pursue a legal action in a court of law. A review of this Arbitration Clause in the Admissions Agreement demonstrates all terms described in *Cardinal* are not present. Thus, Appellee presented clear and convincing evidence this Arbitration Clause is unreasonably favorable to the drafters, the Appellants, and therefore, is substantively unconscionable.

For a contract to be unconscionable, a contract or contractual term must also be procedurally unconscionable which is the second part of the unconscionability analysis. Procedural unconscionability is defined as "no meaningful choice on the part of the other party regarding the acceptance of the provisions." *Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 53 (Pa. Super. Ct. 2017), reargument denied (Apr. 3, 2017), appeal denied, 642 Pa. 620, 170 A.3d 1063 (2017) (internal citations removed).

Pennsylvania case law indicates a contract of adhesion "is a standardized contract form offered to consumers of goods and services on essentially 'take it or leave it' basis without affording consumer realistic opportunity to bargain and under such conditions that consumer cannot obtain desired product or services except by acquiescing in form contract." *Denlinger, Inc. v. Dendler*, 608 A.2d 1061, 1992 (Pa. Super. Ct. 1992). The most distinctive feature of an adhesion contract is that the "weaker party has no realistic choice as to its terms." *Id.*

In the instant case, Decedent decided to seek medical care and treatment from this nursing home after his hospitalization at Saint Vincent Hospital in March of 2015. Decedent, a double amputee suffering from dementia and depression, entered Presque Isle Rehabilitation and Nursing Center as the only nursing home his medical insurance would cover.

Through a number of assessments performed by the staff at Presque Isle Rehabilitation and Nursing Center, Decedent was diagnosed as having extremely poor vision. Decedent had "poor vision" with or without glasses. Decedent never read books or newspapers and often had trouble with the television remote. Appellee was not present to assist Decedent during his admission to Presque Isle Rehabilitation and Nursing Center although Ms. Calandrelli

indicated that if a resident had difficulty reading, she would not present the agreement to the resident until a member of the family or guardian was present.

Moreover, Decedent was unable to negotiate or counter the terms of the Arbitration Clause. Decedent also knew he needed a significant amount of assistance daily such as help with transferring from his bed, using the toilet, dressing himself, daily hygienic needs, and bathing. Decedent was never informed he would be allowed to remain in the facility if he chose not to agree to the Arbitration Clause. Decedent had no realistic choice as to the terms of the Arbitration Clause. Decedent knew he needed medical care and treatment, and if he did not sign the Admissions Agreement he would not receive said medical care and treatment he needed. Thus, Appellee presented through clear, precise and convincing evidence that this Arbitration Clause leaves the “weaker party with no realistic choice as to its terms,” and therefore, is procedurally unconscionable.

As this Trial Court indicated previously, when analyzing the validity of an arbitration clause, trial courts should generally apply ordinary state-law principles governing the formation of contracts, “but in doing so, must give due regard to the federal policy favoring arbitration.” *Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 53 (Pa. Super. 2017). The intent of the Federal Arbitration Act [hereinafter FAA] is to place arbitration agreements “upon the same footing as other contracts.” *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510-11 (1974). Pennsylvania courts also hold arbitration agreements to be analyzed on the “same footing” as other contracts. *Taylor v. Extencicare Health Facilities, Inc.*, 147 A.3d 490, 501 (Pa. 2016); *Salley v. Option One Mortg. Corp.*, 925 A.2d 115, 118-19 (Pa. 2007); *Kohlman v. Grane Healthcare Company*, No. 114 WDA 2019, --- A.3d --- *3 (Pa. Super, 2020); *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 879 (Pa. Super. 2006).

Pennsylvania law and Federal law require arbitration agreements be enforced as written. *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 880 (Pa. Super. 2006). Moreover, arbitration provisions can “be set aside only for generally recognized contracted defenses such as duress, illegality, fraud and unconscionability.” *Id.* “Pennsylvania has a well-established public policy that favors arbitration, and this policy aligns with the federal approach expressed in the Federal Arbitration Act.” *Pisano v. Extencicare Homes, Inc.*, 77 A.3d 651, 660 (Pa. Super. 2013). However, applying state law equally to all contracts is not preempted by the FAA. *Thibodeau* at 880. As indicated in this Trial Court’s Conclusions of Law at page 20, “Under both Pennsylvania law and the Federal Arbitration Act, contract defenses include unconscionability, fraud, or duress and may be invoked to invalidate arbitration agreements.” (Trial Court’s Conclusions of Law at p. 20). This Trial Court in the instant case considered and analyzed general state contract law principles applicable to all contracts in evaluating the validity of the Arbitration Clause and with due regard to the Federal Arbitration Act.

Since no meeting of the minds and consideration was present in formation of the Admissions Agreement and this Arbitration Clause is both substantively and procedurally unconscionable, this Trial Court properly concluded no valid agreement to arbitrate exists with due regard to the FAA. Since no valid agreement exists, this Trial Court did not proceed to the second prong of the test to determine whether the dispute is within the scope of the agreement.

Furthermore, the purpose of the Federal Arbitration Act [hereinafter FAA] is to alleviate parties from expensive litigation and to facilitate the already crowded court calendars. *Id.* Passage of the FAA was intended to enforce arbitration agreements between parties according

to the terms of the agreement. *Trombetta v. Raymond James Financial Services, Inc.*, 907 A.2d 550, 564 (Pa. Super. 2006). The FAA intended to place arbitration agreements on the same footing as other contracts. *Id.* at 569. An agreement to arbitrate and a “liberal policy favoring arbitration” does not mean a court simply can “rubber stamp” these disputes as “subject to arbitration.” *Pisano* at 661. Both Pennsylvania law and Federal law indicate parties are not required to arbitrate when they have not agreed to do so. *Id.* (see also *Gaffer Ins. Co. v. Discover Reinsurance Co.*, 936 A.2d 1109, 1113 (Pa. Super. 2007)). A trial court must still determine whether or not to compel arbitration. *Pisano* at 661. In the instant case, this Trial Court recognizes the significance and importance of the FAA and the necessity of giving the FAA due regard in determining whether a valid agreement to arbitrate exists.

Lastly, the coordinate jurisdiction doctrine applies in the instant case. The Honorable John Garhart of the Erie County Court of Common Pleas deals with the same Admissions Agreement in an unrelated case regarding the same Defendants, the Appellants in the instant case. See *Christina LaJohn v. Care One et al.*, Erie County Docket No. 12054-2014. The Supreme Court of Pennsylvania in the *Ario* case states Pennsylvania Law favors stability and certainty in judicial decisions:

Pennsylvania law generally favors certainty and stability and these principles are embodied in various doctrines. Under the doctrine of stare decisis, a conclusion reached in one matter should be applied to future substantially similar matters. See *Stilp v. Commonwealth*, 588 Pa. 539, 905 A.2d 918, 954 (2006) (“The basic legal principle of stare decisis generally commands judicial respect for prior decisions of this Court and the legal rules contained in those decisions.”). The law of the case doctrine sets forth various rules that embody 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*, 541 Pa. 564, 664 A.2d 1326, 1331 (1995). Pursuant to the coordinate jurisdiction doctrine, judges of equal jurisdiction sitting in the same case should not overrule each other’s decisions. *Id.*

Ario v. Reliance Ins. Co., 602 Pa. 490, 505, 980 A.2d 588, 597 (2009). On October 17, 2017, at Docket Number 12054-2014, the Honorable John Garhart addresses the same Admissions Agreement at issue in the instant case. Judge Garhart concluded by finding this same Arbitration Clause was unconscionable. Judge Garhart states “Despite our federal and state policy favoring arbitration, we find the Arbitration Clause in this case unreasonably favorable to Presque Isle and offering a complete absence of meaningful choice on the part of the Resident, Mrs. LaJohn. For this reason, we find the Arbitration Agreement unconscionable and invalid.” (Judge Garhart’s Opinion, *LaJohn v. Care One et al.*, Erie County Docket No. 12054-2014. October 17, 2017). No appeal was taken from Judge Garhart’s decision. *Id.* Therefore, Judge Garhart’s decision is a final decision finding this same Arbitration Agreement is unconscionable and invalid.

Therefore, for all of the reasons set forth above, this Trial Court respectfully requests the Pennsylvania Superior Court affirm this Trial Court’s Order dated February 10, 2020, overruling Appellants’ Preliminary Objections.

BY THE COURT

/s/ **Hon. Stephanie Domitrovich, Judge**

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

**DEBORAH A. LOMAX, ADMINISTRATRIX FOR
THE ESTATE OF RUFUS LOMAX, DECEASED**

v.

**CARE ONE, LLC; 4114 SCHAPER AVENUE OPERATING COMPANY, LLC
D/B/A PRESQUE ISLE REHABILITATION AND NURSING CENTER;
CARE ONE MANAGEMENT, LLC; HEALTHBRIDGE MANAGEMENT, LLC;
DES HOLDING CO., INC.; THCI HOLDING COMPANY, LLC;
THCI COMPANY, LLC; CARE VENTURES, INC.; CARE REALITY, LLC;
SHOLIN J. MONTGOMERY, NHA, Appellants**

IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 344 WDA 2020

Appeal from the Order Entered February 10, 2020
In the Court of Common Pleas of Erie County
Civil Division at No(s): No. 10167-2017

BEFORE: BOWES, J., McCAFFERY, J., and COLINS, J.*

MEMORANDUM BY BOWES, J.:

FILED MARCH 5, 2021

Care One, LLC, 4114 Schaper Avenue Operating Company, LLC d/b/a Presque Isle Rehabilitation and Nursing Center, Care One Management, LLC, Healthbridge Management, LLC, Des Holding Co., Inc., THCI Holding Company, LLC, THCI Company, LLC, Care Ventures, Inc., Care Reality, LLC, and Sholin J. Montgomery, NHA (collectively “the Facility”) appeal from the order that overruled their preliminary objections to compel arbitration. We affirm.

The following facts are pertinent to our review. Rufus Lomax (“Decedent”) had both of his legs amputated below the knee. Decedent’s vision was also impaired by cataracts, but he did not desire to undergo yet another surgery. For approximately ten years, he resided in an apartment at an assisted living facility designed for wheelchair-bound tenants. His niece, Deborah A. Lomax (“Ms. Lomax”), provided additional care through preparing meals, running errands, and attending medical appointments with him, eventually becoming employed as his caregiver through a senior program offered by the local community action agency.

Decedent was hospitalized in March 2015 due to complications from an infection. Having also experienced a recent decline in his strength that caused him to fall and develop sores, he decided to cease living on his own and enter a rehabilitation facility upon discharge from the hospital. He opted for Presque Isle Rehabilitation and Nursing Center since it “was one of the only open facilities for him, due to his insurance.” N.T. Evidentiary Hearing, 7/30/19, at 95.

Nurse Darlene Stokes performed an assessment of Decedent upon his admission and noted that Decedent suffered from dementia, depression, and poor vision in both eyes with or without glasses. After Ms. Stokes performed her assessment, Admissions Coordinator Kara

* Retired Senior Judge assigned to the Superior Court.

Calandrelli secured Decedent's signature on the paperwork attendant to his admission to the Facility. Ms. Calandrelli followed her usual routine of meeting with the new resident in his room and spending forty-five minutes to an hour going through the twenty-page admission agreement. Her customary procedure was to involve a family member or the Erie Office on Aging in the process if the new resident was incompetent or visually impaired. However, she obtained Decedent's signature on the agreement despite his having been assessed by Ms. Stokes as visually impaired and suffering from dementia without any family present. Page sixteen of the twenty-page admission agreement "between Presque Isle Rehabilitation and Nursing Center ('the Facility') and Rufus Lomax,"¹ contained the following provision:

**ARTICLE XIV
DISPUTE RESOLUTION AND ARBITRATION**

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT AND BROUGHT BY THE RESIDENT, HIS/HER PERSONAL REPRESENTATIVES, HEIRS, ATTORNEYS, OR THE RESPONSIBLE PARTY SHALL BE SUBMITTED TO BINDING ARBITRATION BY A SINGLE ARBITRATOR SELECTED AND ADMINISTERED PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. A CLAIM SHALL BE WAIVED AND FOREVER BARRED IF, ON THE DATE THE DEMAND FOR ARBITRATION IS RECEIVED, THE CLAIM (IF ASSERTED IN A CIVIL ACTION) WOULD BE BARRED BY THE APPLICABLE STATE OF FEDERAL STATUTE OF LIMITATIONS. ANY CLAIMANT CONTEMPLATED BY THIS PARAGRAPH HEREBY WAIVES ANY AND ALL RIGHTS TO BRING SUCH CLAIM OR CONTROVERSY IN ANY MANNER NOT EXPRESSLY SET FORTH IN THIS PARAGRAPH INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO A JURY TRIAL.

Admission Agreement, 3/27/15, at 16.² Nowhere in the written agreement does it indicate that the arbitration provision was optional or voluntary, and Ms. Calandrelli did not advise Decedent that he did not have to sign this agreement to receive care at the Facility. Notably, the arbitration provision of the agreement lacked spaces for checking "yes" or "no" that were used elsewhere in the document to accept or reject other "voluntary" provisions. *See, e.g., id.* at 3 (regarding consent to allow the Facility to manage financial affairs); *id.* at 10 (concerning use of name in the Facility directory and photo for promotional purposes). Rather, there was merely a line where Decedent affixed his initials.

After completing the admission process, Decedent resided at the facility for six months

¹ *See* Admission Agreement, 3/27/15, at 1.

² Additionally, Article XVII of the admission agreement stated: "The Resident parties understand that the Facility may change any or all terms and conditions of the Agreement at any time, by serving appropriate notice to the Resident Parties together with the offer of a revised Agreement or an addendum revising the existing Agreement." Admission Agreement, 3/27/15, at 18. A resident thereafter was required to execute the new agreement or give written notice to the Facility "of an intention to terminate the Agreement." *Id.* Termination would trigger provisions regarding transfer or discharge of the patient. *Id.* Thus, because the arbitration agreement was a term of the admission agreement, the Facility in effect reserved the right to change any or all of the substance of the arbitration agreement unilaterally.

until he was admitted to the hospital with a fever, tachycardia, altered mental status, oxygen saturation of 84%, sepsis, and previously-uncharted pressure ulcers. Decedent did not recover, dying in the hospital on September 26, 2015.

Ms. Lomax was appointed as administratrix of Decedent's estate and initiated this wrongful death and survival action against the Facility. In her complaint, Ms. Lomax stated claims of negligence, negligence *per se*, breach of fiduciary duty, and wrongful death, seeking compensatory and punitive damages. Each of the defendants filed preliminary objections to compel arbitration.³ Ms. Lomax responded opposing arbitration, the trial court conducted an evidentiary hearing, and the parties submitted proposed findings of fact and conclusions of law. Thereafter, the trial court made findings of fact and conclusions of law, determining both that (1) there was no meeting of the minds between the parties as to the arbitration provision, and (2) the provision was unconscionable. Accordingly, the trial court overruled the Facility's preliminary objections.

The Facility filed a timely notice of appeal,⁴ and both the Facility and the trial court complied with Pa.R.A.P. 1925. The Facility states the following questions, which we have reordered for ease of disposition:

1. The trial court found that an arbitration clause was unconscionable, because [D]ecedent needed nursing home care when he signed it, and because the clause only required [D]ecedent to arbitrate. But this Court has found that, because public policy favors arbitration, issues like these do not make an arbitration clause unconscionable. Was the trial court's decision a reversible error?
2. When [D]ecedent was admitted to a nursing home, he signed an admissions agreement and initialed its arbitration clause. The trial court found that [he] was not bound by that contract, because he had poor eyesight. But under Pennsylvania law, a signed contract is presumed to be binding, and evidence of poor eyesight will not overturn this presumption. Was the trial court's decision a reversible error?

The Facility's brief at 5.

We begin with a review of the pertinent legal principles. In an appeal from an order overruling preliminary objections in the nature of a petition to compel arbitration, this Court's review "is limited to determining whether the trial court's findings are supported

³ As noted earlier, the admission agreement is between Decedent and "Presque Isle Rehabilitation and Nursing Center ('the Facility')." Admission Agreement, 3/27/15, at 1. The arbitration clause does not purport to govern claims against the Facility's employees, agents, contractors, or other affiliates. *Cf. Kohlman v. Grane Healthcare Co.*, 228 A.3d 920, 921 (Pa. Super. 2020) (reviewing arbitration clause that governed disputes between the patient and the facility, "its agents, servants, employees, officers, contractors and affiliates"); *MacPherson v. Magee Mem'l Hosp. for Convalescence*, 128 A.3d 1209, 1217 (Pa. Super. 2015) ("The Parties intend that this Agreement shall inure to the direct benefit of and bind the Center, its parent, affiliates, and subsidiary companies, management companies, executive directors, owners, officers, partners, shareholders, directors, medical directors, employees, successors, assigns, agents, insurers and any entity or person (including health care providers) that provided any services, supplies or equipment related to the Patient's stay at the Center . . ."). Defendants other than the entity doing business as Presque Isle Rehabilitation and Nursing Center each asserted that Ms. Lomax's claims are governed by the agreement without specifying how it is a party to the agreement or otherwise is entitled to benefit from it. However, given our determination that Decedent did not have a valid agreement to arbitrate with any entity, we need not examine whether each defendant established that it was a party to the contract and thus entitled to enforce it.

⁴ We have jurisdiction over this appeal from an interlocutory order pursuant to 42 Pa.C.S. § 7320(a)(1).

by substantial evidence and whether the trial court abused its discretion in denying the petition.” *Pisano v. Extendicare Homes, Inc.*, 77 A.3d 651, 654 (Pa. Super. 2013) (internal quotation marks omitted). “In doing so, we employ a two-part test to determine whether the trial court should have compelled arbitration. First, we examine whether a valid agreement to arbitrate exists. Second, we must determine whether the dispute is within the scope of the agreement.” *MacPherson v. Magee Mem’l Hosp. for Convalescence*, 128 A.3d 1209, 1219 (Pa. Super. 2015) (*en banc*) (cleaned up). On the issues of contractual interpretation, our review is *de novo* and our scope of review is plenary. *See Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 50 (Pa. Super. 2017).

Pursuant to the mandates of the Federal Arbitration Act (“FAA”), “courts are obligated to enforce arbitration agreements as they would enforce any other contract,” and, in considering whether a claim is subject to arbitration, must exhibit “a healthy regard for the federal policy favoring arbitration[.]” *Taylor v. Extendicare Health Facilities, Inc.*, 147 A.3d 490, 504, 509 (Pa. 2016) (cleaned up). Nonetheless, “a party cannot be compelled to arbitrate in the absence of a valid agreement to do so[.]” *McIlwain v. Saber Healthcare Grp., Inc.*, 208 A.3d 478, 486 (Pa. Super. 2019) (cleaned up).

The following principles pertain to determining the existence of a valid agreement to arbitrate. “It is black letter law that in order to form an enforceable contract, there must be an offer, acceptance, consideration, or mutual meeting of the minds.” *Id.* at 485 (internal quotation marks omitted). “Under Pennsylvania law, it is presumed that an adult is competent to enter into an agreement, and a signed document gives rise to the presumption that it accurately expresses the state of mind of the signing party.” *Cardinal, supra* at 50. As such, “[c]ontracting parties are normally bound by their agreements, without regard to whether the terms thereof were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains.” *Nicholas v. Hofmann*, 158 A.3d 675, 693 (Pa. Super. 2017) (internal quotation marks omitted).

Nonetheless, as is the case in any action upon a contract, “defenses such as fraud, duress, or unconscionability” are available to challenge the validity of an arbitration agreement. *Taylor, supra* at 509. We have explained that “a determination of unconscionability requires a two-fold determination: (1) that the contractual terms are unreasonably favorable to the drafter, and (2) that there is no meaningful choice on the part of the other party regarding the acceptance of the provisions.” *MacPherson, supra* at 1221 (cleaned up). “The aspects entailing lack of meaningful choice and unreasonableness have been termed procedural and substantive unconscionability, respectively.” *Salley v. Option One Mortgage Corp.*, 925 A.2d 115, 119 (Pa. 2007). “[P]rocedural and substantive unconscionability are generally assessed according to a sliding-scale approach (for example, where the procedural unconscionability is very high, a lesser degree of substantive unconscionability may be required).” *Id.* at 125 n.12 (citing *Delta Funding Corp. v. Harris*, 912 A.2d 104, 111 (N.J. 2006)).

While “the determination of whether an agreement is unconscionable is ultimately a question of law, . . . the necessary inquiry is often fact sensitive.” *Id.* at 124. Factual issues pertinent to the Court’s inquiry in cases involving arbitration agreements between nursing homes and patients include: (1) the physical and mental state of the patient; (2) whether the patient was alone at the time of its execution; (3) the nature of the admission agreement and whether the arbitration agreement “was part of, or buried within, a potentially lengthy

admissions packet that decedent was required to complete, while in ill health;” (4) whether the patient was sent to the facility directly from the hospital; (5) whether the patient had awareness of and the opportunity to research options to instead enter other facilities; (6) whether the patient “was economically constrained” to enter into an agreement with the facility at issue to provide care; and (7) whether the patient had the means to pay for arbitration. *See Kohlman v. Grane Healthcare Co.*, 228 A.3d 920, 927 (Pa. Super. 2020) (listing non-exhaustive factors).

Concerning the procedural prong of the unconscionability examination, our Supreme Court has observed that “[a]n adhesion contract is a standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who adheres to the contract with little choice about the terms.” *Chepkevich v. Hidden Valley Resort, L.P.*, 2 A.3d 1174, 1190 (Pa. 2010) (cleaned up). However, “merely because a contract is one of adhesion does not render it unconscionable and unenforceable as a matter of law.” *Salley, supra* at 127.

For example, this Court reversed trial court findings of unconscionability of arbitration agreements in both *MacPherson* and *Cardinal*, cases significant to the trial court’s ruling and the Facility’s arguments in this appeal. *MacPherson* and *Cardinal* each concerned challenges to four-page arbitration agreements between nursing homes and patients that were executed at the time of admission separately from the respective admission agreements. The arbitration agreement at issue in *McPherson* provided as follows:

VOLUNTARY AGREEMENT: If you do not accept this Agreement, the Patient will still be allowed to live in, and receive services in, this Center.

ARBITRATION AGREEMENT (“AGREEMENT”)

BY ACCEPTING THIS AGREEMENT, THE PARTIES ARE WAIVING THEIR RIGHT TO A TRIAL BEFORE A JUDGE AND/OR A JURY OF ANY DISPUTE BETWEEN THEM. PLEASE READ THIS AGREEMENT CAREFULLY AND IN ITS ENTIRETY BEFORE ACCEPTING ITS TERMS.

This Agreement made on ____ (date) by and between the Parties, Patient Richard MacPherson [handwritten] and/or Patient’s Legal Representative ____ (collectively referred to as “Patient”), and the Center Manor Care Yeadon [handwritten], is an Agreement intended to require that Disputes be resolved by arbitration. The Patient’s Legal Representative agrees that he is signing this Agreement as a Party, both in his representative and individual capacity.

A. What is Arbitration?: Arbitration is a cost effective and time saving method of resolving disputes without involving the courts. In using arbitration, the disputes are heard and decided by a private individual called an arbitrator. The dispute will not be heard or decided by a judge or jury.

B. AGREEMENT TO ARBITRATE “DISPUTES”: Any and all claims or controversies arising out of or in any way relating to this Agreement, the Admission

Agreement or any of the Patient's stays at this Center, or any Center operated by any subsidiary of HCR–Manor Care, Inc., whether or not related to medical malpractice, including but not limited to disputes regarding the making, execution, validity, enforceability, voidability, unconscionability, severability, scope, interpretation, preemption, waiver, or any other defense to enforceability of this Agreement or the Admission Agreement, whether arising out of State or Federal law, whether existing now or arising in the future, whether for statutory, compensatory or punitive damages and whether sounding in breach of contract, tort or breach of statutory duties (including, without limitation except as indicated, any claim based on Patients' Rights or a claim for unpaid Center charges), regardless of the basis for the duty or of the legal theories upon which the claim is asserted, shall be submitted to binding arbitration. Notwithstanding the above, nothing in this Agreement prevents the Patient from filing a grievance or complaint with the Center or appropriate governmental agency; from requesting an inspection of the Center from such agency; or from seeking review under any applicable federal, state or local law of any decision to involuntarily discharge or transfer the Patient from the Center.

....

E. RIGHT TO CHANGE YOUR MIND: This Agreement may be cancelled by written notice sent by certified mail to the Center's Administrator within thirty (30) calendar days of the Patient's date of admission. If alleged acts underlying the dispute occur before the cancellation date, this Agreement shall be binding with respect to those alleged acts. If not cancelled, this Agreement shall be binding on the Patient for this and all of the Patient's other admissions to the Center without any need for further renewal.

F. OTHER PROVISIONS:

1. No Caps/Limits on Damages: There are no caps/limits on the amount of damages the Panel can award other than those already imposed by law in the state in which this Center is located. All state laws, statutes and regulations that limit awardable damages and define the scope of admissible and inadmissible evidence (i.e. regulatory surveys, incident reports, etc.) expressly apply to any arbitration hearing held pursuant to this Agreement.

2. Opportunity to Review & Right to Consult with Attorney: The patient (if competent) and the Patient's Legal Representative acknowledge that the Patient and Legal Representative have each received a copy of this Agreement, and have had an opportunity to read it (or have it read to him/her) and ask questions about it before accepting it. Please read this Agreement very carefully and ask any questions that you have before signing it. Feel free to consult with an attorney of your choice before signing this Agreement.

....

6. Fees and Costs: The Panels' fees and costs will be paid by the Center except in disputes over non-payment of Center charges wherein such fees and costs will be divided equally

between the Parties. NAF's administrative fees shall be divided equally among the Parties. To the extent permitted by law, any Party who unsuccessfully challenges the enforcement of this Agreement shall be required to pay the successful Parties' reasonable attorney fees and costs incurred to enforce such contract (i.e., Motion to Compel Arbitration). The Parties shall bear their own attorney fees and costs in relation to all preparation and attendance at the arbitration hearing, unless the Panel concludes that the law provides otherwise. Except as stated above, the Parties waive any right to recover attorneys' fees and costs.

....

BY SIGNING BELOW, THE PARTIES CONFIRM THAT EACH OF THEM HAS READ ALL FOUR (4) PAGES OF THIS AGREEMENT AND UNDERSTANDS THAT EACH HAS WAIVED THE RIGHT TO A TRIAL BEFORE A JUDGE OR JURY AND THAT EACH OF THEM CONSENTS TO ALL OF THE TERMS OF THIS VOLUNTARY AGREEMENT.

MacPherson, *supra* at 1213–18 (emphases in original).

Although the trial court found the agreement to arbitrate in *MacPherson* invalid, this Court reversed, concluding that it was neither procedurally nor substantively unconscionable. We observed the following. At the outset, in prominent styling, the agreement indicated that it was voluntary and made it clear that “the Patient will still be allowed to live in, and receive services at Manor Care.” *Id.* at 1222 (internal quotation marks omitted). Further, the patient was conspicuously notified that he had thirty days to change his mind. Hence, we concluded that there was no lack of meaningful choice on the part of the patient.

Regarding substantive unconscionability, we noted that the requirement that each side pay its own fees and costs in preparation of arbitration, which was a significant basis for the trial court's conclusion that the agreement unreasonably favored Manor Care, was the same as would be the case in common pleas court. *Id.* at 1221. Manor Care agreed to pay the arbitration panel's costs and fees, and placed no limits on the type or amount of available damages. Additionally, the agreement contained a large, bold indication that both Manor Care and the patient were waiving their rights to a jury trial. *Id.* Thus, we concluded that the terms of the agreement did not unreasonably favor Manor Care. Accordingly, we reversed the trial court's order overruling the preliminary objections.

In *Cardinal*, this Court likened the agreement at issue to that in *MacPherson*. We indicated that it contained “a capitalized, bold-faced notification at the very top of the agreement stating: ‘**THIS AGREEMENT IS NOT A CONDITION OF ADMISSION TO OR CONTINUED RESIDENCE IN THE FACILITY.**’” *Cardinal*, *supra* at 53 (emphasis in original). The first page of the agreement additionally provided:

THE PARTIES UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT BY ENTERING INTO THIS AGREEMENT THEY ARE GIVING UP THEIR CONSTITUTIONAL RIGHT TO HAVE THEIR DISPUTES DECIDED BY A COURT OF LAW OR TO APPEAL ANY DECISION OR AWARD OF DAMAGES RESULTING FROM THE ADR PROCESS EXCEPT AS PROVIDED HEREIN.

Id. at 53-54 (emphasis in original). Moreover, as in *MacPherson*, “[t]he agreement state[d] that the parties will each bear their own fees and costs, that [the facility] shall pay the arbitrators fees and costs, and that the monetary relief available via arbitration is the same as that which would be available in a court of law”. *Id.* at 54. Finally, the agreement also specified that the patient had thirty days to revoke the agreement. *Id.* Thus, we concluded that the agreement was not unconscionable and the trial court erred in overruling the facility’s preliminary objections.

Turning to the case *sub judice*, the Facility maintains that the trial court erroneously found the arbitration agreement procedurally unconscionable “simply because it considered the Admission Agreement to be a contract of adhesion that [Decedent] had to sign if he wanted to remain at the facility.” The Facility’s brief at 46. It argues that the facts of this case are “very similar” to those in *Cardinal* since Ms. Calandrelli testified that Decedent would not be discharged if he had failed to sign the arbitration agreement. *Id.* at 47-48. The Facility asserts that there was no evidence that Decedent felt time-pressured to sign the arbitration agreement or that he was unable to understand what he was doing. *Id.* at 51-52.

The Facility further contends that the arbitration agreement was not substantively unconscionable, as our Supreme Court has expressly held that non-reciprocal arbitration agreements are not *ipso facto* unconscionable. *Id.* at 56 (citing *Salley, supra* at 117-18, 129). It maintains that “[a] non-reciprocal arbitration agreement makes sense in this situation” because a collection action, the type of claim most likely to have been brought by the Facility against Decedent, “is more efficient to pursue” in a court. *Id.* at 57.

Finally, the Facility asserts that the trial court misread the *Cardinal* decision, improperly concluding that the specific contract terms noted favorably in *Cardinal* and *MacPherson* evidencing a lack of unconscionability were now required elements for any arbitration agreement to be valid under Pennsylvania law. *Id.* at 60. It argues that by holding that the arbitration agreement had “to be identical to the contract discussed in *Cardinal* to be enforceable,” the trial court “turned the burden of proving unconscionability on its head” and runs afoul of the FAA’s prohibition against discrimination against arbitration provisions. *Id.* at 61. Nonetheless, the Facility posits, its arbitration agreement passes the trial court’s *Cardinal*-based litmus test. *Id.* at 62-67.

We disagree with the Facility’s characterization of the trial court’s determination. The trial court offered the following explanation of its finding that the Facility’s arbitration provision⁵ was both procedurally and substantively unconscionable:

⁵ To reiterate, the arbitration agreement at issue herein provides, *in toto*, as follows:

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT AND BROUGHT BY THE RESIDENT, HIS/HER PERSONAL REPRESENTATIVES, HEIRS, ATTORNEYS, OR THE RESPONSIBLE PARTY SHALL BE SUBMITTED TO BINDING ARBITRATION BY A SINGLE ARBITRATOR SELECTED AND ADMINISTERED PURSUANT TO THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. A CLAIM SHALL BE WAIVED AND FOREVER BARRED IF, ON THE DATE THE DEMAND FOR ARBITRATION IS RECEIVED, THE CLAIM (IF ASSERTED IN A CIVIL ACTION) WOULD BE BARRED BY THE APPLICABLE STATE OF FEDERAL STATUTE OF LIMITATIONS. ANY CLAIMANT CONTEMPLATED BY THIS PARAGRAPH HEREBY WAIVES ANY AND ALL RIGHTS TO BRING SUCH CLAIM OR CONTROVERSY IN ANY MANNER NOT EXPRESSLY SET FORTH IN THIS PARAGRAPH INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO A JURY TRIAL.

Taken as a whole, this Arbitration Clause in the instant case was meant to be a part of the Admissions Agreement, without the ability for Decedent to rescind this clause. Decedent was not provided any notice that his acquiescence to this Arbitration Clause was not required to obtain treatment in the facility. This Arbitration Clause was only explained to a resident if the resident specifically asked questions about the Arbitration Clause and even then Ms. Calandrelli did not sufficiently explain the significant impact of this Arbitration Clause on a resident's life. . . . Ms. Calandrelli introduced the Arbitration Clause to residents as follows: "So I would say arbitration is where parties meet and an arbitrator would be there to hear both sides. And then the arbitrator would make the decision, just like a judge. And it's binding and it's a legal — like whatever the outcome is, it's a legal finding, so." . . .

After review of the entire Admission Agreement, this agreement did not require Decedent to initial after every clause, but rather, just a few select clauses chosen by the drafters of the Admissions Agreement such as the Arbitration Clause. Residents were not made aware they were not required to sign said Admission Agreement and still could receive medical care and treatment; residents were not aware they were not required to consent to the Arbitration Clause; and residents were not permitted to rescind their consent to the Arbitration Clause within thirty (30) days. By initialing this Arbitration Clause, residents were forever relinquishing their fundamental rights to a trial by jury and to pursue an action in a court of law. This Arbitration Clause is also not reciprocal in that Presque Isle Rehabilitation and Nursing Center still retained its right to a trial by jury and its right to pursue a legal action in a court of law. A review of this Arbitration Clause in the Admissions Agreement demonstrates all terms described in *Cardinal* are not present.

Trial Court Opinion, 2/10/20, at 21-23.

The trial court further addressed the procedural prong of the unconscionability inquiry as follows:

Decedent was unable to negotiate or counter the terms of the Arbitration Clause. Decedent also knew he needed a significant amount of assistance daily such as help with transferring from his bed, using the toilet, dressing himself, daily hygienic needs, and bathing. Decedent was never informed he would be allowed to remain in the facility if he chose not to agree to the Arbitration Clause. Decedent had no realistic choice as to the terms of the Arbitration Clause. Decedent knew he needed medical care and treatment, and if he did not sign the Admissions Agreement he would not receive said medical care and treatment he needed.

Trial Court Opinion, 2/10/20, at 24.

The Facility seeks to have us overturn the trial court's finding by attacking particular facts piecemeal and contrasting in isolation statements from other cases. Properly viewing the attendant circumstances of this case as a whole and applying the sliding-scale analysis approved by our Supreme Court in *Salley, supra* at 125 n.12, 128, we find no basis to

conclude that the trial court erred or abused its discretion by finding that there was no valid agreement to arbitrate based upon the unconscionability of the arbitration provision proffered by Defendants.

We begin by noting that almost all of the factors this Court identified in *Kohlman* as relevant to procedural unconscionability support the trial court's finding. *See Kohlman, supra* at 927. The testimony credited by the trial court at the evidentiary hearing establishes that Decedent was elderly, depressed, and had documented dementia; he arrived at the Facility directly from the hospital, alone, and burdened by recently accepting that he was not able to care for himself any longer; the arbitration provision was buried deep within a lengthy admission agreement that took forty-five minutes to an hour to complete; the Facility was one of few that had an opening and accepted his insurance, thus rendering him economically constrained to agree to the Facility's terms, which were non-negotiable and not presented with an option to decline or to revoke agreement upon further reflection.⁶ *See* N.T. Evidentiary Hearing, 7/30/19, at 45-47 (describing Decedent's condition on admission); *id.* at 79-80, 95 (concerning Decedent's need for professional assistance and lack of options); *id.* at 121 (Ms. Calandrelli testifying that she did not tell residents that the arbitration agreement was mandatory or voluntary). *See also* Admission Agreement, 3/27/15, at 16 (containing no statement that the agreement to arbitrate is voluntary).

As to its substance, the provision purported to require binding arbitration only of claims brought by Decedent without reciprocally requiring the Facility to waive its jury trial rights in any claims it might have under the agreement. Moreover, Article XVII of the admission agreement, under miscellaneous provisions, specified that the Facility retained the right to "change any or all terms and conditions of the Agreement at any time," that a resident's failure to execute a modified agreement would constitute a material breach of the Agreement, and that such would terminate the Agreement and subject the resident to transfer or discharge.⁷ *See* Admission Agreement, 3/27/15, at 18.

In our view, the trial court's contrast of the sparse, one-sided arbitration provision included in Decedent's agreement that was never disclosed to Decedent as voluntary with the detailed, stand-alone, voluntary arbitration agreements at issue in *Cardinal* and *MacPherson* did not amount to an improper litmus test. Rather, it served to highlight why the trial court's unconscionability finding in this case should not be overturned as were the findings in those cases.

In sum, the Facility offered a classic contract of adhesion to a vulnerable man in need of medical assistance, not as a voluntary agreement but as a requirement for his admission. The arbitration agreement unreasonably favored the Facility, not requiring it to waive any litigation rights and allowing it to unilaterally change the terms and evict Decedent if he

⁶ The Facility contends that the trial court's finding that Decedent knew that he needed medical care and would not receive it if he did not sign the Admission Agreement, thereby agreeing to the arbitration provision, was "contradicted by Ms. Calandrelli's testimony that [Decedent] would not have been discharged if he failed to sign the Admission Agreement." The Facility's brief at 48. The Facility neglects to acknowledge that Ms. Calandrelli conceded that she never shared the information that the agreement was voluntary with Decedent or any other new patient. *See* N.T. Evidentiary Hearing, 7/30/19, at 121-22.

⁷ Although the trial court did not rely upon Article XVII of the admission agreement, which by its terms is applicable to the arbitration provision, in its finding of substantive unconscionability, we reiterate that the ultimate question is one of law, to which we apply a *de novo*, plenary review. *See Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 50 (Pa. Super. 2017). As such, we are not bound by the trial court's rationale.

did not accept the modification. The trial court did not err, abuse its discretion, or violate the FAA in concluding that the arbitration agreement herein was invalid based upon the generally applicable contract defense of unconscionability. As there was no valid agreement to arbitrate, the trial court properly overruled Defendants' preliminary objections.⁸

Order affirmed.

Judgment Entered

/s/ Joseph D. Seletyn, Esq.

Prothonotary

Date: 3/5/2021

⁸ Given our conclusion that the trial court did not err or abuse its discretion of finding that there was no valid agreement to arbitrate based upon the unconscionability of the arbitration provision proffered by the Facility, we need not consider the propriety of the trial court's determination that there was no meeting of the minds due to Decedent's poor vision.

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 10251-2021 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Victoria Patricia Rose Bailey to Victoria Rose Haskins.

The Court has fixed the 26th day of March, 2021 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Mar. 26

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 10138-2021 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Joshua Michael Jerry Katsadas to Joshua Michael Jerry Katsidas.

The Court has fixed the 23rd day of April, 2021 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Mar. 26

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 10361-2021 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Darrien Simmons to Darrien Martin.

The Court has fixed the 30th day of April, 2021 at 3:15 p.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and

show cause, if any they have, why the prayer of the Petitioner should not be granted.

Mar. 26

FICTITIOUS NAME NOTICE

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

FICTITIOUS NAME NOTICE

An application for registration of the fictitious name Annapurna Kitchen, 1313-1315 Parade Street, Erie, PA, United States, 16503 has been filed in the Department of State at Harrisburg, PA, File Date 02/10/2021 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the person who is a party to the registration is Nischal Kitchen LLC, 1313-1315 Parade Street, Erie, PA 16503.

Mar. 26

FICTITIOUS NAME NOTICE

An application for registration of the fictitious name JPT Foundation, 19 Wilcox St., Girard, PA 16417 has been filed in the Department of State at Harrisburg, PA, File Date 2/17/2021 pursuant to the Fictitious Names Act, Act 1982-295. The name and address of the person(s) who are party to the registration is John P. Tramontano III and Shelly E. Tramontano, 19 Wilcox St., Girard, PA 16417.

Mar. 26

INCORPORATION NOTICE

Notice is hereby given that Iadeluca Chiropractic Center Corry, P.C. has been incorporated as a domestic professional corporation under the provisions of the Pennsylvania Business Corporation Law of 1988. Michael A. Agresti, Esquire, 300 State Street, Suite 300, Erie, Pennsylvania 16507.

Mar. 26

INCORPORATION NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Department of State for PRECISION HANDLING INC., a corporation organized under the Pennsylvania Business Corporation Law of 1988.

Mar. 26

LEGAL NOTICE

ATTENTION: KRISTY FAYE WELLS

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR MALE CHILD A.J.O. DOB: 10/09/2020

12 IN ADOPTION, 2021

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Stephanie Domitrovich, Courtroom G-222, City of Erie on April 29, 2021 at 1:30 p.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 the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

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

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S §§2731-2742.
This is to inform you of an important option that may be available to you under 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 the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Mar. 26

LEGAL NOTICE

ATTENTION: WILLIAM SCOTT OWENS, SR.

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR MALE CHILD A.J.O. DOB: 10/09/2020 BORN TO: KRISTY FAYE WELLS 12 IN ADOPTION, 2021

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Stephanie Domitrovich, Courtroom G-222, City of Erie on April 29, 2021 at 1:30 p.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 the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County

Office of Children and Youth at (814) 451-7740.

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/Orphan's Court Administrator
Room 204 - 205

Erie County Court House
Erie, Pennsylvania 16501
(814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S §§2731-2742.
This is to inform you of an important option that may be available to you under 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 the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Mar. 26

LEGAL NOTICE

ATTENTION: UNKNOWN BIOLOGICAL FATHER

INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR MALE CHILD A.J.O. DOB: 10/09/2020 BORN TO: KRISTY FAYE WELLS

12 IN ADOPTION, 2021

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Stephanie Domitrovich, Courtroom G-222, City of Erie on April 29, 2021 at 1:30 p.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 the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

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.

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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 the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Mar. 26

LEGAL NOTICE

IN THE COURT OF COMMON
PLEAS OF ERIE COUNTY,
PENNSYLVANIA
GD No. 10048-21
JONATHAN MOLINA
DELGADO, Plaintiff

v.

MARY ROSE RAMOS, Defendant

JURY TRIAL DEMANDED

TO: MARY ROSE RAMOS

DATE: March 9, 2021

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the

case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral &
Information Service
P.O. Box 1792
Erie, PA 16507
814/459-4411

Mon.-Fri.

8:30 a.m.-Noon;

1:15 p.m.-3:00 p.m.

Mar. 26



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SHERIFF SALES

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

APRIL 16, 2021

AT 10 A.M.

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they **MUST** possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

John T. Loomis

Sheriff of Erie County

Mar. 26 and Apr. 2, 9

SALE NO. 1

Ex. #10426 of 2013

**NORTHWEST SAVINGS
BANK, Plaintiff**

v.

**BRENDA L. MALMGREN,
Defendant**

DESCRIPTION

By virtue of a Writ of Execution filed at No. 2013-10426, Northwest Savings Bank vs. Brenda L. Malmgren, owner of property situate in the Township of Harborcreek, Erie County, Pennsylvania being: 3417 Greenlawn Avenue, Erie, Pennsylvania.
Approx. .5132 acres
Assessment Map Number:
(27) 56-190-1.01
Assessed Value Figure: \$90,600.00

Improvement Thereon: Residence
Kurt L. Sundberg, Esq.
Marsh Schaaf, LLP
300 State Street, Suite 300
Erie, Pennsylvania 16507
(814) 456-5301

Mar. 26 and Apr. 2, 9

SALE NO. 2

Ex. #12406 of 2020

**75 NORTH MAIN STREET,
SBL, LLC, Plaintiff**

v.

**MICHAEL PANDOLPH,
Defendant**

DESCRIPTION

By virtue of Writ of Execution filed at No. 12406-2020, 75 North Main Street, SBL, LLC vs. Michael Pandolph, owner of the following properties identified below:

1) Situate in the Borough of Union City, County of Erie, and Commonwealth of Pennsylvania at 75 North Main Street, Union City, Pennsylvania 16438:

Assessment Map No.:

41-006-014.0-022.00

Assessed Value Figure: \$140,000.00

Improvement Thereon:

Funeral Home

Michael P. Kruszewski, Esquire

Pa. I.D. No. 91239

The Quinn Law Firm

2222 West Grandview Boulevard

Erie, PA 16506

(814) 833-2222

Mar. 26 and Apr. 2, 9

SALE NO. 3

Ex. #10326 of 2020

**TRINITY FINANCIAL
SERVICES, Plaintiff**

v.

Richard A. Stritzinger, Defendant

DESCRIPTION

ALL that certain piece or parcel of land situate in the City of Erie, County of Erie and State of Pennsylvania.

BEING KNOWN AS: 818 Wayne Street, Erie, PA 16503

PARCEL #15020034020300

Improvements:

Residential Dwelling.

Jennie C. Shnyder, Esquire

Id. No. 315213

Attorney for Plaintiff

490 Carlisle Pike #182

Mechanicsburg, PA 17050
Southampton, PA 18966
(844) 899-4162

Mar. 26 and Apr. 2, 9

SALE NO. 5

Ex. #12009 of 2020

**Deutsche Bank National Trust
Company, as Trustee for
NovaStar Mortgage Funding
Trust, Series 2006-6 NovaStar
Home Equity Loan Asset-Backed
Certificates, Series 2006-6,
Plaintiff**

v.

Lester Jones, Defendant

DESCRIPTION

By virtue of Writ of Execution No. 12009-20, Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-6 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-6 v. Lester Jones, 217 Lighthouse Street, City of Erie, PA 16507, Tax Parcel No. 14010045024800. Improvements thereon consisting of a Residential Dwelling, sold to satisfy judgment in the amount of \$59,752.35.

Attorneys for Plaintiff:

Andrew J. Marley, Esquire

Stern & Eisenberg, PC

1581 Main Street, Suite 200

The Shops at Valley Square

Warrington, PA 18976

(215) 572-8111

Mar. 26 and Apr. 2, 9

SALE NO. 6

Ex. #11713 of 2020

**LAKEVIEW LOAN
SERVICING, LLC, Plaintiff**

v.

**BRODERICK T. ALLEN,
Defendant(s)**

DESCRIPTION

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN THE CITY OF ERIE, ERIE COUNTY, PENNSYLVANIA: BEING KNOWN AS: 301 E. 28TH STREET, ERIE, PA 16504
BEING PARCEL NUMBER: 18050079021900
IMPROVEMENTS: RESIDENTIAL PROPERTY
Robertson, Anschutz, Schneid, Crane & Partners, PLLC

A Florida Limited Liability Company
133 Gaither Drive, Suite F
Mt. Laurel, NJ 08054
(855) 225-6906
Attorneys for Plaintiff
Robert Flacco, Esquire,
Id. No. 325024

Mar. 26 and Apr. 2, 9



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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 **Thursday, March 11, 2021** and confirmed Nisi.

April 21, 2021 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

| <u>2021</u> | <u>ESTATE</u> | <u>ACCOUNTANT</u> | <u>ATTORNEY</u> |
|-------------|------------------------------|---------------------------------------|---------------------------|
| 67 | Timothy William Bishop | Helen Ruggiere, Administratrix | Tracy L. Zihmer, Esq. |
| 68A | George E. Helsel..... | PNC Bank, National Association, | Jamie R. Schumacher, Esq. |
| 68B | Mary Patricia Helsel | Trustee | James E. Spoden, Esq. |
| 69 | Miyeko Nagare..... | PNC Bank, National Association, | Colleen R. Stumpf, Esq. |
| | | Guardian | |
| 70 | Robert J. Behan | Austin C. Behan, Executor | Darlene M. Vlahos, Esq. |

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

Mar. 19, 26

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

**ADAMS, EARL H.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Rita J. Daub, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**ALBERICO, DOMINICK
JOSEPH, a/k/a
DOMINICK J. ALBERICO,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Carl M. Alberico, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**ANTHONY, AMELIA M.,
deceased**

Late of Millcreek Township, Erie County, Commonwealth of Pennsylvania
Co-executrices: Tina A. Anthony and Denise M. Anthony, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**AVERILL, STEWART L., a/k/a
STEWART LEONARD AVERILL,
deceased**

Late of the City of Erie, County of Erie, and State of Pennsylvania
Executrix: Kara R. Averill
Attorney: Gregory A. Karle, Esq., Dailey, Karle & Villella, 731 French Street, Erie, PA 16501

**BARNES, ALENE BRICKER,
deceased**

Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania
Executrix: Anne M. Lane, 3414 Westbrook Lane, Highlands Ranch, CO 80129
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**FIELD, NORMAN H.,
deceased**

Late of North East Township, Erie County, North East, PA
Executor: Norman S. Field, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**HOOVER, LEROY A., a/k/a
LEROY HOOVER,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Jeffrey Hoover, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**HOUSER, JUDITH N.,
deceased**

Late of North East Township, Erie County, North East, PA
Co-executors: Kim A. Pettys and Mark E. Houser, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**JOHNSON, BETTY LOU, a/k/a
BETTY L. JOHNSON, a/k/a
BETTY JOHNSON,
deceased**

Late of the Township of Waterford, County of Erie, State of Pennsylvania
Executor: Michael H. Waldinger, c/o 337 West 10th Street, Erie, PA 16502
Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

**KENNEDY, PAMELA R.,
deceased**

Late of the Township of Conneaut, County of Erie and State of Pennsylvania
Executor: Curtis W. Kennedy, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

**KIRIK, CATHERINE A.,
deceased**

Late of Union City Township, County of Erie, Pennsylvania
Administrator: Bruce Kirik, c/o 502 Parade Street, Erie, PA 16507
Attorney: Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

**KRASINSKI, VERONICA J.,
deceased**

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

Executor: Gerald Lacy, c/o Knox Law Firm, 120 W. 10th St., Erie, PA 16501

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

**LEONE, WARREN A., a/k/a
WARREN LEONE,
deceased**

Late of the Township of Harborcreek, County of Erie and State of Pennsylvania

Executrix: Jennifer McLallen, 3448 Ridge Parkway, Erie, PA 16510

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

**MATHIS, SHERYL A., a/k/a
SHERYL MATHIS,
deceased**

Late of the City of Erie

Administratrix: Shelena L. Reinsel, 4492 West 57th St., Cleveland, OH 44144

Attorney: Valerie H. Kuntz, Esq., 24 Main Street East, P.O. Box 87, Girard, PA 16417

**MEZZACAPO, VINCENT
ANTHONY, a/k/a
VINCENT A. MEZZACAPO,
a/k/a VINCENT MEZZACAPO,
deceased**

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

Executor: Joshua C. Mezzacapo, c/o 337 West 10th Street, Erie, PA 16502

Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

**NETH, SUZANNE C., a/k/a
SUZANNE NETH,
deceased**

Late of the City of Erie, County of Erie

Executrix: Kathleen A. Martin, c/o Barbara J. Welton, Esquire, 2530 Village Common Drive, Suite B, Erie, PA 16506

Attorney: Barbara J. Welton, Esquire, 2530 Village Common Drive, Suite B, Erie, PA 16506

**NITCZYNSKI, CYNTHIA
MARIE, a/k/a
CYNTHIA NITCZYNSKI, a/k/a
CYNTHIA M. NITCZYNSKI,
deceased**

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

Executrix: Marcia Nitzczynski, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507

Attorney: Kevin M. Monahan, Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**RYDZEWSKI, ROSE MARIE,
deceased**

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

Co-executors: Randall N. Rydzewski and Russell A. Rydzewski, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

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

**THOMAS, KIMBERLY, a/k/a
KIMBERLY A. THOMAS,
deceased**

Late of the Township of Concord, Erie County, Pennsylvania

Administratrix: Mariya Renner, c/o Adam E. Barnett, Esq., 234 West Sixth Street, Erie, PA 16507

Attorney: Adam E. Barnett, Esq., Bernard Stuczynski Barnett & Lager, PLLC, 234 West Sixth Street, Erie, PA 16507

**VICTOR, KIMBERLY J., a/k/a
KIMBERLY JEAN VICTOR,
a/k/a KIMBERLY VICTOR,
deceased**

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

Co-executors: Sydney E. Victor and Anthony B. Ciotti, c/o 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

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

TRUST NOTICES

Notice is hereby given of the administration of the Trust set forth below. All persons having claims or demands against the decedent are requested to make known the same and all persons indebted to said decedent are required to make payment without delay to the trustees or attorneys named below:

**RENNIE TRUST DATED
FEBRUARY 9, 2000**

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

Trustee: Patrick Rennie, c/o John M. Bartlett, Esq., 120 West Tenth Street, Erie, PA 16501

Attorney: John M. Bartlett, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

SECOND PUBLICATION**FITZGERALD, LEONA H.,
deceased**

Late of Erie County

Executrix: Kathleen Marie Crotty, 4142 Conrad Road, Erie, PA 16510

Attorney: David J. Mack, Esquire, 510 Parade Street, Erie, PA 16507

**GAPINSKI, CHARLOTTE A.,
a/k/a CHARLOTTE GAPINSKI,
deceased**

Late of the Township of
Harborcreek, County of Erie and
State of Pennsylvania

Executrix: Regina M. Gapinski,
1289 Troupe Road, Harborcreek,
Pennsylvania 16421

Attorney: Ronald J. Susmarski,
Esq., 4030 West Lake Road, Erie,
PA 16505-3260

**GILBERT, JANET A., a/k/a
JANET GILBERT,
deceased**

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

Executor: Tracy M. Hess, c/o
MacDonald, Illig, Jones & Britton
LLP, 100 State Street, Suite 700,
Erie, PA 16507-1459

Attorney: Thomas J. Buseck,
Esquire, MacDonald, Illig, Jones
& Britton LLP, 100 State Street,
Suite 700, Erie, PA 16507-1459

**GRIFFITHS, DONALD ALBERT,
deceased**

Late of the City of Erie, Erie
County, Pennsylvania

Administratrix: Lori Thor, c/o
Matthew J. Lager, Esq., 234 West
Sixth Street, Erie, PA 16507

Attorney: Matthew J. Lager, Esq.,
Bernard Stuczynski Barnett &
Lager, PLLC, 234 West Sixth
Street, Erie, PA 16507

**KOZIK, ELEANOR,
deceased**

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

Co-executors: Joseph M. Kozik,
Jr. and Robert J. Kozik, c/o Quinn,
Buseck, Leemhuis, Toohey &
Kroto, Inc., 2222 West Grandview
Blvd., Erie, PA 16506

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

**PAINTER, MARTHA DEAN,
a/k/a MARTHA D. PAINTER,
deceased**

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

Co-administrators: James D.
Painter, 2153 Clairmont Drive,
Pittsburgh, PA 15241 and Mary
Louise Opitz, 1701 Burroughs
Road, Virginia Beach, VA 23455-
4313

Attorney: Maureen P. Gluntz,
Esquire, 102 Lexington Avenue,
Pittsburgh, PA 15215

**RAYBURG, JOSEPH HENRY,
deceased**

Late of the City of Erie, County
of Erie

Executrix: Jane M. Manross,
105 Conneautte Drive, Edinboro,
PA 16412

Attorney: Kari A. Froess, Esquire,
Carney & Good, 254 West 6th
Street, Erie, PA 16507

**RUSCITTO, ROBERT ANTHONY,
a/k/a ROBERT A. RUSCITTO,
deceased**

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

Administratrix: Janet LaRocco,
3228 Georgian Ct., Erie,
Pennsylvania 16506-1168

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

**SHANNON, SYLVESTER M., a/k/a
SYLVESTER MARK SHANNON,
a/k/a MARK SHANNON,
deceased**

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

Executrix: Gladys D. Michalchik,
c/o John J. Shimek, III, Esquire,
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

**SLIKER, LARRY R., a/k/a
LARRY SLIKER,
deceased**

Late of the City of Erie,
Commonwealth of Pennsylvania
Executrix: Kristie L. Cirillo, c/o
Vendetti & Vendetti, 3820 Liberty
Street, Erie, Pennsylvania 16509

Attorney: Joseph P. Vendetti,
Esquire, Vendetti & Vendetti,
3820 Liberty Street, Erie, PA
16509

**SNYDER, KATHLEEN L., a/k/a
KATHLEEN LOUISE SNYDER,
deceased**

Late of Summit Township, Erie
County, Pennsylvania

Executrix: Andrea J. Serra, c/o
Jeffrey D. Scibetta, Esq., 120 West
Tenth Street, Erie, PA 16501

Attorney: Jeffrey D. Scibetta,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

TRUST NOTICES

Notice is hereby given of the
administration of the Estate and
Trust set forth below. All persons
having claims or demands against
the decedent are requested to make
known the same and all persons
indebted to said decedent are
required to make payment without
delay to the executor, trustee or
attorney named below:

**KRAUS, NORBERT J., SR.,
deceased**

Late of Lawrence Park Township,
Erie County, Pennsylvania
Successor Trustee & Executor:
Linda M. Podskalny, c/o
33 East Main Street, North East,
Pennsylvania 16428

Attorney: Robert J. Jeffery, Esq.,
Knox McLaughlin Gornall &
Sennett, P.C., 33 East Main Street,
North East, Pennsylvania 16428

THIRD PUBLICATION

**BOWES, RUTH L., a/k/a
RUTH IRENE BOWES,
deceased**

Late of the City of Erie
Administrator: Edward J. Bowes,
Jr., c/o 246 West 10th Street, Erie,
PA 16501
Attorney: Evan E. Adair, Esq.,
246 West 10th Street, Erie, PA
16501

**BUJALSKI, HENRY D., a/k/a
HENRY DOUGLAS BUJALSKI,
deceased**

Late of Harborcreek Township,
Erie County, Commonwealth of
Pennsylvania
Executrix: Cynthia A. Boris, c/o
Jeffrey D. Scibetta, Esq., 120 West
Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**CARBONE, MICHAEL J.,
deceased**

Late of the City of Erie, Erie
County
Executrix: Joy M. Bauer,
P.O. Box 133, Fryburg, PA 16326
Attorney: Terry R. Heeter, Esquire,
P.O. Box 700, Clarion, PA 16214

**COCO, JEAN M.,
deceased**

Late of the Township of Millcreek,
County of Erie, Commonwealth of
Pennsylvania
Executrix: Diane M. Price,
538 Sybil Drive, Erie, PA 16505-
2156
Attorneys: MacDonald, Illig, Jones
& Britton LLP, 100 State Street,
Suite 700, Erie, Pennsylvania
16507-1459

**COURTNEY, RICHARD L., a/k/a
RICHARD LOUIS COURTNEY,
deceased**

Late of the City of Erie, County
of Erie and Commonwealth of
Pennsylvania
Administrator: Richard L.
Courtney, II
Attorney: David J. Rhodes,
Esquire, ELDERKIN LAW FIRM,
456 West 6th Street, Erie, PA
16507

**DANIELS, SUSAN E.,
deceased**

Late of the City of Corry, County
of Erie, Pennsylvania
Co-executrices: Linda J. Heacox
and Susan C. Hicks, c/o Thomas
J. Ruth, Esq., 224 Maple Avenue,
Corry, PA 16407
Attorney: Thomas J. Ruth, Esq.,
224 Maple Avenue, Corry, PA
16407

**DiSANTI, MICHAEL D.,
deceased**

Late of Harborcreek Township,
Erie County, Commonwealth of
Pennsylvania
Executrix: Ellen M. DiSanti, c/o
Michael A. Fetzner, Esq., 120 West
Tenth Street, Erie, PA 16501
Attorney: Michael A. Fetzner,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**HODAPP, THERESA, a/k/a
THERESA G. HODAPP,
deceased**

Late of the City of Erie, County
of Erie, Commonwealth of
Pennsylvania
Executor: James M. Hodapp,
c/o John J. Shimek, III, Esquire,
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

**KENDZIORA, THERESA, a/k/a
THERESA A. KENDZIORA, a/k/a
THERESA ANN KENDZIORA,
a/k/a THERESA C. KENDZIORA,
deceased**

Late of the Township of Lawrence
Park, Erie County, Commonwealth
of Pennsylvania
Executrix: Deborah A. Kendziora,
c/o Knox Law Firm, 120 W. 10th
St., Erie, PA 16501
Attorney: Christine Hall McClure,
Esq., Knox McLaughlin Gornall &
Sennett, P.C., 120 West 10th Street,
Erie, PA 16501

**KING, CAROL ANN, a/k/a
CAROL A. KING,
deceased**

Late of the City of Erie, County
of Erie and Commonwealth of
Pennsylvania
Administratrix: Julie A. Rice
Attorney: Thomas J. Minarcik,
Esquire, ELDERKIN LAW FIRM,
456 West 6th Street, Erie, PA
16507

**KUHAR, JOHN F., a/k/a
JOHN KUHAR,
deceased**

Late of the City of Erie,
Commonwealth of Pennsylvania
Administrator: John Kuhar, c/o
Vendetti & Vendetti, 3820 Liberty
Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti,
Esquire, Vendetti & Vendetti,
3820 Liberty Street, Erie, PA
16509

**KUPPER, JEFFREY M.,
deceased**

Late of the City of Erie, Erie
County, PA
Administratrix: Mary Alfieri
Richmond, Esq., 502 Parade
Street, Erie, PA 16507
Attorney: Mary Alfieri Richmond,
Esq., 502 Parade Street, Erie, PA
16507

**ORNER, PAUL E.,
deceased**

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

Executrix: Lisa M. Royek, 14540 Stewart Road, Corry, PA 16407-9610

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

**POST, ARTHUR L.,
deceased**

Late of Fairview Township, County of Erie and Commonwealth of Pennsylvania

Executor: Brian J. Post

Attorney: David J. Rhodes, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**REID, SANDRA M.,
deceased**

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

Executor: Robert M. Reid, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**SCHAAF, EVA S.,
deceased**

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

Executrix: Charlene A. Schaaf, c/o Thomas C. Hoffman, II, Esq., 120 West Tenth Street, Erie, PA 16501

Attorney: Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**STETSON, JANET A.,
deceased**

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

Administratrix: Abigail M. Stetson

Attorney: James H. Richardson, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**VALAHOVIC, JAMES, a/k/a
JAMES E. VALAHOVIC,
deceased**

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

Executor: Richard Valahovic, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501

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

**WHITE, THELMA J., a/k/a
THELMA JANE WHITE,
deceased**

Late of the Township of Waterford, Commonwealth of Pennsylvania

Executrix: Janet L. Schrimper, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509

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

**WRIGHT, MATTHEW P.,
deceased**

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

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

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

**YEAGER, LOIS T., a/k/a
LOIS YEAGER,
deceased**

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

Executor: Russell R. Yeager, c/o Knox Law Firm, 120 W. 10th St., Erie, PA 16501

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

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