

Lebanon County Legal Journal

The official legal periodical for Lebanon County
containing the decisions rendered in the 52nd Judicial District

Vol. 56

Lebanon, Pennsylvania, December 26, 2018

No. 22

Public Notices

**DECEDENTS' ESTATES
ORPHANS' COURT DIVISION NOTICES
FICTITIOUS NAME**

Opinion

Bashore v. The Good Samaritan Hospital of Lebanon PA No. 2009-00078

Published every Wednesday. Advertisements must be sent to
LCBA, 547 South 10th Street, Lebanon PA 17042
or emailed to lebcoar@verizon.net
by 11 a.m. of preceding Monday.

Lebanon County Legal Journal, per bound volume.....\$95.00
Advance Sheets, per year.....\$97.75
Single copy, advance sheets.....\$4.00

717-273-3113; www.lebanoncountylegaljournal.org

Owned and published by the Lebanon County Bar Association

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DECEDENTS' ESTATES

NOTICE IS HEREBY GIVEN that Letters Testamentary or of Administration have been granted in the following estates. 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 the administrators or executors named.

FIRST PUBLICATION

ESTATE OF RICHARD B. BOMGARDNER, late of the County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters of Testamentary have been granted to the undersigned Executor.

Richard B. Bomgardner II, Executor
19557 Brookside Way
Bend, OR 97702

Daryl J. Gerber, Esquire,
The Law Office of Daryl J. Gerber
46 E. Main Street
Palmyra, PA 17078

ESTATE OF FRANCES L. BROWN, late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

Jay H. Brown, Executor
630 King Street
Lebanon, PA 17042

James A. Brown, Executor
2503 S. 5th Avenue
Lebanon, PA 17042

Albert J. Brown, Executor
4170 Stiegel Pike
Newmanstown, PA 17073

Kenneth C. Sandoe, Esquire
Steiner & Sandoe, Attorneys

ESTATE OF ROBERT S. CARTER, late of the County of Lebanon, Commonwealth of Pennsylvania, deceased. Grant of Letters has been granted to the undersigned Co-Executors.

Robert M. Carter
Stacy K. Carter
Co-Executors
George E. Christianson
Attorney
Lebanon, PA

ESTATE OF CHARLES G. FICKES JR., late of Cornwall Borough, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

John C. Fickes, Executor
576 Reber Road
Mifflinburg, PA 17844

ESTATE OF ANITA J. KRIZAN a/k/a Anita J. Krizan, late of South Lebanon Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Patricia J. Binner, Executrix
905 Oak Lane
Lebanon, PA 17046

David R. Warner, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF COLETTE M. SCHARENBRUCH, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Karen Scharenbroch, Executor
c/o Craig A. Hatch, Esq.
Halbruner, Hatch and Guise, LLP
2109 Market Street
Camp Hill PA 17011

ESTATE OF GLORIA A. SMITH, late of South Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Rodney G. Smith, Executor
Charles A. Ritchie, Jr., Esquire
Feather and Feather, P.C.
22 West Main Street
Annville, PA 17003
Attorney

ESTATE OF LINDA ANN SMITH, late of West Cornwall Township, Lebanon County, PA, deceased.

Pamela L. Berry, Administrator
962 Hunters Grove Road
Brookville, PA 15825
Donna Long Brightbill, Attorney

ESTATE OF VIOLA M. SPENGLER, late of StoneRidge Town Centre, Myerstown, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Betty J. Brownmiller, Executrix
2351 Brownsville Road
Robesonia PA 19551

Or to her attorney:
Russell E. Farbiarz, Esq.
Antanavage Farbiarz, PLLC
64 North Fourth Street
Hamburg PA 19526

ESTATE OF CHARLES J. WOLFE,
late of Lebanon City, Lebanon County,
PA, deceased. Letters Testamentary have
been granted to the undersigned Executor.

John M. Wolfe, Executor
c/o Jon F. Arnold, Esq.
410 Chestnut Street
Lebanon PA 17042

SECOND PUBLICATION

ESTATE OF JAMES T. BERKHEISER
a/k/a JAMES THOMAS BERKHEISER,
late of West Cornwall Township,
Lebanon County, PA, deceased. Letters
Testamentary have been granted to the
undersigned Executor.

Kevin D. Berkheiser, Executor
Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF THELMA G. FISCHER
a/k/a Thelma Fischer, late of Heidelberg
Township, Lebanon County, Pennsylvania,
deceased. Letters Testamentary have been
granted to the undersigned Executrix.

Amy Hehnly, Executrix
43 West Main Street
Newmanstown, PA 17073

Jason J. Schibinger, Esquire
Buzgon Davis Law Offices
P.O. Box 49
525 South Eighth Street
Lebanon, PA 17042

ESTATE OF MURIEL J. FISHER,
late of Palmyra Borough, Lebanon
County, Pennsylvania, deceased. Letters
Testamentary have been granted to the
undersigned Co-Executrixes.

Dawn M. Hamilton & Diane S. Locastro –
Co-Executrixes
c/o Gerald J. Brinser
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF HARRY F. FOUTZ, late of
South Londonderry Township, Lebanon
County, Pennsylvania, deceased. Letters
Testamentary have been granted to the
undersigned Co-Executors.

James H. Foutz and Judith A. Stellmach –
Co-Executors
c/o Keith D. Wagner
P. O. Box 323
Palmyra, PA 17078
Attorney

ESTATE OF FERN A. FRANTZ, late of the Borough of Richland, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

Evan L. Frantz, Executor
130 S. Fort Zeller Road
Newmanstown, PA 17073

Dianne M. Frantz, Executor
306 S. Race Street
Richland, PA 17087

David L. Frantz, Executor
31 Horst Avenue
Lebanon, PA 17042

William H. Sturm, Jr., Esquire
Steiner & Sandoe, Attorneys

ESTATE OF SCOTT JENNINGS LEWIS, late of North Londonderry Township, Lebanon County, PA, deceased. Letters of Testamentary have been granted to the undersigned Executor and Executrix.

James Sanderson Lewis, JR., Executor
Cynthia J. Lewis, Executrix
c/o Aviv S. Bliwas, Esquire
The Law Offices of Aviv S. Bliwas
20 Erford Road, Suite 304
Lemoyne, PA 17043
(717)761-4864

ESTATE OF DORIS V. PAUL aka Doris Virginia Paul, late of North Londonderry Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Personal Representative.

David N. Paul, Personal Representative

C/o Douglas A. Smith, Attorney
2933 Lititz Pike
P.O. Box 5349
Lancaster, PA 17606

Attorneys: Gibbel Kraybill & Hess LLP

ESTATE OF PAUL V. RHOADS, late of the City of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Jan Noone, Executrix
c/o Patrick M. Reb, Esq.
547 South Tenth Street
Lebanon PA 17042
717-274-6620

ESTATE OF THOMAS J. ROOFF a/k/a THOMAS ROOFF, late of Cornwall Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Brian Rooff, Executor
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF LAWRENCE L. ROWE
a/k/a Lawrence Leyenberger Rowe, late of
North Londonderry Township, Lebanon
County, PA, deceased December 4, 2018.
Letters Testamentary have been granted to
the undersigned Executors.

Glenn C. Rowe, Executor
307 Homestead Road
Hershey PA 17033

Cynthia R. Breckenridge, Executor
311 Springwood Lane
Idaho Falls ID 83404

Elyse E. Rogers, Esq.
Sullivan Rogers & Feichtel
100 Sterling Parkway, Suite 100
Mechanicsburg PA 17050

THIRD PUBLICATION

ESTATE OF MARJORIE J. BEARD
a/k/a MARJORIE H. BEARD, late of the
City of Lebanon, Lebanon County, PA,
deceased. Letters Testamentary have been
granted to the undersigned Executor.

Lori A. Wert, Executor
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF JAMES P. O'CONNELL
a/k/a James Patrick O'Connell, late of
Palmyra, Lebanon County, PA, deceased.
Letters Testamentary have been granted to
the undersigned Personal Representative.

Joseph P. O'Connell, Personal
Representative
c/o Megan C. Huff, Esq.
Nestico Druby, P.C.
1135 East Chocolate Ave.
Suite 300
Hershey PA 17033

ESTATE OF JAMES A. NOTTAGE,
late of Bethel Township, Lebanon County,
PA, deceased. Letters Testamentary have
been granted to the undersigned Executor.

Kellie E. Nottage, Executor
c/o Reilly Wolfson Law Office
1601 Cornwall Road
Lebanon, PA 17042

ESTATE OF CLYDE R. ROSE a/k/a
Clyde Robert Rose, late of North Lebanon
Township, Lebanon County, PA, deceased.
Letters Testamentary have been granted to
the undersigned Executor.

Phillip H. Rose, Executor
John E. Feather, Jr., Esq.
Feather and Feather P.C.
22 West Main Street
Annville PA 17003
Attorney

ESTATE OF MABEL SIEGFRIED,
late of Myerstown, Lebanon County, PA,
deceased. Letters Testamentary have been
granted to the undersigned Executor.

John A. Siegfried, Executor
c/o Bellomo & Associates, LLC
3198 East Market Street
York PA 17402

Irene N. Sartalis, Esq.

**ORPHANS' COURT DIVISION
NOTICES**

Court of Common Pleas of Lebanon
County

Notice is hereby given that the following
accounts in decedent's estates, guardianships
and trusts have been filed in the Office of
the Register of Wills and Clerk of Orphans'
Court of Lebanon County, and that the
same will be presented of the Court of
Common Pleas-Orphans' Court Division
of said County for confirmation NISI on
Monday, January 7, 2019 at 10:00 A.M.
in Courtroom No. 1, Municipal Building,
City of Lebanon.

**FIRST AND FINAL ACCOUNTS
WITH PROPOSED SCHEDULE
OF DISTRIBUTION FILED BY
EXECUTORS OR ADMINISTRATORS**

1. Yohe, Larry A., dec'd., Kenneth A.
Yohe & Robert A. Yohe, Admrs., Bradley
L. Griffie, Atty.

**LIST OF ACCOUNTS WITH PROPOSED
SCHEDULE OF DISTRIBUTION BY
GUARDIANSHIPS AND TRUSTS**

1. #1970-113, Eighth & Partial Account
of Manufacturers and Traders Trust Co.,
Successor Guardian of the Estate of Irvin
Root, An Incompetent Person, John D.
Enck, Atty.

All of the aforesaid accounts and statements
of Proposed Distribution will be confirmed
ABSOLUTELY as of course by the said
Orphans' Court except those to which
exemptions are filed within twenty (20)
days after the same are confirmed NISI.

**BRIAN CRAIG
REGISTER OF WILLS AND CLERK OF
ORPHANS' COURT
LEBANON COUNTY, PENNSYLVANIA**

FICTITIOUS NAME REGISTRATION

NOTICE IS HEREBY GIVEN that Martin's Wood Products LLC, 650 Houtztown Road, Myerstown, PA 17067, did file in the Office of the Secretary of the Commonwealth of Pennsylvania on December 11, 2018, registration of the name "**Keystone Lifestyle**" under which it intends to do business at 650 Houtztown Road, Myerstown PA 17067, pursuant to the provisions of the Act of Assembly of December 16, 1982, Chapter 3, known as the "Fictitious Name Act."

Nicholas T. Gard, Esq.
Smoker Gard Associates LLP

NOTICE IS HEREBY GIVEN that Martin's Wood Products LLC, 650 Houtztown Road, Myerstown, PA 17067, did file in the Office of the Secretary of the Commonwealth of Pennsylvania on December 11, 2018, registration of the name "**Keystone Contract**" under which it intends to do business at 650 Houtztown Road, Myerstown PA 17067, pursuant to the provisions of the Act of Assembly of December 16, 1982, Chapter 3, known as the "Fictitious Name Act."

Nicholas T. Gard, Esq.
Smoker Gard Associates LLP

**SANDRA AND DALE BASHORE, W/H VS. THE GOOD SAMARITAN
HOSPITAL OF LEBANON, PA NO. 2009-00078**

Civil Action-Law-Medical Malpractice-Stroke-Administration TPA Infusion-Direct Corporate Negligence-Vicarious Liability-Stipulation to Discontinue Action-Motion to Strike Off Discontinuance-Mistake-Prejudice

Plaintiffs filed a medical malpractice action including allegations of direct corporate negligence and vicarious liability after Plaintiff Sandra K. Bashore (“Bashore”) had undergone elective knee surgery the day before, was found unresponsive and suffered a stroke while a patient in Defendant’s facility. Following discovery and the exchange of expert reports, the parties lodged a Stipulation that discontinued with prejudice all claims except one (1) on the basis that Defendant’s representative had indicated in a deposition that Defendant did not permit the administration of TPA infusions to stroke victims at the time of the stroke. The only claim that remained was a claim of vicarious liability for the conduct of nursing staff for delay in contacting a physician once Bashore’s condition was observed. Plaintiffs filed a Motion to set aside the stipulation docketed, asserting that they received documentation that previously had been requested from Defendant indicating that a physician had been involved in Bashore’s care treatment earlier than previously had been disclosed, Defendant had the capability to provide TPA infusions to stroke victims at that time and the neurology provider who treated Bashore indicated that a TPA infusion would have been administered to Bashore if he had ordered it.

1. Pa.R.C.P. Rule 229(c) provides that the court may strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense or prejudice.
2. The authority to strike off a discontinuance is vested in the sound discretion of the trial court, which will not be reserved absent an abuse of discretion.
3. A trial court does not abuse its discretion by refusing to strike off a discontinuance where the plaintiff fully was aware that his or her representative had entered a discontinuance upon the plaintiff’s receipt of monetary consideration, the plaintiff was unable to prove that the discontinuance was a result of fraud, imposition or mistake or the discontinuance was entered to enable the plaintiff to bring a new action in another court.
4. In considering what constitutes prejudice pursuant to Rule 229(c), the court must consider prejudice to both sides and balance the competing interests of the parties, including whether allowing the action to proceed after discontinuance would put the defendant at any significant disadvantage.

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5. Where Defendant's representative initially indicated in deposition testimony that Defendant would have required a physician ordering a TPA infusion to be present to administer the TPA infusion, the neurology provider after the Stipulation had been filed indicated that the TPA infusion would have been administered by Defendant if an accepting facility would have instructed the same and another representative of Defendant later contradicted the testimony of these individuals by stating that Defendant had no policy for administration of TPA infusions for stroke patients even if a physician had ordered it, these circumstances constitute the type of mistake that justifies setting aside the Stipulation for discontinuance of claims of direct corporate negligence.

6. While Defendant will be prejudiced in the sense that it will have to defend against the claim, there is no significant disadvantage to Defendant's ability to defend the claim since discovery already has been conducted on this issue and any prejudice to Defendant is outweighed by the prejudice Plaintiffs would suffer if denied the right to pursue the claim in light of the passage of the statute of limitations.

L.C.C.C.P. No. 2009-00078, Opinion by John C. Tylwalk, President Judge, April 5, 2018.

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY

PENNSYLVANIA

CIVIL DIVISION NO. 2009-00078

SANDRA K. BASHORE and DALE BASHORE, w/h

v.

THE GOOD SAMARITAN HOSPITAL OF LEBANON, PENNSYLVANIA a/k/a THE
GOOD SAMARITAN HOSPITAL

**SANDRA AND DALE BASHORE, W/H VS. THE GOOD SAMARITAN
HOSPITAL OF LEBANON, PA NO. 2009-00078**

APPEARANCES:

MARSHA SANTANGELO, ESQUIRE
THE BEASLEY LAW FIRM

FOR PLAINTIFFS

MICHAEL MONGIELLO, ESQUIRE
MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN

FOR DEFENDANT

OPINION, TYLWALK, P.J., APRIL 5, 2018.

This is a medical malpractice action which arose when Plaintiff Sandra K. Bashore suffered a stroke while she was a patient in Defendant's facility. Mrs. Bashore was found to be unresponsive early in the morning of January 23, 2007 after having undergone elective knee surgery the previous day. Plaintiffs' original claims had included assertions of direct corporate negligence and vicarious liability based on the conduct of its ostensible agent physicians against Defendant. However, after discovery and exchange of expert reports, the parties executed a Stipulation on December 14, 2015 which discontinued, with prejudice, all claims against Defendant except those for vicarious liability for the conduct of the nursing staff for delay in contacting a physician once Mrs. Bashore's condition was observed. A two-week jury trial in this matter was previously scheduled to commence August 14, 2017, but was rescheduled to the March 2018 Civil Trial Term. After Defendant requested a continuance of the March jury trial with Plaintiffs' concurrence, the jury trial was rescheduled to commence on September 10, 2018.

Plaintiffs have filed a Motion seeking to set aside the Stipulation of December 14, 2015. They claim that shortly prior to the time trial was to begin on August 14, 2017, they received documentation from Defendant which contained new information regarding the timing of the nursing staff's first consultation with a physician after Mrs. Bashore's condition was observed. They claim that this documentation was within the scope of their previous discovery requests, but was not provided in Defendant's prior responses.

Defendant explains that on July 26, 2017, Plaintiffs' counsel requested that Mrs. Bashore's original medical records, along with the original films of the head CT scan which was performed on January 23, 2007, be made available for trial. On August 3, 2017, Defendant's counsel obtained those items from GSH and the new document, the

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“Requisition Slip,” and a preliminary interpretation report were discovered and were immediately provided to Plaintiffs’ counsel on August 4, 2017. The Requisition Slip indicated that a physician had been involved in Mrs. Bashore’s care and treatment slightly earlier on the morning of January 23, 2007 that had previously been known.

Based on this information, Plaintiffs sought a continuance from the August Trial Term and filed a Motion to Set Aside Stipulation, arguing that the new information regarding timing could have provided Defendant with an “empty chair” defense on the claims against the nursing staff. We granted the continuance and permitted the re-opening of discovery, but denied the Motion to Set Aside Stipulation with leave for Plaintiffs to refile the Motion if deemed necessary by any evidence produced during the new discovery period.

In their present Motion, Plaintiffs explain that the aforementioned claims against Defendant were discontinued based on information supplied during initial discovery and based on expert reports which indicated that, at the time Mrs. Bashore suffered her stroke, Defendant’s facility had the capability to give TPA to stroke victims and that, although Narendra Dhaduk, M.D., the neurologist who treated Mrs. Bashore at GSH, could not recall whether he had privileges to order TPA at that time, TPA would have been administered to Mrs. Bashore if he had ordered it. During his deposition, Dr. Dhaduk explained that if a TPA infusion had been started at Good Samaritan Hospital (“GSH”), Mrs. Bashore could have been transported to Hershey Medical Center (“HMC”) for further stroke management.

During the additional discovery period, Plaintiffs scheduled the deposition of Defendant’s representative, Theresa Olinger. Ms. Olinger divulged that at the time of Mrs. Bashore’s stroke, GSH did not permit the administration of TPA to stroke patients, even if the nursing staff had contacted the physician in a timely manner, and even if TPA had been ordered for Mrs. Bashore. Plaintiffs argue that they should now be permitted to pursue the theory that because GSH had the facilities and personnel to administer TPA to patients for conditions other than stroke, it should have had a mechanism in place to enable stroke victims to receive TPA regardless of whether the doctor managing the patient’s care had privileges to order it.

With regard to consideration of a plaintiff’s request to strike a discontinuance, the court in *Nastasiak v. Scoville Enterprises, Ltd.*, 618 A.2d 471 (Pa. Super. 1993) noted:

Authority for striking off a discontinuance appears in Pa.R.C.P. 229(c) as follows:

(c) The court, upon petition and after notice, may strike off a discontinuance in

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order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense or prejudice.

“The authority to strike off a discontinuance is vested in the sound discretion of the trial court, and we will not reverse absent an abuse of that discretion.” *Hopewell v. Hendrie*, 386 Pa.Super. 264, 266, 562 A.2d 899, 900 (1989), *allocatur denied*, 525 Pa. 618, 577 A.2d 890 (1990). The trial court’s discretion, however, is not unlimited. Pa.R.C.P. 229(c) expressly provides for the striking of a discontinuance when necessary to protect either party from unreasonable inconvenience, vexation, harassment, expense or prejudice. *Id.*

The decided cases have held that a trial court does not abuse its discretion by refusing to strike off a discontinuance where (1) the plaintiff was fully aware that his or her lawyer had entered a discontinuance and the lawyer had been authorized to enter a discontinuance upon the client’s receipt of monetary consideration, *Thomas v. Hempt Brothers*, 402 Pa. 369, 167 A.2d 315 (1961); (2) the plaintiff was unable to prove that the discontinuance was a result of fraud, imposition or mistake, *Murdoch v. Murdoch*, 418 Pa. 219, 210 A.2d 490 (1965); (3) the discontinuance was entered to enable the plaintiff to bring a new action in another court, *Pratt v. Best Builders of Pennsylvania, Inc.*, 3 D. & C.3d 149 (Chest.1977).

Nastasiak v. Scoville Enterprises, Ltd., 618 A.2d at 544-545. In discussing *Hope v. Hendrie*, *supra*, the case relied on by Plaintiffs here, the court further observed:

With respect to the issue of prejudice, the Court said:

We note first that Rule 229(c) does not expressly require that the court consider any possible prejudice to the party opposing the striking of the discontinuance. However, the rule does focus on prejudice and we consider it appropriate to consider prejudice to both sides and balance the competing interests of the parties.

On the surface, it is clear that appellees will be prejudiced in the sense that they will have to defend the action. However, we do not see this as the kind of prejudice that should be focused on.... The prejudice that is relevant is the impact on the defendant’s ability to defend. We must focus on whether allowing the action to proceed after it had been discontinued will put the defendant at any significant disadvantage.

Id. at 268, 562 A.2d at 901. The Superior Court determined that the ten month discontinuance had not impacted adversely on the defendant’s ability to defend, but

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that plaintiff would be seriously prejudiced if he could not proceed because a second action would be barred by the statute of limitations.

Nastasiak v. Scoville Enterprises, Ltd., 618 A.2d at 545-546, citing *Hopewell v. Hendrie*, 562 A.2d 899, 901 (Pa. Super. 1989).

Defendant relies on the following testimony of its representative, Jacquelyn Gould, during her deposition on January 22, 2015, in support of its proposition that Plaintiffs were aware of the facts surrounding its claim of direct corporate liability prior to entering the discontinuance:

Q. What, if any, provisions did Good Samaritan Hospital have to administer intravenous TPA to stroke patients as of January of 2007 if ordered by a physician?

A. We did not obviously include that in our policy because it was not in use for stroke patients here in 2007.

(Deposition of Jacquelyn Gould, 1/22/15, Exhibit “E” to Defendant’s Brief in Opposition to Motion to Set Aside at p. 27)

However, upon further questioning to explain GSH’s policy in 2007, Ms. Gould explained:

Q. If a doctor here wanted to give a patient intravenous TPA in January of 2007, is that something that the pharmacy and nursing staff would be able to carry out if a doctor gave that order?

A. Are you speaking for stroke patients?

Q. Yes, stroke patients.

A. Obviously, we had the medication, so the pharmacy could supply it. Nurses had hung those intravenous drips for other patients, so technically they would have had the ability to do it.

We would have probably, and that’s probably, required the physician to be there because the nurses were unfamiliar with its use for stroke patients.

(Deposition of Jacquelyn Gould, 1/22/15, Exhibit “E” to Defendant’s Brief in Opposition to Motion to Set Aside at p. 28)

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In addition, during his deposition on January 9, 2015, Dr. Dhaduk testified as follows:

Q. Okay. With respect to the issue of TPA, let me ask you this: Did Good Samaritan Hospital have the capability to administer any type of thrombolytic therapy to inpatients at Good Samaritan Hospital who had strokes as of January of 2007?

A. They – any TPA? Any TPA, yes.

Q. Intravenous or intra-arterial?

A. Yes. No, not intra-arterial. We do not have the capacity to do intra-arterial. Intravenous, they do that, yes.

Q. Okay. So I understand correctly – is it your testimony that as of January of 2007, Good Samaritan Hospital did have the capability to give intravenous TPA to stroke patients?

A. That is correct.

...

Q. If you had wanted, if you had believed it was appropriate to give her intravenous TPA, and you had wanted to order that, is that something that you could have done at Good Samaritan Hospital?

A. If the Hershey Medical Center agreed to do that. Usually, the practice at the time was, if you use a TPA, we do not have a neurosurgeon at this hospital, so we have to transfer the patient to the facility where the neurosurgeon is available.

...

Q. And I just want to be clear as to whether Good Samaritan Hospital did or did not have the capability to administer intravenous TPA to stroke patients as of January of 2007?

A. No. Only we could start here, but it's to transfer the care where the neurosurgeon is available.

Q. Okay. So you could start the infusion here at Good Samaritan Hospital, and then the patient would be transferred out to another facility?

A. Accepting facility will direct that, that they will basically give you direction,

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“This is what I want you to do, and then this is what we do.”

(Video Deposition of Narendra Dhaduk, M.D., 1/9/15, Exhibit “K” to Plaintiffs’ Memorandum of Law in support of Motion to Set Aside Stipulation, at pp. 59-63)

However, during the period permitted for the re-opening of discovery, Ms. Olinger testified during her deposition on September 1, 2017:

BY DR. SANTANGELO: Are you disputing the proposition that Mrs. Bashore could have received intravenous TPA at this hospital if Dr. Dhaduk had ordered it?

THE WITNESS: From the information I have, we did not have a policy to give TPA to stroke patients at that time.

And, to my knowledge, Dr. Dhaduk did not have – excuse me – did not have privileges to give TPA at that time.

BY DR. SANTANGELO: Are you aware that Dr. Dhaduk has testified at his deposition that he could have given – that had he wanted to give TPA to Mrs. Bashore, that he could have done so?

THE WITNESS: No, I don’t know that.

...

BY DR. SANTANGELO: ... Is it your testimony that had a physician ordered Mrs. Bashore to get IV TPA at this hospital in January of 2007, that could not have been done?

MR MONGIELLO: ... For a diagnosis of stroke?

DR. SANTANGELO: Yes.

THE WITNESS: My understanding that we did not have the policy or the situation to do that.

...

BY DR. SANTANGELO: So my question to you is, if a physician at this hospital had ordered that Mrs. Bashore be given intravenous TPA for her stroke on the morning of January 23, 2007, are you telling us that it could not have been done at this hospital?

THE WITNESS: ... [F]rom an administrative standpoint, if a physician does not

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have privileges for a particular procedure, that we should not be allowing them to write orders and then subsequently give based on those orders.

BY DR. SANTANGELO: ... [I]f there had been a doctor's order for TPA given to this – to be given to this patient on the morning of January 23 for her stroke, are you telling us that the hospital would not have allowed that to happen?

THE WITNESS: I don't know.

(Deposition of Theresa Olinger-Hummel, 9/1/17, Exhibit "D" to Defendant's Brief in Opposition to Motion to Set Aside Stipulation, at pp. 89-94)

We believe Plaintiffs were justified in reaching the conclusion that GSH would have provided the intravenous TPA to Mrs. Bashore upon the order of a physician when the Stipulation was entered in December 2015. Ms. Gould's testimony indicated that TPA could have been administered to a stroke patient upon a physician's order, but that the hospital would have required the physician to be present at the time of such treatment. Dr. Dhaduk's testimony indicated that if the consulting HMC neurosurgeon had directed Dr. Dhaduk to order TPA for Mrs. Bashore, the intravenous TPA would have been administered at GSH prior to Mrs. Bashore being transferred to HMC for further treatment. In contrast, Ms. Olinger's September 2017 testimony contradicts the prior testimony of those two witnesses when she unequivocally stated that GSH had no policy for the administration of TPA to patients in Mrs. Bashore's condition, even if a physician had so ordered.

We find that this is the type of mistake which justifies our setting aside the Stipulation by which the claims of direct corporate negligence had been discontinued by Plaintiffs. Plaintiffs relied on the testimony of Ms. Gould, who had been designated to testify on behalf of Defendant, and Dr. Dhaduk, a neurologist who had been granted privileges to practice at GSH. Both witnesses claimed familiarity with GSH policies at the time Mrs. Bashore suffered her stroke and both indicated that TPA could have been given upon a physician's order.

Defendant will, of course, be prejudiced in the sense that it will now be required to defend against this claim. However, we see no significant disadvantage to Defendant's ability to defend as discovery on this issue has already been conducted and Defendant has ample time before the September 2018 trial date to obtain new expert reports and otherwise prepare for trial. Moreover, we believe that any prejudice to Defendant is outweighed by the prejudice Plaintiffs will suffer if they are denied the right to pursue this claim as the

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applicable statute of limitations has long passed. Plaintiffs acted promptly in moving to set aside the discontinuance of this claim and the discontinuance was not entered with the purpose of obtaining any procedural advantage for Plaintiffs.

For these reasons, we will grant Plaintiffs' Motion to Set Aside the Stipulation of December 14, 2015 to permit Plaintiffs to pursue the claim of direct liability against Defendant. However, Plaintiffs have failed to set forth any reasons to set aside the Stipulation discontinuing its claims for vicarious liability as to the actions of Defendant's ostensible agent physicians and we will deny the request to set aside the discontinuance as to those claims. We will set new deadlines for the exchange of expert reports, dispositive motions, motions *in limine*, requests for *voir dire* questions, and jury instructions after consultation with counsel at the Status Conference scheduled in this matter for May 7, 2018.