

# LACKAWANNA JURIST

## JUDICIAL OPINION

**CASE NAME AND NUMBER:** Hughes v. Wilkes-Barre Hospital Company, 2018 WL 1558795 (Lacka. Co. 2018)

**DATE OF DECISION:** March 28, 2018

**JUDGE:** Terrence R. Nealon

**ATTORNEYS INVOLVED:** Mathew A. Casey, Esquire, Ryan Chase, Esquire, Counsel for Plaintiffs  
Stuart T. O'Neal, Esquire, M. Sean Maravich, Esquire, Courtney C. Barbacane, Esquire, James A. Young, Esquire, Richard S. Margulies, Esquire, Counsel for Wilkes-Barre Hospital Company, LLC d/b/a Wilkes-Barre General Hospital. James A. Doherty, Jr., Esquire, Grace Doherty Hillebrand, Esquire, Counsel for OB-GYN Associates and Lori E. DelGaudio, D.O., Howard S. Stevens, Esquire, Susan Ellis Wild, Esquire, Jennifer L. Weed, Esquire, Counsel for Scranton Hospital Company, LLC d/b/a Moses Taylor Hospital, Eugene P. Feeney, Esquire, Noah E. Katz, Esquire, Counsel for Theresa Baseski, D.O., Mark T. Perry, Esquire, William D. Murray, Esquire, Counsel for Community Health Systems, Inc. d/b/a Community Health Systems and Commonwealth Health

### **SUMMARY OF OPINION:**

In this malpractice action alleging negligence and recklessness in the prenatal, labor, delivery, and neonatal care of a child, the defendant – hospital filed motions for partial summary judgment as to plaintiff's ostensible agency claim and demand for punitive damages. Under 40 P.S. § 1303.516, the plaintiff may establish the vicarious liability of a hospital for the actions of its ostensible agents by proving either (1) that a reasonably prudent patient would have been justified in the belief that the care was being rendered by an agent of the hospital, or (2) that the care furnished by the alleged agent was advertised or represented to the plaintiff as treatment delivered by a hospital agent. In light of the signage on the exterior and interior of the physicians' medical offices, when coupled with the connection of those offices to the hospital's main entrance by an elevated walkway, issues of fact existed as to whether a reasonably prudent person would conclude that the care was being rendered by a hospital agent, or that the hospital represented to the public that care furnished by those physicians was rendered by an agent of the hospital. Under 40 P.S. § 1303.505, a principal may be vicariously liable for punitive damages based upon the wanton or reckless conduct of an agent only if the principal "knew of and allowed the conduct by its agent that resulted in the award of punitive damages." Since the summary judgment record lacked any evidence that the hospital knew of some reckless indifference by the health care providers, but nonetheless allowed it to occur, it did not contain evidence supporting a finding of vicarious liability for punitive damages. Therefore, the motion for partial summary judgment was denied as to the ostensible agency claim, but granted with regard to the vicarious liability claim for punitive damages.

## JUDICIAL OPINION

**CASE NAME AND NUMBER:** Alward v. Housing Authority of the County of Lackawanna,  
2018 WL 1766967 (Lacka. Co. 2018)

**DATE OF DECISION:** April 12, 2018

**JUDGE:** Terrence R. Nealon

**ATTORNEYS INVOLVED:** Jeremy R. Weinstock, Esquire, Counsel for Plaintiff  
Thomas Geroulo, Esquire, Ryan R. McBride, Esquire, Counsel for Defendant

### **SUMMARY OF OPINION:**

A tenant of the county housing authority filed a negligence action seeking damages for health complications caused by sewage, mold, and hazardous fumes that developed from defects in the sewage, ventilation, and plumbing systems of the residential property that the housing authority leased to her. The housing authority filed preliminary objections seeking to dismiss the tort action based upon the gist of the action doctrine, which precludes a plaintiff from recasting a breach of contract claim as a tort claim, and pursuant to the Sovereign Immunity Act that insulates a housing authority from tort liability unless the harm was caused by a dangerous condition that derived or originated from the housing authority's real property. The housing authority also demurred to the tenant's demand for "the costs of this action" in her prayer for relief, and argued that the tenant could not recover "counsel fees" absent express statutory authorization, a clear agreement of the parties, or some other established exception.

Although the parties' lease created their landlord-tenant relationship, the duties allegedly breached by the housing authority arose from broader societal duties imposed by Pennsylvania tort law rather than the parties' contract, and as such, the tort claim was not barred by the gist of the action doctrine. Additionally, once the sewage, ventilation, and plumbing systems were installed in the authority's rental unit and became affixed to it, they became part of the authority's real estate itself, as a result of which the dangerous conditions at issue arguably developed and stemmed from the authority's real estate so as to fall within the real estate exception to tort immunity set forth in the Sovereign Immunity Act. Furthermore, since the tenant merely demanded taxable costs, as opposed to an award of counsel fees, her prayer for relief was legally sufficient. Accordingly, the housing authority's preliminary objections in the nature of demurrers were overruled.

## LACKAWANNA JURIST

### ESTATES

#### First Notice

**ESTATE OF JOSEPH H. CAMPAGNA**, Deceased late of Thornhurst, PA LACKAWANNA COUNTY: Died June 12, 2018. Notice is hereby given that letters of Testamentary has been granted in the above estate. All persons indebted to said estate are required to make payments and those having claims or demands are to present the same without delay to Joann M. Cistone, Executrix, 1471 Buck Hill Drive, Southampton, PA 18966.

**ESTATE OF ANTHONY J. CAPOCCIA A/K/A ANTHONY JOSEPH CAPOCCIA**, late of 214 Franklin Street, Dunmore, Pennsylvania (died April 11, 2018). Letters Testamentary having been granted, all persons having claims or demands against estate of decedent shall make them known and present them, and all persons indebted to said decedent shall make payment thereof without delay to Vincent Capoccia, 214 Franklin Street, Dunmore, Pennsylvania 18512 and Ann Marie Zieno, 17 Silver Street, Sidney, New York 13838, Executors, or to James J. Gillotti of Oliver, Price & Rhodes, Attorney for the Estate, 1212 South Abington Road, PO Box 240, Clarks Summit, PA 18411.

**ESTATE OF AGNES M. GOLDEN, A/K/A AGNES GOLDEN**, late of Scranton, Lackawanna County, Pennsylvania, Deceased. Letters of Administration C.T.A. on the above estate have been granted the undersigned pursuant to 20 Pa.C.S.A. §3155(b)(5), all persons indebted to said estate are requested to make immediate payment, and those having legal claims to present the same without delay to: Gregory J. Pavlovitz, Esq., Pavlovitz & Fackenthal, LLC, 408 W. Market Street, 1st Floor, Pottsville, PA 17901

IN RE: **ESTATE OF BARBARA L. HOFFMAN**, late of Olyphant, Pennsylvania (Died March 15, 2015). Notice is hereby given that Letters Testamentary on the above Estate have been granted to Robert Hoffman. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Executor named above or to Eugene Daniel Lucas, Esquire, 207 Lackawanna Avenue, Olyphant, PA 18447.

NOTICE IS HEREBY GIVEN that Letters of Administration have been granted in the **ESTATE OF ADAM J. LUTCHKO, A/K/A ADAM J. LUTCHKO, JR., OR ADAM LUTCHKO, OR ADAM LUTCHKO, JR.**, Deceased, late of 60 Copeland Avenue, Carbondale, Lackawanna County, Pennsylvania 18407, who died on May 27, 2018. All persons indebted to the Estate are requested to make payment and those having claims or demands are to present same, without delay, to the Co-Administrators, Theresa Lutchko and John Lutchko, or Michael N. Krisa, Attorney for the Estate, 3397 Scranton/Carbondale Highway, Suite 4, Blakely, Pennsylvania 18447.

**ESTATE OF VIRGINIA A. MINER, AKA VIRGINIA MINER**, Deceased late of Blakely, PA LACKAWANNA COUNTY: Died February 19, 2018. Notice is hereby given that letters of Testamentary has been granted in the above estate. All persons indebted to said estate are required to make payments and those having claims or demands are to present the same without delay to Natalie B. Miner, Executrix, 113 Smith Street, Manlius, NY 13104 and James R. Miner, 22042 Water Run Court, Ashburn, VA 20148.

**ESTATE OF JEFFREY M. YOUNG, AKA JEFF YOUNG**, Deceased late of Scranton, PA LACKAWANNA COUNTY: Died December 22, 2017. Notice is hereby given that letters of Administration has been granted in the above estate. All persons indebted to said estate are required to make payments and those having claims or demands are to present the same without delay to Theresa Marie Young, Administrator, 618 Pear Street, Scranton, PA 18505.

#### Second Notice

RE: **ESTATE OF JOSEPH J. ABDA, III**, late of Dunmore, Lackawanna County, Pennsylvania (died May 6, 2018). Notice is hereby given that Letters of Administration for the Estate have been issued to Joseph J. Abda IV, Administrator of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without delay to the Administrator, or to John J. McGovern, Jr., Attorney for the Estate, 321 Spruce Street – Suite 201, Scranton, PA 18503.

NOTICE IS HEREBY GIVEN that letters testamentary have been granted in the **ESTATE OF MICHAEL ANDREJCO**, late of Benton Township, Lackawanna County, Pennsylvania who died June 21, 2018. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to Mary P. Saxton, Executrix, 4377 SR 438, Dalton PA 18414 or Robert H. Sayers, 814 Main Street, Dickson City, Pennsylvania, 18519 Attorney for the Estate.

**ESTATE OF KARL KEITH BEICHLER A/K/A KARL K. BEICHLER, A/K/A KARL BEICHLER**, late of the Township of Benton, County of Lackawanna, Commonwealth of Pennsylvania, who died on May 22, 2018. Letters of Testamentary in the above estate have been granted to the undersigned, all persons indebted to said estate are requested to make prompt payment and all having claims against said estate will present them without delay to: William Beichler, Jr., Executor, c/o JAMI LAYAOU HEARN, ESQ., 181 West Tioga Street, Tunkhannock, PA 18657.

**ESTATE OF KATHLEEN BOCZNIEWICZ**, late of Dalton Borough, PA (died April 17, 2018), Catherine M. Fraser, Executrix; David L. Haldeman, Esq., Attorney for the Estate, 1134 Lackawanna Trail, Clarks Summit, PA 18411.

**ESTATE OF ROBERT J. BOYKO, A/K/A ROBERT J. BOYKO, SR.**, late of the Borough of Dickson City, Lackawanna County, Pennsylvania, (died June 7, 2018). Letters Testamentary were granted to BARBARA A. BAYNE. Creditors present claims and debtors make payments to John P. Pesota, Esquire, Suite 702 SNB Plaza, 108 North Washington Avenue, Scranton, PA 18503.

**ESTATE OF CHARLES BUDRIS**, late of Scranton, Lackawanna County, Pennsylvania, (died May 10, 2015). Notice is hereby given that Letters of Administration have been granted in the above estate. All persons indebted to said Estate are required to make payments and those having claims or demands are to present the same without delay to Leanne Budris, c/o Stephen J. Evers, Attorney, 213 R. North State Street, Clarks Summit, PA, 18411.

In the **ESTATE OF JOHN P. DROP, JR.**, of Lackawanna County, Pennsylvania. Letters Testamentary in the above estate have been granted to Michael A. Drop. All persons indebted to said estate are requested to make prompt payment and all having claims against said estate will present them without delay to: Marissa McAndrew, Esq., Brieche Law Offices, P.C., 707 Main Street, PO Box 157, Forest City, PA 18421, Attorney for the Estate.

## LACKAWANNA JURIST

**ESTATE OF MARGARET A. GRANQUIST**, late of Clarks Summit, Lackawanna County, Pennsylvania. Letters of Administration on the above estate having been granted to Sarah Granquist, all persons indebted to the said estate are requested to make payment, and those having claims to present the same without delay to her c/o Joseph Kosierowski, Esq. 400 Broad Street, Milford, Pennsylvania 18337.

NOTICE IS HEREBY GIVEN that Letters Testamentary in the **ESTATE OF ODESSA LEVINE**, late of Waverly Township, Lackawanna County, Pennsylvania, (Date of Death: April 26, 2018), have been granted to the undersigned. All persons indebted to said estate are required to make immediate payment and those having claims shall present them for settlement to: **KENNETH LEVINE, EXECUTOR. KEVIN R. GREBAS, Esquire, COLBERT & GREBAS, P.C.**, 210 Montage Mountain Road Suite A, Moosic, PA 18507.

In the **ESTATE OF MARGARET A. MASLAR**, late of the City of Scranton, County of Lackawanna and Commonwealth of Pennsylvania, deceased, who died on June 7, 2018. Letters Testamentary have been granted to the undersigned. All persons having claims against the estate of said decedent are requested to make known the same and all persons indebted to make payment without delay to: Terri Curtis, Catherine J. Garbus, Esquire, 24 E. Tioga Street, Tunkhannock, PA 18657. (570)836-6749

**ESTATE OF MARION J. REMPE**, Scranton, PA (died December 5, 2017), Linda Gallagher, Executrix, Paul A. Kelly, Jr., Esq., 201 Lackawanna Avenue, Suite 306, Scranton, PA 18503.

NOTICE is hereby given that the opening of the **ESTATE OF JAMES SAVERO, A/K/A JAMES B. SAVERO, A/K/A JAMES BENJAMIN SAVERO**, late of 1114 Froude Avenue, City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania (died June 6<sup>th</sup>, 2018). Letters of Administration having been granted on June 25<sup>th</sup>, 2018 to: **THOMAS F. SAVERO**, 415 S. Irving Avenue Rear, City of Scranton, County of Lackawanna, and Commonwealth of Pennsylvania, as Administrator. All persons having claims shall present them to the Administrator named above or the Attorney named below and all persons indebted to decedent shall make payment to **WILLIAM P. OPEIL, JR., ESQUIRE**, 109 Shady Lane, Olyphant, PA 18447.

**ESTATE OF ELLEN SLENSKA**, late of Jermyn, PA (died June 17, 2018) Letters Testamentary were granted to Nadine M. Borys, Executrix. Elaine C. Geroulo, Esq., Attorney for the Estate, 411 Jefferson Avenue, Scranton, PA 18510.

**ESTATE OF WAYNE VAN CORTLANDT SMITH**, Scott Township, PA (died June 9, 2018), Linda M. Smith and Elena Mead Slaughter, Co-Administrators. Paul A. Kelly, Jr., Esq., 201 Lackawanna Avenue, Suite 306, Scranton, PA 18503.

### Third Notice

**ESTATE OF SALLY GLEASON**, Late of Moosic Borough, PA (DIED April 29, 2018), William Gleason, Administrator, or to Donald J. Frederickson, Jr., KOBAL & FREDERICKSON, Attorneys for the Estate, 435 Main Street, Moosic, PA. 18507-1017.

**ESTATE OF FOREST F. HENDRICKSON, III**, late of South Abington Twp., Pennsylvania (died April 21, 2018). Letters Testamentary have been issued to Forest F. Hendrickson IV, Executor of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without

delay to Patrick Walsh, Esquire, attorney for the Estate at 715 N. State Street, Clarks Summit, PA 18411.

**ESTATE OF HAROLD F. KEATING, JR.**, Late of Taylor Borough, PA (DIED April 13, 2018), Elizabeth A. Haduch, Administratrix, or to Donald J. Frederickson, Jr., KOBAL & FREDERICKSON, Attorneys for the Estate, 435 Main Street, Moosic, PA. 18507-1017.

**ESTATE OF ALICE M. MERRIGAN**, late of Eynon, PA (died March 25, 2018) Paul Manarchuck Executor, Frederick M. Moase, Jr., Attorney for the Estate, Law Offices of Frederick M. Moase, Jr., 123 East Garfield Ave, Carbondale, PA 18407.

RE: **ESTATE OF ROBERT J. ORTIZ**, Deceased, Late of Scranton, Pennsylvania (Died April 6, 2018). Letters of Administration in the Estate of Robert J. Ortiz a/k/a Robert J. Clement, having been granted, all persons having claims or demands against said Estate of the Decedent should make them known and present them and all persons indebted to said Estate should make payment thereof, without delay, to Ana Ortiz, Administratrix, c/o Robert T. Moran, Esquire, 116 N. Washington Avenue, Suite 400, Scranton, PA 18503, (570) 955-4513.

**ESTATE OF ROBERT L. SEPHTON**, late of Jermyn, Lackawanna County, Pennsylvania (died October 21, 2017). Notice is hereby given that Letters of Administration for the Estate of **ROBERT L. SEPHTON** have been issued to Bernadette Sephton, Administratrix of the Estate. All those having claims or demands against the Estate or indebtedness owed to the Estate shall present claims or remit payment without delay to Bernadette Sephton, c/o John J. McGee, Attorney for the Estate, 400 Spruce St., Suite 320 Scranton, PA 18503.

**ESTATE OF FRANCESCO STOPPINI**, late of Elmhurst, Lackawanna County, Pennsylvania, (died April 19, 2018). Notice is hereby given that Letters Testamentary have been granted in the above estate. All persons indebted to said Estate are required to make payments and those having claims or demands are to present the same without delay to Mary Ann Stoppini, c/o Stephen J. Evers, Attorney, 213 R. North State Street, Clarks Summit, PA, 18411.

**ESTATE OF MARGARET ANN ZINI, DECEASED**, late of 743 CRYSTAL STREET, PECKVILLE, PA 18452, (Died May 18, 2018) LINDA ZINI MOTTS, Executrix; Dante A. Cancelli, Esquire, Suite 401, 400 Spruce Street, Scranton, Pennsylvania 18503, Attorney.

### FICTITIOUS NAME

Notice is hereby given that D. Wolfe Consulting, Inc., 2800 Stafford Ave #3023, Scranton, PA 18505 filed an application for registration of a fictitious name on June 8, 2018 under the Fictitious Names Act with the Department of State, Commonwealth of Pennsylvania to conduct business under the Fictitious Name of "**Reviews by Sarah**" 808 Spring Street, Moosic, PA 18507.

T1-7/13

### FICTITIOUS NAME

Notice is hereby given that D. Wolfe Consulting, Inc., 2800 Stafford Ave #3023, Scranton, PA 18505 filed an application for registration of a fictitious name on June 11, 2009 under the Fictitious Names Act with the Department of State, Commonwealth of Pennsylvania to conduct business under the Fictitious Name of "**Naztazia**" 808 Spring Street, Moosic, PA 18507.

T1-7/13

LACKAWANNA JURIST

**CHANGE OF NAME**

NOTICE IS HEREBY GIVEN, that the Petition for Change of Name, filed by Petitioner Briana Balbuena, Natural Mother and Guardian of the Minor Child, Gerald Lucero, was filed in the Court of Common Pleas of Lackawanna County to No. 2018 CV 03704 and prays for a decree to change his name to Gerald Balbuena. The Court has fixed August 31, 2018 at 9:00 a.m. as the date and time of the hearing in Courtroom #3. Lackawanna County Courthouse, 200 N. Washington Ave., Scranton, PA 18503.

T1- 7/13

**CERTIFICATE OF ORGANIZATION**

NOTICE IS HEREBY GIVEN that a Certificate of Organization, Domestic Limited Liability Company, for **RR Organization LLC**, a Pennsylvania limited liability company has been filed and approved by the Department of State, Commonwealth of Pennsylvania, on June 26, 2018, in accordance with the provisions of the Commonwealth of Pennsylvania Limited Liability Company Law of 1994, 15 Pa. C.S.A. Section 8901, as amended. The principal place of business is 145 S Merrifield Avenue, Scranton, Pennsylvania 18504.

Justin J. Sulla, Esq.  
T1-7/13

**NOTICE OF DISSOLUTION**

No Buck Club, a non-profit corporation with a registered office at 211 N. Main Street, Taylor, Lackawanna County, Pennsylvania, 18517, does hereby give Notice of its Intention to Dissolve for doing business in this Commonwealth. Any proceedings directly affecting this company shall be sent to 211 N. Main Street, Taylor, Lackawanna County, Pennsylvania, 18517. This shall serve as official notice to creditors and taxing authorities.

John P. Pesota, Esquire  
T1-7/13

**NOTICE**

**“NOTICE TO LEGATEES”**

To all legatees, creditors and other persons interested. Notice is hereby given that the following Executors, Administrators, Trustees, and Guardians have filed their accounts with the Register of Wills and Clerk of Orphans’ Court, Division of the Court of Common Pleas.

The following accounts have been filed and may be examined in the Office of the Register of Wills and Clerk of Orphans’ Court. If you desire to object, the same may be accomplished by filing that objection in writing with the Clerk of Orphans’ Court on or before Friday, the 2<sup>nd</sup> of August, 2018.

The accounts will be filed by the clerk, with the Court for adjudication and conformation on Monday, the 3<sup>rd</sup> of August, 2018. Distribution may be ordered or authorized without further notice if no objections are filed prior to that date.

35-2018-18 First & Final Account  
Thomas Brown Tammy Brown Executrix  
Deceased David M Sebelin Esq

35-1983-685 Eleventh & Partial Account  
Hyde Park Cemetery PNC Bank N.A. Trustee  
Association J. Stephen Feinour Esq  
Trust

35-1983-685 Eleventh & Partial Account  
Abington Hills Cemetery PNC Bank N.A. Trustee  
Trust No 1 J. Stephen Feinour Esq

35-1983-685 Eleventh & Partial Account  
Abington Hills Cemetery PNC Bank N.A. Trustee  
Trust No 2 J. Stephen Feinour Esq

35-2017-302 First & Final Account  
Michael S. Simpkins Frank P. Simpkins. Executor  
Deceased Wayne M. Chirrazzi Esq

35-2017-567 First & Final Account  
Helen M. Schroth-O’Malley Fidelity Deposit  
Deceased & Discount Bank  
Executor  
Daniel L Penetar Jr Esq

T2-7/20