

LACKAWANNA JURIST

JUDICIAL OPINION

CASE NAME AND NUMBER: Rao v. Menzel, 2020 WL 1972736 (Lacka. Co. 2020)

DATE OF DECISION: April 24, 2020

JUDGE: Terrence R. Nealon

ATTORNEYS INVOLVED:

Gregory A. Germain, Esquire, Counsel for Plaintiff

Howard A. Rothenberg, Esquire, Counsel for Defendant

SUMMARY OF OPINION:

Two cardiologists entered into a real estate partnership to operate a shopping center in Hilton Head, South Carolina, pursuant to an agreement which required each partner to maintain their respective capital accounts in equal amounts. Plaintiff contended that defendant's capital account was consistently underfunded by more than \$500,000.00, and after he filed suit to require defendant to equalize his capital account, plaintiff filed a discovery motion seeking to require the parties to produce their expert reports simultaneously. Plaintiff presented his motion in discovery motions court where it was heard and decided by a "Deputy Discovery Master" rather than a judge, and after plaintiff's motion was denied, he filed a motion seeking to appeal "de novo" the ruling made by the Discovery Master and have that appeal decided by a judge.

Prior to January 4, 2016, the Lackawanna County Rules of Civil Procedure governing discovery motions provided that those motions were to be decided by the court-appointed Special Trial Master in the first instance, with an aggrieved party having the right to appeal the Master's ruling to the court of common pleas for a *de novo* review. However, on November 6, 2015, Local Rule 4000.1 was amended to abolish the Special Trial Master system for discovery and to replace the Master with a designated Discovery Motions Court Judge, and the amendments to Lacka. Co. R.C.P. 4000.1 became effective on January 4, 2016, 30 days following their publication in the Pennsylvania Bulletin on December 5, 2015. Following the repeal of the discovery master system, no procedure exists for a *de novo* appeal of a discovery ruling or for the consideration of a discovery motion by a Special Trial Master. Therefore, based upon the version of Lacka. Co. R.C.P. 4000.2 which has been effective since January 4, 2016, no judge is authorized to consider or hear a *de novo* appeal from a discovery ruling, as a result of which plaintiff's motion for a *de novo* appeal was denied.

JUDICIAL OPINION

CASE NAME AND NUMBER: Pikula v. Ciabocchi, 2020 WL 2391026 (Lacka. Co. 2020)

DATE OF DECISION: May 11, 2020

JUDGE: Terrence R. Nealon

ATTORNEYS INVOLVED:

John M. Mulcahey, Esquire, Counsel for Plaintiff, Stacey Marie Pikula, in No. 18 CV 1753

Thomas J. Carroll, Jr., Esquire, Counsel for Plaintiff, Desiree Marcinko a/k/a Desiree Brozina, in No. 18 CV 2852

Daniel E. Cummins, Esquire, Counsel for Defendant, John Ciabocchi, in No. 18 CV 1753 and No. 18 CV 2852

Kevin M. Higgins, Esquire, Counsel for Defendant, Erie Insurance Exchange, in No. 18 CV 2852

SUMMARY OF OPINION:

A vehicle operator and her passenger, who were both injured in a rear-end collision, filed separate lawsuits with the passenger demanding compensatory damages only from the tortfeasor and the operator seeking compensatory and punitive damages from the tortfeasor and further asserting a claim for underinsured motorist (UIM) benefits from her own UIM insurer. During discovery, the tortfeasor admitted liability for negligently causing the accident, and after the passenger certified her case for trial, the tortfeasor filed a motion requesting the consolidation of both cases for a joint trial pursuant to Pa.R.C.P. 213(a). The tortfeasor argued that consolidation would "avoid the danger of conflicting verdicts" and "serve the interests of judicial economy." Cases may be consolidated for trial under Rule 213(a) only if they "involve a common question of law or fact" or "arise from the same transaction or occurrence." Following the tortfeasor's admission of liability, these two actions no longer presented any common questions or law or fact and instead involved individual injuries, different items of damages, and distinct supporting evidence. The tortfeasor's acceptance of liability also eliminated the prospect of inconsistent verdicts regarding liability. In addition, the passenger's case was scheduled for trial in less than four months, while the operator's suit had not even been certified for trial. Consequently, consolidation of these matters for a joint trial was not warranted, and the tortfeasor's motion to consolidate was denied.

LACKAWANNA JURIST

JUDICIAL OPINION

CASE NAME AND NUMBER: Moses Taylor Hospital v. Coverys, 2020 WL 2305045 (Lacka. Co. 2020)

DATE OF DECISION: May 9, 2020

JUDGE: Terrence R. Nealon

ATTORNEYS INVOLVED:

Michael P. Perry, Esquire, Kelly Hadley, Esquire, Counsel for Plaintiff
Thomas R. Hurd, Esquire, Counsel for Defendant

SUMMARY OF OPINION:

A hospital and its self-insurance trust commenced a bad faith action against the hospital's excess insurer, and stated its intention to assert that the insurer's bad faith conduct in refusing to resolve a malpractice case pursuant to the hospital's requests caused the avoidable expenditure and depletion of excess coverage funds, thereby resulting in less aggregate coverage being available for the hospital in other pending malpractice cases. The hospital and trust filed a motion seeking to seal its complaint and the entire record in this litigation, and asserted that such closure was necessary to preserve the confidentiality of its settlement negotiations, valuation methods, and payments in the malpractice case, as well as the terms and outcome of the binding arbitration proceeding which was subject to a confidentiality clause in the arbitration agreement. The insurer contended that the hospital and trust had not identified a "clearly defined" and "serious injury" that any of the parties would suffer from public access to the record in this case, and submitted that no legitimate reason existed to seal the record in a run-of-the-mill action alleging bad faith conduct by an insurer.

To warrant the closure of the entire judicial record, the hospital was required to establish that its interest in secrecy outweighed the common law presumption of public access to judicial records. The terms of the arbitration agreement, the result of the arbitration hearing, the amounts paid by the trust and excess insurers, and much of the conduct by the excess insurer's representatives which allegedly constituted bad faith were already matters of public record in the underlying malpractice action. The settlement discussions, valuation methods, and claims handling practices that the hospital maintained were confidential are routinely disclosed in bad faith liability actions against insurers. Furthermore, the existence of a confidentiality agreement among the parties in the malpractice suit did not control the court's determination of whether sealing of the record was appropriate in the bad faith action. The secrecy interests cited by the hospital did not supersede the presumption in favor of open access to judicial records so as to justify court-sanctioned closure of the record. Therefore, the motion to seal the pleadings and the record was denied.

JUDICIAL OPINION

CASE NAME AND NUMBER: Valley Truck Center v. Margarita Express, LLC, 2020 WL 2073701 (Lacka. Co. 2020)

DATE OF DECISION: April 29, 2020

JUDGE: Terrence R. Nealon

ATTORNEYS INVOLVED:

Howard A. Rothenberg, Esquire, Counsel for Plaintiff
Joseph C. Zola, Esquire, Counsel for Defendant, Austin Environmental c/o Main Trailer Registration
Rebecca Cantor, Esquire, Counsel for Defendants, Margarita Express, LLC and Angel E. Perez-Reynoso

SUMMARY OF OPINION:

A towing and storage service, which was summoned by the State Police to remove a disabled trailer from the site of a single vehicle accident, secured a default judgment against the trailer owner for unpaid towing and storage fees. As those unpaid storage fees continued to accrue, the towing and storage service presented a motion in Motions Court seeking to amend the judgment amount to reflect the additional charges. Defendant opposed that request on the grounds that a hearing was required under Pa.R.C.P. 1037 and that the motion was untimely pursuant to 42 Pa.C.S. § 5505.

Rule 1037, and its requirement of a hearing if the prothonotary is unable to assess damages in "a sum certain by computation," apply only in cases where damages are to be calculated before default judgment, and have no application where a plaintiff seeks to modify the amount of damages after default judgment. Furthermore, Section 5505 empowers courts to modify an order within 30 days, but that time limitation applies only to appealable orders. A default judgment is not subject to appeal until the court denies a petition to strike or open the default judgment. Inasmuch as the instant motion to modify the judgment amount was presented within 30 days of the denial of defendant's petition to strike or open the default judgment, it was timely under 42 Pa.C.S. § 5505.

ESTATES

First Notice

RE: **ESTATE OF MARGARET JEAN BIRTCH A/K/A JEAN BIRTCH**, late of Glenburn Township, Lackawanna County, and State of Pennsylvania, deceased, who died on the 25th day of April, 2020. Letters of Testamentary having been granted, all persons having claims or demands against the estate of the decedent shall make them known and present them, and all persons indebted to the decedent shall make payment thereof without delay to the Executor, Bradley L. Birtch, Jr., 1003 W. Market Street, Scranton, PA 18508, or to Mattes & Mattes, P.C., 324 N. Washington Ave., Scranton, PA 18503.

RE: **ESTATE OF JOYCE A. HOLMES**, late of Clarks Summit, Lackawanna County, Pennsylvania (died April 18, 2020). Notice is hereby given that Letters Testamentary for the Estate have been issued to William Ziegler, 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 the Executor, or to John J. McGovern, Jr., Attorney for the Estate, 321 Spruce Street - Suite 201, Scranton, PA 18503.

ESTATE OF VICTOR ADAM LOPEZ, LATE OF SCRANTON, LACKAWANNA COUNTY, PENNSYLVANIA. Letters of administration of the above Estate having been granted to Giovanni Lopez, all persons indebted to the Estate are requested to make payment, and those having claims to present the same, without delay to: Giovanni Lopez, 529 Taylor Avenue, 1st floor, Scranton, PA 18510. or to the attorney: Latisha B. Schuenemann, Esquire, Leisawitz Heller Abramowitch Phillips, P.C., 2755 Century Boulevard, Wyomissing, PA 19610.

RE: **ESTATE OF DOROTHY D. MACKIE**, late of South Abington Township, Lackawanna County, Pennsylvania (Died April 6, 2020). Letters of Testamentary in the above estate having been granted, all persons having claims or demands against the estate of the decedent shall make them known and present them, and all persons indebted to said estate shall make payment thereof without delay to Co-Executors, Matthew D. Mackie, III, P.O. Box 189, Waverly, Pennsylvania 18471 or Linda J. Lundberg, Vice President, Sr. Estate Product Specialist, PNC Wealth Management, P.O. Box 308, 4242 Carlisle Pike, Camp Hill 17001-0308, or to James W. Reid, Esquire, Oliver, Price & Rhodes, Attorneys for the Estate, 1212 South Abington Road, PO Box 240, Clarks Summit, PA 18411.

ESTATE OF DORIS A. MORAN, late of Scranton, Lackawanna County, PA (died March 28, 2020). 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 Donna Rupp, Executor, 114 South Merrifield Avenue, Scranton, PA 18504 or to Jane M. Carlonas, Esquire, of Oliver, Price & Rhodes, Attorney for the Estate, 1212 S. Abington Road, PO Box 240, Clarks Summit, PA 18411.

ESTATE OF DALLAS DONNELL SESSION, late of Dunmore, Lackawanna County, Pennsylvania, (died March 12, 2020). Notice is hereby given that Letters of Administration of the estate have been issued to Darkell Adam Session, Administrator. MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.

ESTATE OF LONDON OLIVIA SESSION late of Dunmore, Lackawanna County, Pennsylvania, (died March 10, 2020). Notice is hereby given that Letters of Administration of the estate have been issued to Darkell Adam Session, Administrator. MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.

ESTATE OF TIARA MONAE SESSION, late of Dunmore, Lackawanna County, Pennsylvania, (died March 10, 2020). Notice is hereby given that Letters of Administration of the estate have been issued to Darkell Adam Session, Administrator. MARIANNE M. STIVALA, ESQUIRE, BRIAN J. CALI & ASSOCIATES, 103 EAST DRINKER STREET, DUNMORE, PENNSYLVANIA 18512.

ESTATE OF HANNA WHITE A/K/A HANNAH WHITE A/K/A HANNAH J. WHITE, Late of Carbondale, Pennsylvania, (died April 19, 2020). Notice is hereby given that Letters Testamentary in the above estate have been granted to Michael Wiesel. All persons indebted to the said Estate are required to make payment and those having claims to present the same without delay to Michael Wiesel, Executor, or to Howard M. Spizer, Esquire, Attorney for the Estate, Hinman, Howard & Kattell, LLP, 705 Bank Towers Building, 321 Spruce Street, Scranton, PA.

Second Notice

ESTATE OF JACK M. BERRYMAN, JR., late of the City of Scranton, Pennsylvania, (died February 01, 2020). Notice is hereby given that Letters of Testamentary on the above Estate have been granted to Linda Berryman, of Indiana, PA, and Philip Berryman, of Oley, PA. All persons indebted to the said estate are required to make payment and those having claims to present the same without delay to the Personal Representatives named herein, or to Patrick N. Coleman, Esquire, Tellie & Coleman, P.C., 310 East Drinker Street, Dunmore, PA 18512.

NOTICE IS HEREBY GIVEN that Letters Testamentary have been granted to Janice Prushinskii in the **ESTATE OF SHARON A. ESHMONT**, late of Dunmore, PA (died 04/27/2020). All persons indebted to said estate are requested to make payment, and creditors to present their claims without delay to the Executrix c/o Ernest A. Sposto Jr., Esq., 108 North Washington Avenue, Suite 401, Scranton, PA 18503, Attorney for the Estate.

NOTICE IS HEREBY GIVEN that Letters of Administration have been granted in the **ESTATE OF KATHLEEN T. KEATING, A/K/A KATHLEEN L. KEATING**, Deceased, late of 115 Harper Street, Dunmore Lackawanna County, Pennsylvania 18512, who died on June 5, 2012. 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 Administrator, Dominic J. Keating, or Michael N. Krisa, Attorney for the Estate, 3397 Scranton/Carbondale Highway, Suite 4, Blakely, Pennsylvania 18447.

NOTICE IS HEREBY GIVEN that Letters Testamentary have been granted in the **ESTATE OF FRANK MILEWSKI, JR.**, late of the Township of Jefferson, County of Lackawanna, Pennsylvania, who died 05/17/2020. 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 Executor, Michael Milewski, or James P. Phillips, Jr, Esquire, the attorney for the estate at 731 Cliff Drive, Lake Ariel PA 18436.

Third Notice

ESTATE OF WILLIAM HORACE BATEZELL, IV, late of Scott Township, PA (died March 1, 2020). Letters of Administration having been granted to William Horace Batezell V. All persons knowing themselves to be indebted to said Estate will make payment immediately, and those having claims will present them for settlement to William Horace Batezell V, Executor, or to: Tullio DeLuca, Attorney for the Estate, 381 N. 9th Avenue, Scranton, PA 18504.

ESTATE OF ERNEST J. GATTO, SR., Deceased, late of Dunmore, Pennsylvania (died April 2, 2020). All persons indebted to said Estate are required to make payment, and those having claims or demands to present the same, without delay, to Carmen S. Gatto, Executor, c/o Attorney Joseph F. Gaughan, 300 Mulberry Street, Suite 303, Scranton, PA 18503.

ESTATE OF PETER PAUL GRIGALUNAS, late of South Abington Twp., Lackawanna County, Pennsylvania (died May 9, 2020). Letters Testamentary granted to James Grigalunas, Executor; all persons indebted thereto shall make payment and all creditors shall present their claims without delay to Paul Keeler, Esquire, 415 South State St., Clarks Summit, Pennsylvania, 18411.

ESTATE OF ELINOR M. KAIRIS, late of Clarks Summit, Lackawanna County, Pennsylvania (died April 25, 2020). Letters Testamentary granted to Edward R. Kairis, Executor; all persons indebted thereto shall make payment and all creditors shall present their claims without delay to Paul Keeler, Esquire, 415 South State St., Clarks Summit, Pennsylvania, 18411.

NOTICE IS HEREBY GIVEN that Letters of Administration have been granted in the **ESTATE OF JOHN LASICHAK**, Deceased, late of 412 Delaware Street, Jermyn, Lackawanna County, Pennsylvania 18433, who died on March 22, 2020. 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 Administrator, John Edward Lasichak, or Michael N. Krisa, Attorney for the Estate, 3397 Scranton/Carbondale Highway, Suite 4, Blakely, Pennsylvania 18447.

RE: **ESTATE OF HOWARD M. PACTHER, A/K/A HOWARD PACTHER**, late of Scranton, Pennsylvania (died April 19, 2020). Notice is hereby given that Letters Testamentary for the Estate of Howard M. Pachter, a/k/a Howard Pachter have been issued to Elaine Pachter, a/k/a Elaine B. Pachter, Executrix 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 Executrix at 940 N. Webster Avenue, Scranton PA 18510, or to Robert T. Kelly, Jr., Myers, Brier & Kelly, LLP, Attorney for the Estate, 425 Spruce Street, Suite 200, Scranton, PA 18503.

ARTICLES OF INCORPORATION

MedPsych Consultants, PC has been incorporated under the provisions of Chapter 29 of the Business Corporation law of 1988 as a Professional Corporation.

Myers, Brier & Kelly, L.L.P.
425 Spruce Street
Suite 200, Scranton, PA 18503
T1-6/12

CHANGE OF NAME

CHANGE OF NAME NOTICE IS HEREBY GIVEN that on the 1st day of June 2020, the Petition for Name Change of Ryan John Czarkowski was filed in the Court of Common Pleas of Lackawanna County to term and number 2020-CV-2199 and prays for a Decree to change said Petitioner's name to Ryan John Emiliani. The Court has fixed the 31st day of July 2020 at 9:30 a.m. as the date and time of the Hearing.

T1-6/12