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IN THIS ISSUE

IN RE: ESTATE OF
WENDELL L. LEHMAN, DECEASED
(Part 2 of 2)

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IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

IN RE: ESTATE OF RICHARD J. SMITH

NOTICE

If you are JOSEPH B. SMITH, or know of his whereabouts, please contact our office with regard to the ESTATE OF RICHARD J. SMITH, who passed away on September 11, 2020.

Ehrhart Law, LLC
ATTN: Amy E.W. Ehrhart, Esq.
118 Carlisle Street, Suite 202
Hanover, PA 17331
Telephone: 717-698-3764

5/21, 5/28, & 6/4

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed on April 19, 2021 with the Department of State of the Commonwealth of Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a proposed business corporation to be organized under the provisions of the Pennsylvania Corporation Law of 1988, approved December 21, 1988, L.P. 1444, No. 177, as amended.

The name of the corporation is SteinourGC Inc., with its principal office or place of business at 575 Marsh Creek Road, Gettysburg, PA 17325. The names and addresses of the persons owning or interested in said business are: Amanda L. Steinour, 575 Marsh Creek Road, Gettysburg, PA 17325, and Edward T. Steinour, 575 Marsh Creek Road, Gettysburg, PA 17325.

5/21

FICTITIOUS NAME REGISTRATION

NOTICE IS HEREBY GIVEN that a Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on August 18, 2020 for RED TRUCK FARM, LLC with a principal place of business located at 75 Kime Hatchery Road, Gardners, PA 17324 in Adams County. The individual interested in this business is Christoph R. Hemler also located at this same address. This is filed in compliance with 54 Pa.C.S. 311.

John C. Zepp, III, Esq.

5/21



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IN RE: ESTATE OF WENDELL L. LEHMAN, DECEASED
(Part 2 of 2)

November 10, 2014 Meeting with Attorney Rubin

95. Decedent scheduled an appointment with Attorney Rubin for November 10, 2014. Present at the November 10, 2014 meeting were Decedent, Attorney Rubin, Melvin Lebo (Wanda's husband), Sheldon, John Lingg (Lindy's husband), and Attorney Rubin's law partner, Alex Snyder (hereinafter "Attorney Snyder") (J. Lingg N.T. 9/10/20 pg. 229, 230 pg. 241; Pet.'s Ex. 95; A. Snyder N.T. 9/10/20 pg. 338, 339; Stipulation of Counsel at N.T. 9/11/20 pg. 573, 574).
96. The sole purpose of the November 10, 2014 meeting was to change Decedent's will. (J. Lingg N.T. 9/10/20 pg. 229, 230).
97. Decedent was very clear during the November 10, 2014 meeting about what he wanted to do. (J. Lingg N.T. 9/10/20 pg. 263, 264).
98. Decedent who did most of the talking with Attorney Rubin during the November 10, 2014 meeting. (J. Lingg N.T. 9/10/20 pg. 268).
99. Attorney Snyder testified that Decedent and Attorney Rubin did the majority of the talking at the November 10, 2014 meeting. (A. Snyder N.T. 9/10/20 pg. 339, 342, 346).
100. It was not Attorney Snyder's impression that the November 10, 2014 meeting was being steered by anyone other than Decedent. (A. Snyder N.T. 9/10/20 pg. 339).
101. Attorney Snyder testified that he is always concerned about the testamentary capacity of his elderly clients when he is involved in creating testamentary documents and that it is his standard practice to assess testamentary capacity and whether the testator is being influenced by others. (A. Snyder N.T. 9/10/20 pg. 345, 346, 349).
102. Attorney Snyder testified that he had no concerns about Decedent's testamentary capacity during the November 10, 2014 meeting. (A. Snyder N.T. 9/10/20 pg. 347).
103. This Court finds the testimony of Attorney Snyder credible.

104. Every single person who testified at trial, that was present during the November 10, 2014 meeting at Barley Snyder, testified that it was Decedent who instructed Attorney Rubin as to how to draft his will.
105. Attorney Rubin drafted the 2014 Will and emailed it to Sheldon on November 14, 2014, copied Attorney Snyder and stated “Sheldon, I think this does what Wendell wants it to do in the easiest and simplest way.”² (Sheldon N.T. 9/10/20 pg. 405; Pet.’s Ex. 98).
106. The 2014 Will was signed by Decedent on December 4, 2014. (Pet.’s Ex. 3).
107. When Decedent discovered that the 2014 Will could have potentially resulted in Decedent bequeathing more than \$200,000.00 to Beatrice, he made another appointment with Bud Rubin to change the Will. (J. Lingg N.T. 9/10/20 pg. 232).
108. The provisions excluding Annette and including Annette’s Grandchildren in the 2015 Will were the same as in the 2014 Will. (Compare Pet.’s Ex. 2,3).
109. In June 2015, Decedent gifted each of his children, including Annette, \$495,000.00, which Annette accepted. (J. Lingg N.T. 9/10/20 pg. 244, 245).
110. The gifts to Decedent’s four children in June of 2015 were made by Sheldon as agent at the direction of Decedent from one of the TOD Accounts. When asked why the June of 2015 gifts included Annette, Sheldon testified:
- The simple point is Wendell did what Wendell wanted to do. I couldn't tell him what to do. It was his money. He told me what to do. The shoe was on his foot. He made the decision. Whether he changed his will, that was his decision and if he gave those gifts, he could have given it all to the SPCA.
- (Sheldon N.T. 9/10/20 pg. 397).
111. In addition to accepting the \$495,000.00 gift from Decedent in June of 2015, Annette borrowed \$10,000.00 from Decedent and signed a promissory note with Decedent in 2016. (Resp. Ex. 27).

² The Decedent did not have a computer or use email. (S. Lehman N.T. 9/10/20 pg. 446)

112. On May 12, 2015 Annette sent an email to Lindy, Wanda and Sheldon requesting that Decedent sign his house and land over to his children for \$1.00. (Resp. Ex.18).

November 18, 2014 TOD Accounts

113. On November 18, 2014, Decedent opened two (2) of the TOD Accounts referenced above as new accounts. Decedent signed the beneficiary designation forms and made the beneficiaries of these two (2) accounts Wanda, Lindy, and Sheldon, as he had previously done in January of 2012. Sheldon prepared the beneficiary designation form for Decedent to sign. Decedent signed the beneficiary designation form on November 18, 2014. (Sheldon N.T. 9/10/20 pg. 430, 431; Pet.'s Ex. 84, 76).
114. On November 18, 2014, Decedent also changed the existing TOD Account he had with Genworth and made Wanda, Lindy, and Sheldon the beneficiaries. Sheldon prepared the beneficiary designation form for Decedent to sign. Decedent signed the beneficiary designation form on November 18, 2014. (Sheldon N.T. 9/10/20 pg. 431-434; Pet.'s Ex. 90, 91).
115. There was no evidence or testimony presented that any of Decedent's signatures or initials on the beneficiary designation forms were forged or executed without Decedent's knowledge or authorization.
116. Shortly after Decedent changed the Genworth TOD Account, Genworth wrote Decedent (addressed to Decedent at Decedent's residence) dated November 24, 2014 instructing Decedent to correct the beneficiary designation he signed on November 18, 2014, so that it equaled 100%, rather than 99.99%, as would have occurred if the account had been split equally three (3) ways. (Sheldon N.T. 9/10/20 pg. 432; Resp. Ex. 14). Decedent wrote on the Genworth letter "Sheldon look and do." (Sheldon N.T. 9/10/20 pg. 434; Resp. Ex. 14).
117. Based on the evidence and testimony presented at trial, this Court finds that Sheldon was not acting as the agent for Decedent when Sheldon prepared the beneficiary designation forms and Decedent signed such forms on January 26, 2012 and November 18, 2014.

118. On November 13, 2014 Decedent created a handwritten detailed list of personal property (with the value of each item) and provided this document to Sheldon. (Sheldon N.T. 9/10/20 pg. 451; Resp. Ex. 28).
119. Sheldon described his involvement in the TOD Accounts as administrative. (Sheldon N.T. 9/10/20 pg. 449). Decedent did not have a computer or email to transact financial business on his own and depended on Sheldon to communicate with the investment companies and to obtain required forms. (S. Lehman N.T. 9/10/20 pg. 452). In 2014, PTS Asset Management requested Decedent move his accounts from Vanguard to Trust Company of America as a matter of convenience. As requested by PTS Asset Management, Decedent agreed and signed the paperwork creating the TOD Accounts ending in XXX-351 and XXX- 353 on November 18, 2014. (Sheldon N.T. 9/10/20 pg. 445-447; Resp. Ex. 29, 30).
120. Norman Myers was Decedent's accountant from 1974 through 2016 and described Decedent as being intimately involved in understanding, and interested in, the tax implications of his finances and did not see any change in that during 2014 and 2015. (N. Myers N.T. 9/11/20 pg. 575, 580 — "When I would finish the tax returns and take the end product for him to sign, and he would look through it, I better be able to answer the questions of what was this and what was that and how does this affect my taxes and what's this all about. How much of this, and he would go through it and ask certain questions and I better have the answers.").
121. Mr. Myers would meet with Decedent every January/February (including 2015). Decedent would have all his tax information ready and would review the information with Mr. Myers. Mr. Myers had no concern about Decedent's ability to understand the purpose of their meeting or the various financial documents. (N. Myers N.T. 9/11/20 pg. 577, 578).
122. This Court finds the testimony of Norman Myers credible.

Procedural History

123. On September 6, 2017 Petitioners filed Petition for Citation to Show Cause Why an Inventory and Accounting Should Not be

Filed by the Respondent While Acting as an Agent for the Decedent, While Acting as Executor of the Estate of Wendell L. Lehman and Why Respondent Should Not be Removed as Executor.

124. In the September 6, 2017 Petition, Petitioners allege that Sheldon, acting as Decedent's Power of Attorney, changed beneficiary designations on Decedent's non-probate assets to benefit himself and others and to exclude Annette. (9/6/17 Pet. at ¶ 52-65).
125. On November 21, 2017, this Court entered a Stipulated Order directing Sheldon file an Inventory and Accounting for the time period while acting as agent for Decedent and an Inventory and Accounting of his activities as Executor of Decedent's estate.
126. On December 28, 2017, Sheldon filed a First and Final Accounting as the Decedent's agent pursuant to the POA (the "POA Accounting")³ and filed a First and Partial Accounting for Estate of Wendell L. Lehman.
127. On February 27, 2018 Petitioners filed Petitioners' Objections to Respondent's First and Final POA Accounting as Agent for Wendell L. Lehman and Petitioners' Objections to Respondent's First and Partial Accounting for Estate of Wendell L. Lehman. In Petitioners' Objections to the First and Final POA Accounting, Petitioners allege (1) Decedent's initials on one of the beneficiary designation forms was forged (2/27/18 Obj. at ¶ 27); (2) that Sheldon unduly influenced Decedent into signing the beneficiary designation forms (2/27/18 Obj. at ¶ 29, 34, 49); and (3) with respect to two of the beneficiary designations that Sheldon "misled the Decedent into signing the form under the ruse of simply moving the accounts, when in reality Sheldon was changing the named beneficiaries thereof to the detriment of Petitioners". (2/27/18 Obj. at ¶ 33, 36).
128. With the agreement of counsel, this Court bifurcated all issues concerning the non-probate TOD Accounts from all other objections to the POA Accounting and the Estate Accounting,

³ As Sheldon did not exercise his Power of Attorney to create the beneficiary designations for the TOD Accounts, they are not included in Sheldon's December 28, 2017 POA Accounting.

- and scheduled a nonjury trial for September 8th, 10th, 11th, and 15th, 2020.
129. On August 14, 2020, Counsel for Petitioners filed Petitioners' Trial Memorandum. Petitioners' Counsel alleged that Sheldon, acting in his capacity as agent for Decedent, unduly influenced and preyed upon Decedent in the execution of the designated beneficiary forms for the four non-probate TOD Accounts.
 130. On September 2, 2020, Petitioners' Counsel filed Petitioners' Supplemental Trial Memorandum. Therein, Petitioners' Counsel alleged that not only did Sheldon utilize undue influence on Decedent concerning the beneficiary designation forms for the non-probate TOD Accounts, but that Sheldon breached his fiduciary duty as POA to Decedent by failing to exercise reasonable caution or prudence in the exercise of his duties in the omission of material information in updating others as to the non-probate accounts given the "known intent" of Decedent which was not consistent with the non-probate account changes.
 131. Nonjury trial was held on September 8th, 10th, 11th, and 15th, 2020.
 132. Petitioners, Annette and Annette's Grandchildren, elected not to testify during the nonjury trial.
 133. Christopher Boyer and Wendy Starner are not the beneficiaries of the 2015 Will or any of the predecessor Wills.
 134. Christopher Boyer and Wendy Starner are not the beneficiaries of any of the relevant TOD Accounts.

LEGAL STANDARD

135. "It has always been the law of Pennsylvania that a parent does not have to leave any of his property to any of his children, irrespective of whether he likes them or dislikes them, or hates them, and he does not have to disclose his reasons for disinheriting them." **In re Sommerville's Estate**, 177 A.2d 496, 499 (Pa. 1962); see also **In re Estate of Rothberg**, 166 A.3d 378, 385 (Pa. Super. 2017) As such, "a testator with children can disinherit some or all of them for any reason whatsoever." **Id.** quoting **In re Agostini's Estate**, 457 A.2d 861, 865 (1983).

136. “It has been said many times that one may by will dispose of his property as he sees fit and that he is entitled to act on his own prejudices.” **In re: Estate of Younger**, 508 A.2d 327, 330 (Pa. Super. 1986) quoting **In re: Patti's Estate**, 1 A.2d 791, 798 (Pa. Super. 1938). “In other words, it being the prerogative of any man to dispose of his estate as he sees fit, it is not the function of any court of equity to invalidate a testamentary disposition in the absence of, e.g., undue influence, the components of which-weakened intellect, confidential relationship and substantial benefit-have not all been established to the level of clear and convincing evidence instantly.” **Id.**; see also **In re: Estate of Nalaschi**, 90 A.3d 8, 11 (Pa. Super. 2014).

Undue Influence

137. In addressing claims of undue influence concerning a change in a beneficiary form or other non-probate assets, courts apply the same standards used when considering undue influence in the context of a will contest. See **In re Estate of LeVeglia**, 11-9066, 2013 WL 8538688 (Pa. Com. Pl. June 21, 2013); **Life Insurance Company of North America v. Robert J. and Susan R. Obrian and Rita Piskorski**, 3 Phila. Co. Reprtr. 529, 533 (Phila. 1980). Once the proponent presents evidence of the formality of execution on the change of beneficiary form, a presumption of lack of undue influence arises, shifting the burden of coming forward with evidence of undue influence to the contestant. **Id.**
138. The contestant must present evidence that is clear and convincing to meet that burden. **In re: Estate of Reichel**, 400 A.2d 1268, 1270 (Pa. 1979); **In re: Clark's Estate**, 334 A.2d 628, 632 (Pa. 1975).
139. The clear and convincing evidence standard is the highest burden in Pennsylvania civil law and requires that the fact finder be able to come to clear conviction, without hesitancy, of the truth of the precise fact in issue. **Lessner v. Robinson**, 592 A.2d 678, 681 (Pa. 1991).
140. To meet the clear and convincing evidentiary standard, it necessarily means that witnesses must be found to be credible, the facts to which they have testified are remembered distinctly,

and that their testimony is so clear, direct, weighty, and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. **Jones v. Prudential Property and Casualty Ins. Co.**, 856 A.2d 838 (Pa. Super. 2004).

141. In describing what is meant by undue influence, the Pennsylvania Supreme Court has held that the term “influence” does not encompass every line of conduct capable of convincing a self-directing person to dispose of property in one's favor. **In re Estate of Ziel**, 359 A.2d 728 (Pa. 1976). The law requires that the influence be control “acquired over another that virtually destroys [that person's] free agency.” *Id.* at 733. Conduct constituting influence must consist of “imprisonment of the body or mind, fraud, or threats, or misrepresentations, or circumvention, or inordinate flattery or physical or moral coercion, to such a degree as to prejudice the mind of the testator, to destroy his free agency and to operate as a present restraint upon him in the making of a will.” **Id.**
142. A contestant claiming undue influence can proceed in two ways: (1) by direct evidence of the forgoing; or (2) by indirect evidence. **In re: Estate of Clark**, 334 A.2d 628 (Pa. 1975).
143. A contestant attempting to prove undue influence indirectly must establish: (1) weakened intellect; (2) a confidential relationship; and (3) that the proponent received a substantial benefit. **In re: Estate of Clark**, 334 A.2d 628 (Pa. 1975). All three (3) of these elements must be proven by evidence that is clear, precise, and convincing. *Id.* Upon proof of these three (3) elements, a presumption of undue influence arises and the burden of proof shifts then to the proponent to establish the lack of undue influence. **Id.**

Weakened Intellect

144. “Although our cases have not established a bright-line test by which weakened intellect can be identified to a legal certainty, they have recognized that it is typically accompanied by persistent confusion, forgetfulness and disorientation.” **Owens v. Mazzei**, 847 A.2d 700, 707 (Pa. Super. 2004) citing **In re: Estate of Glover**, 669 A.2d 1011, 1015 (Pa. Super. 1996)

appeal denied 689 A.2d 233 (Pa. 1997) (no undue influence found where witnesses described decedent as “strong-willed, lucid and sharp.”); See also **In re: Bloch**, 625 A.2d 57, 60 (Pa. Super. 1993) (no weakened intellect found where “decedent's friends, neighbors and next-of-kin depicted her as a self-styled, independent person who was not easily swayed in her thinking on a subject about which she felt strongly”); **In re: Estate of Younger**, 508 A.2d 327, 329 (Pa. Super. 1986) alloc. denied, 529 A.2d 1078 (Pa. 1986) (no weakened intellect found where doctor testified that “[decedent], because of his tenacious and stubborn attributes, could not be influenced or persuaded to do anything he did not wish to do”).

Confidential Relationship

145. A confidential relationship exists when “the circumstances make it certain that the parties did not deal on equal terms, but on one side there is overmastering influence, and on the other, weakness, dependence or trust, justifiably reposed.” **Leedom v. Palmer**, 117 A. 410, 410-411 (Pa. 1922); **In re: Estate of Clark**, supra, **Burns v. Kabboul**, 595 A.2d 1158 (Pa. Super. 1991).
146. There is no precise formula known to Pennsylvania law for determining the existence of a confidential relationship. **In re: Estate of Buriak v. Sperl**, 492 A.2d 1166, 1168 (Pa. Super. 1985); see also **In re: Estate of Scott**, 316 A.2d 883, 885 (Pa. 1974) (“The concept of a confidential relationship cannot be reduced to a catalogue of specific circumstances, invariably falling to the left or right of a definitional line.”).
147. “[It] is marked by such a disparity in position that the inferior party places complete trust in the superior party's advice and seeks no other counsel, so as to give rise to a potential abuse of power.” **In Re: Estate of Fritts**, 906 A.2d 601, 608 (Pa. Super. 2006), appeal denied, 916 A.2d 1103 (Pa. 2007).
148. Each relationship must be analyzed on a fact-by-fact basis. “A parent-child relationship does not establish the existence of a confidential relationship nor does the fact that the proponent has a power of attorney where the decedent wanted the proponent to act as attorney-in-fact. **In re Estate of Jakiella**, 510 A.2d 815, 817-18 (Pa. Super. 1986).

149. While several courts have opined that the grant of a power of attorney may be evidence of a confidential relationship, the Pennsylvania Supreme Court has held that the mere existence of a POA does not establish a confidential relationship as a matter of law. **In re: Estate of Ziel**, 359 A.2d 728, 734 (Pa. 1976). This is especially true where the decedent remained aware of the extent of his property and active in handling his business affairs. **Id.**

Standard of Review: Expert Opinions

150. Pennsylvania case law recognizes that professional expert opinions are evidence of low quality and little value. “[A]n opinion is only an opinion. It creates no fact. Because of this, opinion evidence is considered of a low grade and not entitled to much weight against positive testimony of actual facts such as statements by the defendant and observation of his actions.” **Bernstein**, 2014 Pa. Rules of Evidence (Gann), Comment 7(e) to Pa. R.E. 702, pg. 617 quoting **Com. v. McCloud**, 455 A.2d 177, 179 (Pa. Super. 1983). While opinion evidence is admissible, it will not sustain a finding of fact in the face of direct and credible evidence unless strengthened by other facts and circumstances. **In re Snedeker’s Estate**, 84 A.2d 568, 569 (Pa. 1951).
151. “It is well settled that expert testimony is incompetent if it lacks an adequate basis in fact. The expert is allowed only to assume the truth of testimony already in evidence.” **Viener v. Jacobs**, 834 A.2d 546, 558 (Pa. Super. 2003); **Hussey v. May Dep’t Stores, Inc.**, 357 A.2d 635, 637 (Pa. Super. 1976).

Standing

152. To have standing, a party must have a tangible interest in the outcome of the dispute.

A party seeking judicial resolution of a controversy must, as a prerequisite, establish that he has standing to maintain the action....Standing requires a party to have a substantial interest in the subject matter of the litigation; the interest must be direct; and the interest must be immediate and not a remote consequence....The inquiry into standing ascertains

whether a party is the proper entitled to make the legal challenge to the matter involved...A person who has no stake in the matter has no standing to obtain judicial resolution of his challenge to the matter.

Rock v. Pyle, 720 A.2d 137, 142 (Pa. Super. 1998). (Citations omitted.).

153. A party must likewise have a “substantial interest” in the outcome of the litigation:

A “substantial” interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A “direct” interest requires a showing that the matter complained of caused harm to the party’s interest. And “immediate” interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interest sought to be protected by the statute or constitutional guarantee in question.

South Whitehall Township Police Service v. South Whitehall Township, 555 A.2d 793, 795 (Pa. 1989) (Internal citations omitted.). Accord, *In Re Estate of Briskman*, 808 A.2d 928, 933 (Pa. Super. 2002).

DISCUSSION

Undue Influence Claim

Petitioners initially allege that Sheldon unduly influenced Decedent into signing the beneficiary designation forms for the four non-probate TOD Accounts. The first beneficiary designation form for TCA account 328 was signed by Decedent on January 26, 2012 and Decedent named Wanda, Lindy and Sheldon as the beneficiaries at the time this account was opened. On November 18, 2014 TCA Accounts 351 and 353 were opened and Decedent signed beneficiary designation forms naming Wanda, Lindy and Sheldon as the beneficiaries of these accounts. On November 18, 2014, Decedent changed the beneficiary for the Genworth Annuity Account and signed a new beneficiary designation form for this account naming Wanda, Lindy and Sheldon as the beneficiaries. Annette was excluded as a beneficiary on all four of these non-probate TOD Accounts.

The non-probate TOD Account beneficiary designation forms were all signed by Decedent. During trial, there was no evidence presented that Decedent's signatures or initials were forged, or that Sheldon somehow deceived or manipulated Decedent into signing the non-probate TOD Account beneficiary designations under the guise that they were something else.

Because evidence of the formality of execution on the change of beneficiary form has been presented by Sheldon, a presumption of lack of undue influence arises, and the burden of coming forward with clear and convincing evidence of undue influence shifts to Petitioners. See **In Re: Clark's Estate**, 334 A.2d 628 (Pa. 1975). Petitioners must establish through evidence that is clear, precise, and convincing (1) weakened intellect; (2) a confidential relationship; and (3) that the proponent received a substantial benefit. **Id.**

Petitioners have established by clear, precise, and convincing evidence that Sheldon received a substantial benefit from the non-probate TOD Accounts.

Petitioners have presented no evidence to meet their burden concerning the January 26, 2012 non-probate TOD Account. No evidence was presented that Decedent suffered from any kind of weakened intellect in January of 2012 nor has clear, precise and convincing evidence been presented concerning the existence of a confidential relationship between Decedent and Sheldon during January 2012.

Decedent's first mental evaluation occurred on May 7, 2013 while at an appointment with Dr. Murillo. Dr. Murillo had Decedent perform the SLUMS test and Decedent scored a 25 out of 30 possible points. A SLUMS score of 21 to 26 falls within the mild cognitive impairment range. Mild neurocognitive disorder (mild cognitive impairment) is modest cognitive decline in one or more cognitive domains that does not substantially interfere with everyday activities. As such, mild cognitive impairment does not rise to the level of "weakened intellect."

Decedent was hospitalized at Hanover Hospital from July 2, 2014 through July 14, 2014 suffering from Listeria meningitis and delirium which resulted in a sudden change in mental status. On July 14, 2014, Decedent was transferred from Hanover Hospital to Homewood for intravenous antibiotic treatment and rehabilitation concerning the Listeria meningitis and delirium. Decedent was discharged from

Homewood on August 18, 2014. On August 25, 2014, Decedent had an appointment with Dr. Murillo where he took a second SLUMS test and scored a 24 out of 30 possible points. Dr. Murillo concluded that Decedent had recovered from the *Listeria meningitis* and delirium incident and could continue making his own decisions. This Court gives no weight to any testimony or evidence concerning Decedent's mental status between July 2, 2014 through August 12, 2014 based on Decedent suffering from *Listeria meningitis* and delirium which clearly impacted his mental status.

The other relevant time period concerning Petitioners' claim of undue influence is November and December 2014. Decedent met with Attorney Rubin, Attorney Snyder and other family members, including Sheldon, on November 10, 2014 concerning changes to his Will. Decedent directed Sheldon to prepare beneficiary designation forms for the other three non-probate TOD Accounts. Decedent signed such beneficiary designation forms on November 18, 2014 designating Lindy, Wanda, and Sheldon as the beneficiaries of these three non-probate TOD Accounts. On December 4, 2014, Decedent signed the Will after Attorney Rubin made the requested changes.

Petitioners have not presented clear, precise, and convincing evidence to establish that Decedent suffered from weakened intellect during the fall and winter of 2014. Petitioners rely heavily on the testimony of Dr. Rovner to meet their burden concerning weakened intellect. Dr. Rovner never met Decedent, never was Decedent's treating physician, nor did Dr. Rovner interview Decedent's treating physicians or family members in formulating his opinion. Dr. Rovner's opinion is based primarily on a review of Decedent's medical records. This Court gives little to no weight to Dr. Rovner's opinion. It is not supported by the testimony of Dr. Murillo and Dr. McBeth, nor is it supported by the testimony of other disinterested witnesses, including Attorney Snyder and Decedent's CPA, Norman Myers. Furthermore, Dr. Rovner's report stated "Mr. Lehman's cognitive deficits, however, did interfere with his everyday function, suggesting the presence of a major neurocognitive disorder (i.e., dementia)." (Pet.'s Ex. 141 pg. 15). This opinion is not supported through the testimony of Dr. Murillo or Dr. McBeth, through the medical records of Decedent, nor through the testimony of all lay witnesses in this matter. There was no evidence or testimony

presented that Decedent suffered from dementia, other than the report of Dr. Rovner.

This Court does not find that Decedent's behavior during the fall and winter of 2014 was "accompanied by persistent confusion, forgetfulness and disorientation." See **In Re: Estate of Fritts**, 906 A.2d at 607. Decedent was lucid and knew what he was doing. This is supported by the testimony of Dr. Murillo concerning the second SLUMS test on August 25, 2014, where Decedent scored a 24 out of 30 possible points. Dr. Murillo concluded that the score indicated Decedent had recovered from the *Listeria meningitis* and delirium incident and could continue to make his own decisions. This is also supported by Dr. McBeth concerning his appointments and personal interaction with Decedent during November and December 2014. Furthermore, this conclusion is supported by Attorney Snyder's observations of Decedent on November 10, 2014 and CPA Myers' interaction with Decedent in early February 2015.

Petitioners have also failed to present clear, precise, and convincing evidence establishing a confidential relationship between Decedent and Sheldon during the fall and winter of 2014. Testimony and evidence presented established that Sheldon acted as a financial advisor for Decedent from 1995 through Decedent's death in 2016. Testimony and evidence also established that Sheldon was appointed POA to Decedent on December 30, 2011. Petitioners rely heavily on these facts to allege a confidential relationship. While such factors are relevant concerning a confidential relationship between Decedent and Sheldon during this time period, such factors are not dispositive and controlling. It is reasonable that Decedent appointed Sheldon as his POA on December 30, 2011 given Decedent's age and the fact he did not use a computer or email. Yet, Decedent was well aware of his own property and was actively involved in his business and investment affairs. The testimony and evidence established that Decedent made his own decisions concerning his financial matters and investments, and while he relied on information from others, including Sheldon and CPA Myers, ultimately, he made the final decision concerning these matters.

Based on a review of all evidence presented, this Court does not find that the relationship between Decedent and Sheldon "is marked by such a disparity in position that the inferior party places complete

trust in the superior party's advice and seeks no other counsel, so as to give rise to a potential abuse of power." See **In Re: Estate of Fritts**, 906 A.2d at 608. During the fall and winter of 2014 Decedent remained active in handling his own business affairs and continued to make his own decisions. Examples of Decedent's independent thinking and actions during this time period include: (1) Decedent's decision to leave Homewood on August 18, 2014 against the wishes of his family and Dr. Murillo; (2) Decedent's decision to fire Dr. Murillo on October 28, 2014; (3) Decedent's decision to hire and fire caregivers during the fall and winter of 2014; (4) Decedent's preparation of a hand written list of personal property and its value prepared on November 13, 2014; (5) Decedent's scheduling of an appointment with Attorney Rubin and Attorney Snyder on November 10, 2014 for the purpose of Decedent removing Annette from his Will; (6) Decedent directing Sheldon to correct the Genworth Annuity Account after November 18, 2014 so that it equaled 100%; and (7) The fact that no evidence was presented showing Sheldon attempted to isolate Decedent from other family members during this time period. These factors support the conclusion that there was not a confidential relationship between Decedent and Sheldon during the fall and winter of 2014.

Petitioners ignore two important areas of testimony and evidence concerning the issue of undue influence. First concerns the personality and background of the Decedent. Testimony from every witness who personally interacted with Decedent clearly established that Decedent was strong willed, head strong, opinionated, decisive, intelligent, a successful businessman, and a very savvy and experienced investor. While Decedent sought advice from others, including his attorney and CPA, ultimately, he made his own decisions. The testimony and evidence also established that Decedent used threats concerning his wealth to control family members and control family relationships, and this behavior continued from 2012 through 2015.

Petitioners also ignored testimony and evidence concerning the strained relationship between Decedent and Annette. This strained relationship dated back to 1988 when Annette ceased all communication with her parents until approximately 1996. Although Decedent and Annette reconciled after 1996, the evidence and testimony illustrated there were still serious issues within their relationship. This was evident through Decedent removing Annette

as an heir numerous times, including January 2012 and November and December 2014. Prior to January 26, 2012, Decedent was upset with Annette because she refused to cooperate with her other siblings concerning the Lehman family farm. Decedent was also extremely upset with Annette concerning the October 28, 2014 meeting with Annette and Dr. Murillo where Dr. Murillo advised Decedent he should not drive anymore. Decedent was still upset with Annette on November 13, 2014 (testimony of Dr. McBeth and email from Annette to her siblings). This strained relationship provides a reasonable explanation why Decedent acted as he did in 2012 and 2014.

Therefore, Petitioners have not presented clear, precise, and convincing evidence concerning Decedent's weakened intellect or confidential relationship with Sheldon. This Court rejects Petitioners' claims of undue influence regarding the non-probate TOD Accounts.

Breach of Fiduciary Duty

Petitioners also allege that Sheldon breached his fiduciary duty as POA to Decedent by failing to exercise reasonable caution or prudence, in the exercise of his duties, in the omission of material information in updating others as to the non-probate accounts given the "known intent" of Decedent which was not consistent with the non-probate account changes.⁴ Petitioners' second claim must be established and proven by evidence which is clear, direct, precise and convincing. Petitioners primarily rely on the testimony of their hired expert witness, Christopher Harvey. Petitioners also rely on a Court of Common Pleas case from Philadelphia County, **Nixon Power of Attorney**, (7 Fiduciary Rep. 3d. 81 (2016)).

This Court gives little weight to Mr. Harvey's Opinion, which is premised upon the fact that Sheldon was acting in his role as agent for Decedent when Sheldon appeared with Decedent at the November 10, 2014 meeting and when Decedent signed the four relevant beneficiary designation forms in January 2012 and November 2014. Mr. Harvey's opinion is also based on his conclusion that Sheldon failed to disclose Decedent's cognitive concerns surrounding Decedent's capacity at the November 10, 2014 meeting.

⁴ Petitioners had previously raised the issue of Sheldon's breach of fiduciary duty as evidence of undue influence in prior filings but raised this issue as a second claim for relief in Petitioners' Supplemental Trial Memorandum, filed on September 2, 2020, six days before trial.

The evidence and testimony at trial clearly establishes that Sheldon was not acting as the agent for Decedent when Sheldon appeared with Decedent at the November 10, 2014 meeting, nor was Sheldon acting as agent for Decedent when Sheldon prepared the beneficiary designation forms at the direction of Decedent which Decedent signed on January 26, 2012 and November 18, 2014. See **In Re: Estate of Anna S. Wierzbicki**, 174 A.3d 1061 (Pa. Super. 2017) wherein Superior Court ruled:

“[F]irst, it is undisputed that the decedent herself executed the document. The Clark’s do not dispute that the signature on page 3 of the document is that of the decedent. The fact that the executrix assisted the decedent by handwriting the names and other information of the decedent’s chosen beneficiaries is of no moment.”

Id. at 1065. Furthermore, as previously set forth in this Opinion, Decedent clearly had testamentary capacity on November 10, 2014 and was not suffering from weakened intellect during this time period.

The best evidence concerning Decedent’s “known intent” on November 18, 2014 is Decedent’s actions on January 26, 2012 when Decedent opened TCA Account 328 and named Wanda, Lindy, and Sheldon as the beneficiaries, and specifically excluded Annette and her bloodline concerning this non-probate TOD Account.

Petitioners’ reliance on **Nixon Power of Attorney** is also misplaced, as this case is both factually and legally distinguishable.⁵ In **Nixon Power of Attorney**, the respondent was acting as agent under a grant of general power of attorney when she changed the beneficiaries in the decedent’s IRA from the decedent’s nine children to herself. The court ruled “this change of beneficiary is inconsistent with Mrs. Nixon’s known intent to treat her nine children equally as stated in her will and codicils and in the original IRA account beneficiary designation executed in 2006.” **Id.** at 87. In this case Sheldon was not acting as agent under the general power of attorney grant when he prepared the proper paperwork for Decedent to review and sign concerning the beneficiary designation forms. Furthermore,

⁵ A decision from the Court of Common Pleas of one county provides no binding precedent for another county’s trial court. See **Castle Pre-Cast Superior Walls of Delaware, Inc. v. Strauss-Hammer**, 610 A.2d 503 (Pa. Super. 1992); 1 Standard Pennsylvania Practice 2d § 2; 287.

Decedent's decision concerning the beneficiaries of the three non-probate TOD accounts on November 18, 2014 is consistent with his "known intent" based on Decedent's actions on January 26, 2012 concerning the beneficiaries designated in the first non-probate TOD Account. This Court gives no weight to Petitioners' reliance upon **Nixon Power of Attorney**.

Petitioners provide no other relevant caselaw or statutory authority to support their second claim. Even if this Court were to find, as stated by Petitioners' expert Mr. Harvey, that Sheldon breached his duty of loyalty and good faith as POA when he failed to disclose the non-probate accounts' inconsistencies to Decedent's attorneys at Barley Snyder, Petitioners have presented no caselaw or statutory authority to support Petitioners' claims that, based on this alleged breach, they are entitled to a 25% share of the non-probate TOD Accounts.

Accordingly, the attached Order is entered.

ORDER OF COURT

AND NOW, this 16th day of April, 2021, following four day non-jury trial in the above-captioned matter, following review of the Parties' Findings of Fact and Conclusions of Law and review of the Trial Transcript, this Court rules as follows:

1. Petitioners Christopher Boyer and Wendy Starner do not have standing to assert their Objections and are removed as Petitioners.
2. Petitioners have not met their burden of proof that Sheldon Lehman unduly influenced Decedent Wendell Lehman with respect to his designations of beneficiaries in the four non-probate TOD Accounts.
3. Petitioners have not met their burden of proof in their claim that Sheldon Lehman violated his fiduciary duty of loyalty and good faith to Decedent Wendell Lehman.

Therefore, Petitioners' Objections to the First and Final POA Accounting as Agent for Wendell L. Lehman are hereby denied.

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 administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF DALE A. BEAVERSON, DEC'D**

Late of the Borough of York Springs, Adams County, Pennsylvania

Co-Executors: Randall A. Beaverson and Kevin E. Beaverson, c/o John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

Attorney: John C. Zepp, III, Esq., P.O. Box 204, 8438 Carlisle Pike, York Springs, PA 17372

ESTATE OF CHARLES W. CHRISTOPHER, JR. a/k/a CHARLES WESLEY CHRISTOPHER, JR. a/k/a CHARLES CHRISTOPHER, SR. a/k/a CHARLES CHRISTOPHER, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Administrator: Charles W. Christopher, IV, 3145 Old Route 30, Orrtanna, PA 17353

Attorney: Lauren E. Sulcove, Esq., Family First Estate Services, 1110 Kennebec Drive, Chambersburg, PA 17201

ESTATE OF ALLEN D. DIEHL, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Executrix: Cheryl Diehl, c/o Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF DELORES M. GILBERT a/k/a DELORES MAE GILBERT, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Personal Representative: Loretta M. Plitt, 86 Brysonia Wensville Road, Biglerville, PA 17307

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF MARY L. KEPNER a/k/a MARY LOUISE KEPNER, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrices: Cynthia M. Smith and Mary E. Mickle, c/o R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

ESTATE OF RICHARD L. KREITZ a/k/a RICHARD KREITZ a/k/a RICHARD LEO KREITZ, DEC'D

Late of the Borough of Fairfield, Adams County, Pennsylvania

Executors: Robert L. Kreitz and Ricky L. Kreitz, c/o R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

Attorney: R. Thomas Murphy, Esq., R. Thomas Murphy & Associates, P.C., 237 East Queen Street, Chambersburg, PA 17201

ESTATE OF BONNIE L. REINHART a/k/a BONNIE LEE REINHART, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Co-Executors: Lewis P. Reinhart, Jr. and Sadie J. Fuhrman, c/o Sharon E. Myers, Esq., CGA Law Firm, PC., P.O. Box 606, East Berlin, PA 17316

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC., P.O. Box 606, East Berlin, PA 17316

ESTATE OF THOMAS C. SENSENEY, II, DEC'D

Late of Butler Township, Adams County, Pennsylvania

Executrix: Barbara Senseney, 1532 Goldenville Road, Gettysburg, PA 17325

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF HELEN H. STABLER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Donald L. Stabler, c/o Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Scott L. Kelley, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF VIRGINIA F. WHITE, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Donna S. Harrison, 313 Forrest Drive, Gettysburg, PA 17325

Attorney: John J. Murphy III, Esq., Patrono & Murphy, LLC, 28 West Middle Street, Gettysburg, PA 17325

SECOND PUBLICATION**ESTATE OF CHARLES R. KRIETZ, SR. a/k/a CHARLES R. KREITZ, SR., DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Personal Representative: Terry E. Krietz, 151 Twin Lakes Drive, Gettysburg, PA 17325

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

ESTATE OF ELAINE C. LEPPA a/k/a ELAINE W. LEPPA, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Co-Executors: Shaun M. Webb and Ryan G. Leppo, c/o Anthony J. Fitzgibbons, Esq., 279 North Zinns Mill Road, Suite D, Lebanon, PA 17042

Attorney: Anthony J. Fitzgibbons, Esq., 279 North Zinns Mill Road, Suite D, Lebanon, PA 17042

ESTATE OF CARY A. MURPHY, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania

Executor: Barbara A. Yandrasitz, c/o Mark E. Halbruner, Esq., Halbruner, Hatch & Guise, LLP, 2109 Market Street, Camp Hill PA 17011

Attorney: Mark E. Halbruner, Esq., Halbruner, Hatch & Guise, LLP, 2109 Market Street, Camp Hill PA 17011

ESTATE OF CALVIN E. UTZ, DEC'D

Late of the Borough of Littlestown, Adams County, Pennsylvania

Kathleen M. Grudberg, 1415 Frederick Pike, Littlestown, PA 17340

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF BETTY H. BOHRER, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Personal Representative: Michelle L. Dominguez, 3 Hillcrest Drive, Biglerville, PA 17307

Attorney: Teeter Law Office, 108 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION CONTINUED

ESTATE OF JOYCE E. BROOKS, DEC'D
Late of Berwick Township, Adams County, Pennsylvania

Executrix: Rebecca S. Roth, 136 Pin Oak Place, McSherrystown, PA 17344

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, PA 17331

ESTATE OF BONNIE P. CASHELL, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Executor: Raymond Lioi, c/o Kristen R. McGuire, Esq., Stock and Leader, 221 West Philadelphia Street, Suite 600, York, PA 17401

Attorney: Kristen R. McGuire, Esq., Stock and Leader, 221 West Philadelphia Street, Suite 600, York, PA 17401

ESTATE OF MARY A. CLARKE a/k/a MARY CLARKE, DEC'D

Late of Cape Canaveral, Florida

Dwayne Allen, Sr., c/o Heather Entwistle Roberts, Esq., Entwistle & Roberts, P.C., 37 West Middle Street, Gettysburg, PA 17325

Attorney: Heather Entwistle Roberts, Esq., Entwistle & Roberts, P.C., 37 West Middle Street, Gettysburg, PA 17325

ESTATE OF LUTHER D. DICK, DEC'D

Late of Tyrone Township, Adams County, Pennsylvania

Executor: Luther D. Dick, Jr., 221 Brysonia Wenksville Road, Biglerville, PA 17307

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover PA 17331

ESTATE OF MICHAEL A. HUGGENS a/k/a MICHAEL ANDREW HUGGENS, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Executrix: Sherry L. Huggens, c/o Linda S. Siegle, Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover, PA 17331

Attorney: Linda S. Siegle, Siegle Law, 1010 Eichelberger Street, Suite 3, Hanover, PA 17331

ESTATE OF SYLVIA R. KRICHTEN, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executors: David J. Krichten and Richard C. Krichten, c/o Erik D. Spurlin, Esq., MPL Law Firm LLP, 137 E. Philadelphia Street, York, PA 17401

Attorney: Erik D. Spurlin, Esq., MPL Law Firm LLP, 137 E. Philadelphia Street, York, PA 17401

ESTATE OF MARY S. LAWRENCE, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Steven N. Lawrence, 1420 New Chester Road, New Oxford, PA 17350

Attorney: Arthur J. Becker, Jr., Esq., Becker Law Group, P.C., 529 Carlisle Street, Hanover, PA 17331

ESTATE OF ESSA FAYE LEESE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Co-Executrices: Dixie Downin, Wanda Wallen, Sandra Duttera, Phyllis Duncan, Gwendolyn Lawrence, c/o Jennifer M. Stetter, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 17331

Attorney: Jennifer M. Stetter, Esq., Barley Snyder, LLP, 14 Center Square, Hanover, PA 173315

ESTATE OF ELEANOR I. LUDVICO a/k/a ELEANOR LUDVICO, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Loretta Ford a/k/a Loretta Ludvico, 3253 Muirfield Drive, Chambersburg, PA 17202

Attorney: Lawrence R. Rife, IV, Esq., Hoskinson, Wenger & Rife, 147 East Washington Street, Chambersburg, PA 17201

ESTATE OF ANTHONY A. OTTOMANO, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Administrator: Anthony Michael Ottomano, c/o Erik D. Spurlin, Esq., MPL Law Firm LLP, 137 E. Philadelphia Street, York, PA 17401

Attorney: Erik D. Spurlin, Esq., MPL Law Firm LLP, 137 E. Philadelphia Street, York, PA 17401

ESTATE OF ANNA M. RILEY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Linda R. Luckenbaugh, 691 Marsh Creek Road, Gettysburg, PA 17325

Attorney: Puhl & Thrasher, 220 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ROBERT C. WAREHIME, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Lynn M. Coradi, 51 Elk Drive, Hanover, PA 17331

Attorney: Matthew L. Guthrie, Esq., Barley Snyder LLP, 14 Center Square, Hanover, PA 17331

ESTATE OF SHIRLEY A. WILLIAMS a/k/a SHIRLEY T. WILLIAMS, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Tammy J. Hickey, 716 Rock Creek Ford Road, Gettysburg, PA 17325; Dawn W. Hefflin, 1860 Goldenville Road, Gettysburg, PA 17325; Scot M. Williams, 16814 Flower Mist Lane, Houston, TX 77095

Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF MERLE G. WOLF, III, DEC'D

Late of Menallen Township, Adams County, Pennsylvania

Administratrix: Jevy N. Wolf, 315-B West Point Road, Aspers, PA 17304

Attorney: John A. Wolfe, Esq. Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325