

**ADVANCE SHEET**  
**THE**  
**Dauphin County Reporter**

(USPS 810-200)

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A WEEKLY JOURNAL  
CONTAINING THE DECISIONS RENDERED IN THE  
12th JUDICIAL DISTRICT

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No. 5903, Vol. 125

February 1, 2013

No. 38

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Entered as Second Class Matter, February 16, 1898, at the Post Office at Harrisburg, Pa.,  
under the Act of Congress of March 31, 1879

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100 Chestnut Street, Suite 304  
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Telephone: 717-232-8771  
Facsimile: 717-232-8773  
E-mail: [hhpc@ptd.net](mailto:hhpc@ptd.net)  
Website: [www.h-hpc.com](http://www.h-hpc.com)

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42 Years in Harrisburg

**THE  
DAUPHIN COUNTY REPORTER**  
**Edited and Published**  
**by the**  
**DAUPHIN COUNTY BAR**  
**ASSOCIATION**  
**213 North Front Street**  
**Harrisburg, PA 17101-1493**  
**(717) 232-7536**

**ELIZABETH G. SIMCOX**  
**Executive Director**

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**Administrative Assistant**

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**Office Assistant**

**Printed by**  
**KURZENKNABE PRESS**  
**1424 Herr St., Harrisburg, PA 17103**

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THE DAUPHIN COUNTY REPORTER (USPS 810-200) is published weekly by the Dauphin County Bar Association, 213 North Front Street, Harrisburg, PA 17101. Periodical postage paid at Harrisburg, PA. POSTMASTER: Send address changes to THE DAUPHIN COUNTY REPORTER, 213 North Front Street, Harrisburg, PA 17101.

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**Estate Notices**

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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 estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors or their attorneys named below.

**FIRST PUBLICATION**

ESTATE OF MICHAEL W. BOONE, late of Dauphin County, Pennsylvania (died January 11, 2013). Administrator: Daniel J. Boone. Attorney: Michael Cherewka, Esq., 624 North Front Street, Wormleysburg, PA 17043. f1-f15

ESTATE OF HARRY OUTLEN, late of Harrisburg, Dauphin County, Pennsylvania (died September 30, 2011). Administrator: Ebony Outlen, 1640 N. 3rd Street, Harrisburg, PA 17102. Attorney: Robin J. Marzella, Esq., R.J. Marzella & Associates, 3513 North Front Street, Harrisburg, PA 17110. f1-f15

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ESTATE OF ANNA DANZI, late of Lower Paxton Township, Dauphin County, Pennsylvania. Personal Representatives: Michael J. Danzi, 2185 Bordeaux Ct., Harrisburg, PA 17112 and Sally A. Sanders, 4323 New Hampshire Dr., Harrisburg, PA 17112. Attorney: John R. Beinhour, Esq., Curcillo Law, LLC, 3964 Lexington Street, Harrisburg, PA 17109. f1-f15

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ESTATE OF EILEEN M. FORNEY, late of Swatara Township, Dauphin County, Pennsylvania (died December 16, 2012). Executor: David L. Robison, 8750 Jonestown Road, Grantville, PA 17028. Attorney: Jeffrey M. Mottern, Esq., 28 East Main Street, Hummelstown, PA 17036. f1-f15

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ESTATE OF WINIFRED E. HENRY, late of the Borough of Halifax, Dauphin County, Pennsylvania. Executrix: Ruth Ann Thompson, 1233 Kittatinny Street, Harrisburg, PA 17104. Attorney: Marvin Beshore, Esq., 130 State Street, P.O. Box 946, Harrisburg, PA 17101. f1-f15

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ESTATE OF CARL E. BECKER, JR., late of Penbrook Borough, Dauphin County, Pennsylvania (died January 7, 2013). Personal Representative: Cynthia A. Christ, 1131 Main Street, Oberlin, PA 17113. f1-f15

Commonwealth v. Schildt

Hence, we hereby find in favor of the Plaintiff in the amount of \$82,287.06 representing the unpaid medical expenses, plus statutory interest at 12% per annum, attorney's fees, and costs of suit, which attorney's fees and costs we find to be reasonable and proper. We hereby enter a separate Order of Judgment accordingly.

ISSUED AT HARRISBURG, this 13th day of December, 2012.

ORDER

AND NOW, to wit, this 13th day of December, 2012, in conjunction with the Court's Opinion filed of even date herewith, IT IS HEREBY ORDERED that Judgment is entered in favor of the Plaintiff and against the Defendant in the amount of \$82,287.06, representing the unpaid medical expenses, plus statutory interest at 12% per annum, attorney's fees, and costs of suit. The Prothonotary is hereby directed to promptly enter Judgment on the docket as aforesaid.

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**Commonwealth v. Schildt**

**Crimes and Criminal Procedure — Driving Under the Influence — Evidence —  
Breath Testing Device — Reliability.**

Defendant successfully challenged the *per se* evidentiary presumption of reliability and accuracy for breath testing device (intoxilyzer) readings beyond a limited range. Additionally, the Court found that the manufacturer had ignored the regulatory requirement for independent laboratory certification of the simulator solution used in calibrating the device.

1. The Intoxilyzer 5000EN device, as presently field calibrated and utilized, is not capable of providing a legally acceptable Blood Alcohol Content (BAC) reading to satisfy the Commonwealth's burden of proof beyond a reasonable doubt for an alleged violation of 75 Pa.C.S.A. §3802(c) of the Pennsylvania Motor Vehicle Code - DUI Highest Rate of Alcohol (.16 and higher).

2. *The manufacturer of simulator solution shall certify to the test user that its simulator solution is of the proper concentration to produce the intended results when used for accuracy inspection tests or for calibrating breath test devices. This certification shall be based on gas chromatographic analysis by a laboratory independent of the manufacturer. 67 Pa. Code. §77.24(d) (emphasis added).*

Motion to Quash. C.P., Dau. Co., No. 2191 CR 2010. Motion granted.

Commonwealth v. Schildt

*Office of the District Attorney of Dauphin County,*  
for the Commonwealth

*Justin J. McShane,* for the Defendant

*Office of the Public Defender of Dauphin County,*  
for the Conjoined Defendants

CLARK, J., December 31, 2012 – “Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passion, they cannot alter the state of facts and evidence.” These famous words were first spoken by John Adams in his ‘*Argument in Defense of the Soldiers in the Boston Massacre Trials*’ in December 1770.<sup>1</sup> These remarkable words relate to the case *sub judice* because, after hearing testimony from several extremely qualified expert witnesses offered by the Defendant, and after reviewing the pertinent statutes and regulations as promulgated in the Commonwealth of Pennsylvania, we are left with the **FACTS**. And the unvarnished **FACTS** of this case ultimately establish that the array of breath testing devices presently utilized in this Commonwealth, and in particular the Intoxilyzer 5000EN device manufactured by CMI, Inc. (hereinafter “CMI”), as those devices are presently field calibrated and utilized in this Commonwealth, are not capable of providing a legally acceptable Blood Alcohol Content (BAC) reading, which is derived from a Defendant’s breath, *outside* of the limited linear dynamic range of 0.05% to 0.15%. This is so because those devices’ operational calibration and consequent display of a BAC reading cannot be reliably and scientifically verified due to the limited operational field calibration range of 0.05% to 0.15%. Thus, the utilization of any instrument reading above or below that limited dynamic range cannot, as a matter of science and therefore law, satisfy the Commonwealth’s burden of proof beyond a reasonable doubt on an essential element of a charged offense for an alleged violation of 75 Pa.C.S.A. §3802(c) of the Pennsylvania Motor Vehicle Code.

#### INTRODUCTION

The true issue before the Court is the evidentiary reliability of the reading derived from a particular device used in the above-docketed case, as well as in the attached cases, to determine levels of intoxication

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1. John Adams was a straightforward politician in his time, an original diplomat of the United States, one of the original framers of the Declaration of Independence, the first Vice President of the United States, the second President of the United States; and above all, a true patriot of his infant nation to whom we owe eternal gratitude for the very freedoms we often take for granted in these United States of America.

## Commonwealth v. Schildt

outside the linear dynamic range of 0.05% to 0.15%. According to past and present practice, the Commonwealth has enjoyed a *per se* satisfaction of its evidentiary burden to establish a BAC of .16% in Highest Rate DUI cases by simply producing a device printout which displays such a test reading or higher. This case challenges that *per se* evidentiary presumption. While the Commonwealth has curiously attempted to recast the Defendant's own contentions on this very issue in the Commonwealth's Memorandum of Law in Opposition to Defense's Motion to Quash and its (Commonwealth's) Response to Defendant's Memorandum of Law and Proposed Findings of Fact by erroneously restating the Defendant's own evidentiary challenge argument to suggest that the Court construe the issue as a challenge as to the reasonableness of the codified regulations promulgated by the Pennsylvania Departments of Health (hereinafter "DOH") and Transportation (hereinafter "PennDOT") as they relate to this matter, that recasting and shifting of focus is totally misplaced. This Court will nevertheless address the true constitutional evidentiary issue as raised by the Defendant which is at the core of this dispute, and as further elaborated through expert testimony during the Evidentiary Hearing before this Court.

However, it is likewise very important to note what is NOT being challenged by the Defendant in the matter at hand. The Defendant has *not* asserted that the approved breath testing devices utilized in this Commonwealth are physically *incapable* of ever producing a scientifically valid reading of BAC below .05% or above .15%. Nor has the Defendant asserted that the codified regulations as promulgated by DOH and PennDOT, pursuant to the procedures and requirements of the Commonwealth Documents Law (CDL)<sup>2</sup>, and as authorized by the specific provisions of the various statutes attendant to the Commonwealth's DUI statutes (75 Pa.C.S. §1547 et seq.), are invalid or otherwise infirm. And most importantly, the Defendant does *not* assert that any indicated reading of BAC from .05% to .15% is, in any way, deficient or otherwise inadmissible by the Commonwealth in a prosecution of a charge of DUI pursuant to 75 Pa.C.S. §3802(a) (2) or §3802(b).

Conversely, what the Defendant does challenge is any evidentiary *presumption* that may arise that just because an approved breath testing device has been verified for field calibration accuracy with data points of .05, .10 and .15, that such device can be reliably and scientifically *presumed* to be likewise accurate beyond that limited linear dynamic range. And since 75 Pa.C.S. §3802(c) has, as a prime element of that

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2. See 45 Pa.C.S. Chapters 5, 7 and 9.

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particular offense (Highest Rate BAC), the requirement to establish a BAC of .16% or higher, the present limited methodology of field calibration of only .05% to .15% cannot satisfy the Commonwealth's burden of proof on such Highest Rate element to a scientifically acceptable level of reliability which can be accorded any such *per se* presumption of meeting the Commonwealth's evidentiary burden.

Interestingly, the Defendant has conceded during his argument, that all of the breath testing devices presently approved by the Commonwealth *could probably* produce a scientifically valid BAC reading above .15%, or even below .05%, but that the present methodology for initial calibration and subsequent field calibration verification would have to be significantly adjusted to accommodate for that extended spectrum of linear dynamic range.

## FACTUAL HISTORY

On January 16, 2010, at approximately 2:11 a.m., the Defendant was involved in a single vehicle accident on Beagle Road in Londonderry Township, Dauphin County, Pennsylvania. Pennsylvania State Police Trooper Jeremy Baluh arrived on the scene and observed the Defendant's vehicle resting on its side in the creek next to Beagle Road. Upon Trooper Baluh's initial contact with the Defendant, he noticed that the Defendant was speaking with slurred speech, had a strong odor of alcohol on his breath, and his eyes were red. The Defendant was wet from being in the creek, was not wearing shoes, was unsure of his footing and staggered as he walked. The Defendant admitted that he had consumed multiple alcoholic beverages prior to operating his vehicle. Based on Trooper Baluh's observations of the Defendant, Trooper Baluh formed the opinion that the Defendant was incapable of safe driving and placed the Defendant under arrest. There is absolutely no dispute by the Defendant that Trooper Baluh possessed the requisite probable cause to arrest the Defendant for DUI.

The Defendant was transported by Trooper Baluh to the nearby Middletown Borough Police Department Headquarters for a legal breath test which was conducted by Officer Ben Lucas of the Middletown Borough Police Department. Officer Lucas is a certified breath test operator in the Commonwealth of Pennsylvania. Officer Lucas performed the breath test on the Defendant after a twenty (20) minute observation period in which the Defendant did not eat, drink, vomit, regurgitate or smoke. The test was performed utilizing an Intoxilyzer 5000EN, a device manufactured by CMI, and is a device certified by the DOH and PennDOT as an "approved device" for breath testing to determine blood alcohol content. The device used by Officer Lucas was field verified for

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calibration on January 9, 2010 and tested for accuracy on January 9, 2010 as well. The test was done within two hours of the time the Defendant was operating a motor vehicle. The results of the two breath samples provided by the Defendant were 0.208% and 0.214% BAC.

## PROCEDURAL HISTORY

The Defendant was charged on January 16, 2010 with two counts of DUI<sup>3</sup> and Driving on Roadways Laned for Traffic.<sup>4</sup> After a Preliminary Hearing before Magisterial District Judge David H. Judy, Esquire, conducted on May 6, 2010, all charges were bound over for disposition in the Court of Common Pleas of Dauphin County. It is specifically noted that nothing in this writing is intended to apply to a prosecution for DUI being brought under 75 Pa.C.S. §3802(a)(1), inasmuch as the percentage of blood alcohol content of a person driving, operating or being in actual physical control of the movement of a vehicle is NOT an element of that statutory offense.

The Defendant was scheduled to appear for Formal Arraignment on June 3, 2010. However, the Defendant signed a Waiver of Appearance at Formal Arraignment (hereinafter Waiver of Appearance) which was filed on May 21, 2010. Despite Defendant's signed and filed Waiver of Appearance, a Bench Warrant was somehow issued on June 16, 2010 for the Defendant's arrest. The Commonwealth filed a Motion to Lift Bench Warrant on June 24, 2010, which was granted on June 25, 2010. On August 18, 2010, the Defendant appeared before our distinguished colleague, the Honorable Scott Arthur Evans, and requested a continuance. His request was granted and the case was scheduled for October 20, 2010. On August 27, 2010, the Defendant, through counsel, filed a "Motion to Quash Criminal Information to Wit: The Charge of 18 PA.C.S.A. §3802(c) Driving Under the Influence-Highest Rate of Alcohol as the Commonwealth is Using Evidentiary Breath Testing Devices That Cannot Scientifically Prove the Quantification for Values Above 0.15 and as such Cannot Prove an Essential Element of the Crime Charged Due to this Inability to Quantify Values Outside of the Demonstrated Linear Dynamic Range"<sup>5</sup> (hereinafter "Motion to Quash").

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3. 75 Pa.C.S.A. §3802(a)(1) and 75 Pa.C.S.A. §3802(c).

4. 75 Pa.C.S.A. §3309(1).

5. Several criminal cases were originally attached and joined in Defendant's Motion to Quash. Since the filing of said Motion, more cases have joined Defendant's Motion to Quash and are awaiting the outcome of the Court's ruling herein. A listing of those presently known joined cases is attached hereto, and marked as Appendix "A," but such listing may, in fact, be incomplete due to an indexing and clerical anomaly in the Clerk of Court's Office. However, this writing and the holdings herein are intended to accrue to all cases which are listed or should have been listed on Appendix "A," notwithstanding those administrative difficulties.

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When this Court was assigned by Court Administration to determine this evidentiary matter involved in the Motion to Quash, we noted the rather unusual scope and attendant issues embedded in the Motion, and we therefore undertook additional measures to include various Commonwealth agencies in the disposition of this matter at a fairly early stage in the proceedings. The Court clearly sensed from the initial filing of the Motion to Quash by the Defendant's counsel that the scientific issues, and the direct implication of evidentiary and constitutional law issues attendant to this case could have a profound effect upon similar cases in this Judicial District, and indeed across the Commonwealth. It was also apparent that the instant matter may well be a case of first impression in the Commonwealth. Accordingly, the Court held Pre-Hearing Conferences on February 10, 2011 and again on November 28, 2011<sup>6</sup> to which we specifically extended invitations to several different Commonwealth agencies, including the Attorney General's Office, the Department of Transportation, the Department of Health, and the Pennsylvania State Police to fully participate in such Conferences. Notably, only one agency, the Department of Transportation, had a counsel attend the first of the aforementioned Conferences. No other Commonwealth agency appeared at said Conferences, but some sent correspondence to the Court thanking us for extending such invitations, and clearly indicated that each agency was comfortable with the representation provided on behalf of the Commonwealth by the Dauphin County District Attorney's Office, and that their agency would not be participating in the Pre-Hearing Conferences or the Hearing on the merits of the Motion to Quash. However, as the case progressed, it became rather unsettling to the Court that these Commonwealth agencies did not opt to at least participate in the Conferences which would have certainly illuminated the potential state-wide implications of a possible ruling adverse to their interests emanating from the fundamental issues associated with this case. It is for that very reason of initial non-response that we renewed our initial invitation of January 20, 2011, and re-invited those same agencies to attend the subsequent Conference on November 21, 2011. But alas, our invitations went chiefly unheeded.

After discovery was completed by the parties and expert reports were prepared and filed, an Evidentiary Hearing was scheduled for April 16th, 19th, 23rd, and 24th of 2012. On April 16, 2012, the Defendant

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6. The Court's Conference Scheduling Orders of January 20, 2011 and November 21, 2011 both list counsels for the Attorney General's Office, the Department of Transportation, the Department of Health, and the Pennsylvania State Police in the distribution legends. Those agencies were encouraged by the Court to become involved in this proceeding, since each of them would likely be a stakeholder in the outcome of the matter.

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presented testimony from Dr. Lee N. Polite; on April 19, 2012, the Defendant presented testimony from Dr. Jerry Messman; on April 23, 2012, the Defendant presented testimony from Dr. Jimmie Valentine and the Commonwealth presented partial testimony from its prime witness, Mr. Brian T. Faulkner. The Commonwealth concluded the Evidentiary Hearing with its witness, Mr. Faulkner, on April 24, 2012. After testimony concluded, the Court advised that each party would have an opportunity to submit any Proposed Findings of Fact, Conclusions of Law, Memorandums of Law, and subsequent Responses thereto. The Commonwealth filed its Memorandum of Law in Opposition to Defense's Motion to Quash, the Defendant filed his Memorandum of Law and Proposed Findings of Fact and both parties ultimately filed Responses thereto.

## A HISTORICAL PERSPECTIVE

In order to properly frame the statutory, regulatory and evidentiary issues attendant to this case, the Court believes that a very brief and quite generalized discussion of some pertinent historical facts and circumstances would assist in such discussion and resolution. That necessary historical perspective begins a bit more than a quarter century ago, in 1984.

In 1984, and again in 1989, the General Assembly enacted DUI legislation which established an enforcement scheme which consisted of a *per se* high limit of presumed impairment (.10% BAC), a *per se* low limit of presumed non-impairment (<.05% BAC) and a "grey zone" in between those high and low thresholds for possible conviction of a DUI offense under certain circumstances. At the times of those enactments, it was generally accepted that *per se* impairment of the ability to safely operate a motor vehicle occurred at a .10% BAC. Thus, most DUI statutes across our nation adhered to that .10% BAC as the presumed threshold of impairment sufficient to criminalize the driving, operation or control of a vehicle with that level of blood alcohol in an operator's body.

Conversely, those same 1984 and 1989 DUI statutes established that any BAC reading below .05% was conclusively presumed to indicate that no DUI violation had occurred. A BAC reading in the "grey zone" at or above .05% but below .10% could potentially be used to establish a violation, but there could be no *presumption* of intoxication sufficient to establish *per se* intoxicated operation from that "grey zone" BAC reading, and additional legally sufficient evidence would be needed to secure a DUI conviction under those circumstances which could pass muster for proof beyond a reasonable doubt.

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At the time of the original statutory enactment of the DUI statutes in 1984, the General Assembly also authorized DOH and PennDOT to adopt and promulgate comprehensive regulations to implement those newly enacted DUI statutes. Indeed, those Commonwealth agencies did just that and those very same regulations (with some minor amendments over the years), particularly the ones promulgated by the DOH and PennDOT at 67 Pa. Code §77.24, §77.25 and §77.26, form the bedrock of the regulatory scheme for implementation of the DUI laws of this Commonwealth to this very day. There is no question in this case, nor in the associated cases, that those 1984 DOH and PennDOT regulations were perfectly suitable and legally valid to produce a BAC reading for enforcement of those *previously enacted DUI statutes*. And therein is the salient root of the legal issues attendant to this case. Likewise, there is no dispute by the Defendant that those regulations are *per se* invalid or otherwise insufficient to the degree that they deal with a BAC reading between the limited linear dynamic range of .05% and .15%; but rather, it is the Defendant's contention that they (regulations) did not keep up with the constitutionally mandated evidentiary requirements of later (current) enacted DUI legislation, and are, for that evidentiary reason, insufficient to apply a *per se* presumption of Highest Rate impairment above a .15% reading derived from an approved breath testing device.

In the early 1990s, the previously accepted presumption of impairment at the .10% level of BAC began to be called into question. Slowly over the course of that decade and into the early 2000s, debate began to coalesce across our country that significant impairment indeed occurred at a lower level of BAC, to wit, .08%. That modified perception of DUI impairment then began to find support in the legislatures of several states, and a significant hue and cry was raised in Congress to pressure the states to adopt a uniform standard of .08% BAC for *per se* DUI enforcement purposes. Those nationwide remedial efforts and associated Congressional persuasions (which chiefly took the form of economic sanctions associated with highway funding and other forms of Federal largess) took several years to find traction. Indeed, the Commonwealth of Pennsylvania was not an early adopter of that lower (.08%) *per se* DUI level.

However, this Commonwealth eventually saw the light (and needed those Federal funds), and it enacted on September 30, 2003 (effective February 1, 2004) the basic rubric of the present day, three-tiered, statutory scheme for DUI enforcement and, most importantly, the associated tier-related increasing penalties for violations of those same statutes

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came into effect. It is that very same 2003 statute, in particular 75 Pa.C.S. §3802(c) — Highest Rate of Impairment — that is directly involved in this case. However, that is not the end of the historical discussion.

As will be discussed hereinafter at significant length, the concomitant regulations originally promulgated by the DOH and PennDOT in 1984 have not kept up with the latest (and presently effective) three-tiered DUI statutes of this Commonwealth. This regulatory deficiency is particularly acute as it applies to the Commonwealth's burden of proof (beyond a reasonable doubt) associated with a prosecution of an alleged Highest Rate offense pursuant to 75 Pa.C.S. §3802(c). And as likewise fully discussed hereinafter, due to this regulatory deficiency to keep abreast of the most current form of DUI statutory enforcement, the Commonwealth can no longer rely on a *per se* violation in a Highest Rate case by simply producing a BAC reading from an approved breath testing device which indicates any reading above .15% BAC under the limited field testing and calibration scheme currently in place in our Commonwealth.

## ESSENCE OF THE DEBATE

The Motion to Quash filed by the Defendant on August 27, 2010 contained a seven (7) page writing prepared by the Defendant's learned counsel and a one (1) page declaration of Lee N. Polite, MBA, Ph.D. That initial writing set forth both the factual and scientific basis for the Motion to Quash, and gave both the Court and the Commonwealth a virtual roadmap of the extensive issues that were to be forthcoming in this case. On February 14, 2011, upon receipt of the Commonwealth's Motion Requesting Defendant's Experts Prepare and Disclose Reports, the Court Ordered that the Defendant must have any individual he intended to call in support of the pending Motion to Quash prepare a full expert report within sixty (60) days. The expert report was to include a full résumé of the professional credentials of any such witness, together with a full annunciation of the factual and scientific basis for any opinions expressed in such reports, and a comprehensive written discussion of the methodologies utilized by such witness in arriving at any opinion expressed in their writings.

The Defendant then filed a Motion to Extend Timely Filing of Expert Reports on April, 7, 2011, which this Court granted, thereby permitting the Defendant to file his expert reports by April 30, 2011. The Defendant's counsel served the Commonwealth and the Court with three (3) comprehensive expert reports from heavily-credentialed scientists on April 30, 2011.

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The Commonwealth then filed its first Motion to Extend Filing of Expert Reports on June 30, 2011, which the Court granted. The Commonwealth then filed its second Motion to Extend Filing of Expert Reports on August 2, 2011, which the Court granted with the explicit directive that no further continuances would be granted. On September 1, 2011, more than half a year after the Commonwealth was aware of the rather complex issues to be presented in this case, it produced a mere one-page letter prepared by an engineer, Mr. Brian T. Faulkner, who was credentialed with a Bachelor's Degree in Electrical Engineering, and who is also employed by CMI, the manufacturer of one of the breath testing devices, the Intoxilyzer 5000EN. Mr. Faulkner's position with CMI was described as the Manager of Engineering. It was quite apparent to the Court at the Hearing that the Commonwealth's proposed expert witness, Mr. Faulkner, possessed minimally significant enough credentials to support the requirements for reasonable pretension<sup>7</sup> on some of the scientific matters under examination in the case, but did not possess sufficient credentials to be able to opine on any advanced scientific matters. However, in the interests of fairness and justice to the Commonwealth's position, the Court allowed the Commonwealth to call Mr. Faulkner as its limited expert witness and accepted his testimony on the record. It is also important to note that as a result of the Commonwealth's rather limited choice of an expert witness(s), any concerns regarding the veracity of the DataMaster breath testing devices manufactured by National Patent Analytical Systems, Inc., which were used to prosecute a substantial percentage of the conjoined Defendants' cases in this matter, remain completely un-rebutted. In fact, a significant portion of the Defendant's claims associated with the Intoxilyzer 5000EN remain entirely un-rebutted as well.

While the Commonwealth's selection of an expert witness in this case was perplexing to the Court, what was truly astounding to the Court was the Commonwealth's post-Hearing Memorandum of Law in Opposition to Defense's Motion to Quash. Despite four (4) days of Evidentiary Hearing, coupled with possessing and reviewing the Defendant's three (3) extensive expert written reports for several months in advance of the Hearing, the Commonwealth still somehow managed to mischaracterize the core evidentiary issues in this case and attempted to mistakenly characterize the Defendant's challenge as regulatory rather than evidentiary. Nothing could be further from the truth.

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7. See *Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995).

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Indeed, the Commonwealth, in its Memorandum, stated that, “[i]t is the Defendants’ position that the regulations as promulgated by the Pennsylvania Department of Health are inadequate and scientifically unreliable as to testing on a breath test device when the results are above .15%.” The Commonwealth then asserts that, “[T]here has been no challenge by the defense that the Commonwealth, in the instant case, or those attached, has not met the current regulations that Pennsylvania law requires. **The issue, therefore, is with the regulation itself.**”<sup>8</sup> (emphasis added).

In the Defendant’s Reply to Commonwealth’s Memorandum, the Defendant, through counsel, amply clarified and re-asserted that the Commonwealth’s perception was entirely misplaced and that the Defendant did not take issue with the Commonwealth’s regulations; but, rather, the issue was the Commonwealth’s failure to update its internal policies to reflect the increased BAC values contemplated by the new DUI statutes.<sup>9</sup> And thus, in such responsive writing, the Defendant has clearly established the parameters of his constitutional evidentiary challenge to any presumption of *per se* impairment above a .15% BAC reading derived from an approved breath testing device. The Court accepts that re-affirmed contention of the Defendant.

## DISCUSSION

As preliminarily mentioned, the Defendant’s assertion in his Motion to Quash is that the Commonwealth cannot establish to a legally and scientifically acceptable certainty that the alleged quantitation of the BAC above .15% (which is derived from the breath sample obtained from the Defendant) is legally accurate when displayed as a test result reading on an approved breath testing device; and thus, it is contended, that the Commonwealth is unable to prove an essential element of its case beyond a reasonable doubt as it pertains to a charge of DUI brought pursuant to 75 Pa.C.S. §3802(c). This Court is constrained to agree with the Defendant’s contention.

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8. Commonwealth’s Memorandum of Law in Opposition to Defense’s Motion to Quash, page 5.

9. Defendant’s Reply to Commonwealth’s Memorandum, page 1.

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The law in Pennsylvania for driving under the influence of alcohol or a controlled substance is as follows:

(a) General Impairment

(1) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.

(2) An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.08% but less than 0.10% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(b) High rate of alcohol — An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is at least 0.10% but less than 0.16% within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

(c) Highest rate of alcohol — An individual may not drive, operate or be in actual physical control of the movement of a vehicle after imbibing a sufficient amount of alcohol such that the alcohol concentration in the individual's blood or breath is 0.16% or higher within two hours after the individual has driven, operated or been in actual physical control of the movement of the vehicle.

75 Pa.C.S.A. §3802.

The General Assembly's structure of this statute clearly illustrates that the commensurate penalties for driving under the influence of

alcohol or a controlled substance in Pennsylvania are also intended to be graduated.<sup>10</sup> For an individual to be found under the influence of alcohol or a controlled substance while in operation or control of a motor vehicle in Pennsylvania, certain regulations must be followed. As mentioned earlier, the DOH and PennDOT, pursuant to the statutory authority of the Pennsylvania Legislature, have clearly promulgated the pertinent regulations in 67 Pa. Code §77.24, §77.25, and §77.26, which are titled as the following:

**§77.24 Breath test procedures**

**§77.25 Accuracy inspection tests for Type A equipment**

**§77.26 Periodic calibration of Type A breath test equipment**

The lengthy verbatim recitation of the regulatory provisions in each of these main categories has been omitted for ease of review of this writing, save one, § 77.24(d), which provides:

(d) *Simulator solution certification.* The manufacturer of simulator solution shall certify to the test user that its simulator solution is of the proper concentration to produce the intended results when used for accuracy inspection tests or for calibrating breath test devices. *This certification shall be based on gas chromatographic analysis by a laboratory independent of the manufacturer.* (emphasis added).

Assuming the foregoing regulations have been followed and an individual is charged with driving under the influence, of alcohol, the admissibility of that individual's chemical testing results are governed by 75 Pa.C.S.A. §1547(c) which states:

(c) *Test results admissible in evidence.* — In any summary proceeding or criminal proceeding in which the defendant is charged with a violation of section 3802 or any other violation of this title arising out of the same action, the amount of alcohol or controlled substance in the defendant's blood, as shown by chemical testing of the person's breath,

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10. While there are further distinctions for lower levels of alcohol concentration in an individual's blood or breath, i.e. 0.02% or higher for minors is an offense, 0.04% or higher is an offense for a commercial vehicle driver, and 0.02% or greater is an offense for drivers of a school bus or school vehicle, this Court will not address these lower levels as the Defendant in the matter *sub judice* is specifically challenging the highest rate of alcohol. However, the scope of this writing, by direct implication, certainly accrues to those lower level DUI limits as well.

## Commonwealth v. Schildt

blood or urine, which tests were conducted by qualified persons using approved equipment, shall be admissible in evidence.

(1) Chemical tests of breath shall be performed on devices approved by the Department of Health using procedures prescribed jointly by regulations of the Departments of Health and Transportation. Devices shall have been calibrated and tested for accuracy within a period of time and in a manner specified by regulations of the Departments of Health and Transportation. For purposes of breath testing, a qualified person means a person who has fulfilled the training requirement in the use of the equipment in a training program approved by the Departments of Health and Transportation. A certificate or log showing that a device was calibrated and tested for accuracy and that the device was accurate shall be presumptive evidence of those facts in every proceeding in which a violation of this title is charged.

As a result of the evidence produced at the Hearing, it is now extremely questionable as to whether or not any DUI prosecution which utilizes a reading from an Intoxilyzer 5000EN breath testing device could presently withstand scrutiny based upon the startling testimony of the Commonwealth's own witness, Mr. Faulkner, at the Hearing. What has now come into play as a result of Mr. Faulkner's testimony is a serious question as to procedures and simulator solutions utilized by the manufacturer, CMI, to initially "teach" the Intoxilyzer 5000EN breath testing device to accurately and reliably respond to an ethanol sample during the original calibration of the device, post physical production, but while undergoing such initial calibration at the CMI facilities. As previously mentioned, the Commonwealth's sole expert witness was Mr. Faulkner, who testified that once the physical manufacturing process for the Intoxilyzer 5000EN is complete, the device then goes through the manufacturer's (CMI's) in-house initial calibration lab where it has its calibration and consequent displayed reading adjusted for the first time. The lab introduces allegedly known concentrations of ethanol solutions to determine the device's response to ethanol. N.T. 4/23/12 at 170.

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However, a quite thorny issue developed during Mr. Faulkner's testimony concerning that initial calibration by CMI which appears to collide with Pennsylvania's regulations requiring that "*the manufacturer of simulator solution shall certify to the test user that its simulator solution is of the proper concentration to produce the intended results when used for accuracy inspection tests or for calibrating breath test devices. This certification shall be based on gas chromatographic analysis by a laboratory independent of the manufacturer.*" 67 Pa. Code. §77.24(d) (emphasis added). Astoundingly, Mr. Faulkner testified that CMI does *not* follow the preceding Pennsylvania regulation. At the Evidentiary Hearing, the Commonwealth inquired of its own witness, Mr. Faulkner, as follows:

**Commonwealth:** "And can you talk about the solutions that are used to do the initial calibration?"

**Defense Counsel:** "All right. Now I have to object for fair scope of this."

**Commonwealth:** "I'm asking him where they get those solutions, if they're certified through NIST traceable standards."

**Mr. Faulkner:** "We make our own solutions in-house. Solutions are checked and verified with a gas chromatograph. The gas chromatograph is verified with NIST traceable reference materials." N.T. 4/23/12 at 172-173.

Mr. Faulkner's own testimony stunningly supports the Defendant's claim that the Intoxilyzer 5000EN could not have produced a legally acceptable reading of his (the Defendant's) blood alcohol content derived from the breath alcohol content as tested by the Intoxilyzer 5000EN because the device was never properly calibrated according to Pennsylvania regulatory standards in the first place. Under those Pennsylvania standards, the simulator solution used in the calibration of the breath testing device by the manufacturer of the device must be certified based on gas chromatographic analysis by a laboratory **independent of the manufacturer**. Unfortunately, CMI calibrates the Intoxilyzer 5000EN with a simulator solution made in-house, with no reference to any certification based on gas chromatographic analysis completed by an independent laboratory.

It is perfectly clear to this Court that at least one of the purposes of this specific regulatory provision (§77.24(d)) promulgated by the DOH and PennDOT is that it is intended to act as an initial, and indeed

## Commonwealth v. Schildt

critical, check and balance against the possible introduction of a faulty simulator solution being used by the manufacturer in the very first instance of calibration of the breath testing device. Although Mr. Faulkner's testimony indicates that the manufacturer, CMI, owns a gas chromatograph instrument, there was absolutely no testimony brought forth by the Commonwealth which could even remotely establish how that instrument itself was scientifically tested for accuracy, or who might be the person(s) who performs any such scientific testing, or the professional credentials of any such person(s).

Although Mr. Faulkner stated that NIST traceable materials are used to "verify" the gas chromatograph instrument, we are left without any evidence of the attendant circumstances and procedures that might be utilized in any such verifying endeavor, such that the Court could possibly evaluate the efficacy of any such procedure. However, notwithstanding any such "verifying" undertakings performed by the manufacturer (CMI) on its own gas chromatograph, the bare **FACT** remains that the entity (CMI) that is performing the initial *calibration* of the breath testing device is using a simulator solution which was prepared (and allegedly subjected to some sort of a gas chromatographic analysis) by the same manufacturer and calibrator of that device. The regulatory requirement of a "gas chromatographic analysis by a laboratory *independent* of the manufacturer" has been blatantly ignored and obviously violated. (emphasis added).

Defense expert Dr. Jerry D. Messman, an internationally recognized expert in the disciplines of chemistry, organic chemistry, analytical chemistry, metrology, spectrometry or spectroscopy, physical chemistry, good laboratory methods, thermodynamics and statistical thermodynamics, testified that a simulator solution prepared in-house does not generate the same level of confidence as that of a higher order certified reference material. Dr. Messman explained that if the concentration of the standard is wrong, then the calibration curve will be wrong, and the measured result will be wrong. N.T. 4/19/12 at 64-65. Hence, the simulator solution produced and utilized by CMI is problematic at best, as confirmed by the DOH and PennDOT regulatory requirement that a manufacturer of a breath test device cannot rely on its own uncertified simulator solution but instead *must* utilize a simulator solution with a certification based on gas chromatographic analysis by a *laboratory independent of the manufacturer*.

Additionally, amidst Mr. Faulkner's testimony, he explained that during the initial calibration adjustment at the factory, CMI uses a zero as

## Commonwealth v. Schildt

the first solution that is introduced or first value that's introduced to the Intoxilyzer 5000EN device. N.T. 4/23/12 at 171. Likewise, in his one page expert report<sup>11</sup>, Mr. Faulkner described the factory calibration adjustment for the Intoxilyzer 5000EN. As described above, the adjustment is done with in-house prepared ethanol concentrations of 0.000, 0.020, 0.040, 0.100, and 0.300 g/210L. This adjustment is then confirmed with ethanol concentrations of 0.020, 0.040, 0.100, and 0.300 g/210L. Conversely, Defendant's expert witness, Dr. Lee N. Polite, who was tendered as an internationally recognized expert in the disciplines of organic chemistry, analytical chemistry, physical chemistry, spectrometry or spectroscopy, good laboratory practice, EPA regulations, metrology, thermodynamics, and statistical thermodynamics, opined that zero is not a data point because one cannot measure zero. Dr. Polite explained his opinion through the following analysis:

“So remember the calibration curve is what will relate the concentration in this case of ethanol versus the response... The origin is 00 mark, zero concentration and zero response. And one — the conventional wisdom which is incorrect would say, well, I assume that if we introduce a zero amount of ethanol we will get a response of zero so let's include this as a data point. In other words, let's force the line through zero. And we caution very heavily against that because that's not an actual data point. The way I always put it is if you force the line through zero, you're actually ignoring your real data points, things that you actually measured, and you are anchoring your curve at the one place that you did not measure which is the zero point. So not only do we not measure it, we cannot measure zero because we can't measure zero. It's an undefined term... So that means when nothing is going through it, we'll arbitrarily call that zero, but we never include that as a data point because it's not a data point, it's not something we've measured.

N.T. 4/16/12 at 96-97.

Comparably, Defendant's other expert witness, Dr. Messman, concurred with Dr. Polite's assessment that zero is not a valid data point for calibration of the Intoxilyzer 5000EN. When Dr. Messman was asked

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11. Defense Exhibit 15, N.T. 4/19/12 at 79.

## Commonwealth v. Schildt

whether he had any notion as to whether or not infrared breath test machines are capable of truly measuring zero, he stated that the machines cannot measure zero. Dr. Messman's rationale behind this assertion is that measuring zero would essentially require the device to measure a single atom, which is not very practical in any laboratory. N.T. 4/19/12 at 72-73.

Moreover, 67 Pa. Code §77.26(b) (1) imposes the requirement that calibration testing of a breath test device shall consist of conducting three separate series of five simulator tests to give readings of 0.05%, 0.10%, and a reading above 0.10% which is a multiple of 0.05%. (Pennsylvania uses 0.15% for its calibration verification). Defense expert, Dr. Polite, addressed the significance of this limited linear range when he declared, "If you're calibrating from 0.05 to 0.15 and did these three points, you have the correlation coefficient, you've proven to me that your instrument works — definitely works between 0.05% and 0.15%. There's no data to say that it works at 0.16%. There's no data to say it works at 0.04%." N.T. 4/16/12 at 127. Dr. Polite further enunciated that, "Anything outside of the range of 0.05% to 0.15% is not a valid number. We just don't have any data to say anything above 0.15% has any validity because they haven't proven that." N.T. 4/16/12 at 139. That statement captures the essence of the evidentiary deficiency with the calibration of the Intoxilyzer 5000EN and its consequent displayed reading. The Defendant's blood alcohol content was recorded as 0.208% based on the breath test administered on the Intoxilyzer 5000EN. Yet, if the Intoxilyzer 5000EN only undergoes calibration verifications at 0.05, 0.10, and 0.15 data points, how can any reading outside of that linear range be accepted on its face as *per se* valid? All of the expert witnesses, including Mr. Faulkner, acknowledged that at some point, the linear accuracy of a breath testing device will "fall off" and be inaccurate, and that the only way to know where that "fall off" point occurs is to scientifically test for it with valid data points spread across the entire dynamic range of the intended (or possible) measurement spectrum.

Despite CMI's initial calibration and testing of the Intoxilyzer 5000EN up to a 0.30% ethanol concentration (using an in-house prepared solution that is unverified by a laboratory *independent* of the manufacturer (CMI), in violation of 67 Pa. Code §77.24(d)), the Intoxilyzer 5000EN is not on-site operationally tested and verified above a .15% ethanol concentration once it leaves the manufacturer. Inasmuch as the monthly calibration verifications in Pennsylvania range from 0.05% to 0.15%, it is this Court's estimation that the Intoxilyzer 5000EN could not produce a legally acceptable blood alcohol content reading above

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0.15% for the Defendant which can, *per se* and as a matter of acceptable evidentiary law, satisfy the Commonwealth's burden of proving each and every element of a charged offense beyond a reasonable doubt, without engaging in some form of speculation, conjecture or guess. It is bedrock law in this Commonwealth that the finder of fact may not engage in any such specious activity of speculation, conjecture or guess when determining whether or not the Commonwealth has met its burden of proof beyond a reasonable doubt as to each and every element of a charged offense.

This is *not* a matter of reasonable inference derived from legally acceptable and scientifically established **FACTS**. Rather, opining from such an uncorroborated and unworthy basis for establishing constitutionally acceptable and required evidence to determine a critical element of a charged DUI offense is an anathema to the concept of fundamental justice and is repugnant to our Constitution.

## CONCLUSION

The Court finds that the Commonwealth's contention that the Defendant's position is a challenge to the regulations as promulgated by the DOH and PennDOT is desperately misplaced. The Defendant has not attacked those Pennsylvania regulations or statutes. Rather, he has launched a direct frontal assault on an embedded *per se* presumption that the lineal accuracy of a breath testing device above 0.15% extends infinitely and, likewise, extends to nothing below 0.05%. Both presumptions, without valid testing of that premise on any such approved breath testing device, are fatally infirm as a matter of established science and consequently the law. Indeed, the DOH and PennDOT appear to have acknowledged that there could well be a variance of result as evidenced by the procedures for calibration testing enumerated in 67 Pa. Code §77.26(b) (1).

The regulatory scheme established in those regulations which requires graduated testing of .05, .10 and .15 data points establishes the very essence of the core issue in the matter. For if a single data point were scientifically sufficient to establish acceptable linear accuracy across the entire dynamic range of the breath testing device, then there would be no need for testing and field calibration of two other data points. That is clearly not the scientific **FACTS** of the matter, as recognized by those very same regulations.

**WHEREFORE**, based upon the **FACTS** adduced at the Hearing, and as discussed in the foregoing writing, **IT IS HEREBY ORDERED** that

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the Defendant's Motion to Quash is **GRANTED**. This grant of relief shall also accrue to all cases which have been joined for disposition on the same or similar issues. Separate Orders shall be prepared for each known joined case, and this Opinion is hereby incorporated into those other proceedings as well.

**ISSUED AT HARRISBURG**, this 31st day of December, 2012.

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**FIRST PUBLICATION**

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**Estate Notices**

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ESTATE OF PHILLIP A. MUTO a/k/a PHILIP E. MUTO, late of Lower Paxton Township, Dauphin County, Pennsylvania (died January 25, 2012). Attorney: Herschel Lock, Esq., 3107 North Front Street, Harrisburg, PA 17110. fl-f15

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ESTATE OF HELEN L. CROSLEY, late of Harrisburg, Dauphin County, Pennsylvania (died December 25, 2012). Executor: Stephen A. Crosley, 351 N. 17th Street, Camp Hill, PA 17011. Attorney: William J. Peters, Esq., 2931 North Front Street, Harrisburg, PA 17110. fl-f15

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ESTATE OF RICHARD S. GOTOWKA, JR., late of Lower Paxton Township, Dauphin County, Pennsylvania (died December 30, 2012). Personal Representative: Carol M. Gotowka. Attorney: Elizabeth P. Mullaugh, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108-1166. Telephone (717) 237-5243. fl-f15

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ESTATE OF CLAUDETTE M. AIKENS, late of Harrisburg, Dauphin County, Pennsylvania (died July 28, 2012). Personal Representative: Lenora M. Smith, P.O. Box 5154, Harrisburg, PA 17110. fl-f15

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ESTATE OF BETTY B. OATES, late of Dauphin County, Pennsylvania. Co-Executors: William G. Oates, Jr., 1520 Sunrise Drive, Dauphin, PA 17018 and Kathy L. Hunter. Attorney: Raymond C. Hedger, Jr., Esq., Hedger & Hedger, 2 Fox Chase Drive, P.O. Box 915, Hershey, PA 17033. fl-f15

ESTATE OF MARIE W. ADAMS, late of Elizabethville Borough, Dauphin County, Pennsylvania. Co-Executors: Deanna Savidge, 312 E. Center Street, Millersburg, PA 17061 and Ronald Bordner, 106 Park Street, Millersburg, PA 17061. Attorney: Earl Richard Etzweiler, Esq., 105 North Front Street, Harrisburg, PA 17101. Telephone (717) 234-5600. fl-f15

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ESTATE OF CORA G. MEMMI, late of Derry Township, Dauphin County, Pennsylvania. Personal Representative: August T. Memmi. Attorney: Anthony J. Nestico, Esq., Nestico Druby, P.C., 1135 East Chocolate Avenue, Suite 300, Hershey, PA 17033. fl-f15

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**SECOND PUBLICATION**

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ESTATE OF JULIA J. PATRICELLI, late of Dauphin County, Pennsylvania (died November 30, 2012). Personal Representative: Albert R. Hooke, 1921 Preserve Lane, Palmyra, PA 17078. j25-f8

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ESTATE OF AUDREY B. USCHOLD, late of the Township of Wiconisco, Dauphin County, Pennsylvania (died December 8, 2012). Executor: Gregory R. Uschold, 412 Center Street, P.O. Box 524, Wiconisco, PA 17097. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethville, PA 17023.. j25-f8

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ESTATE OF MARY ALICE LONGENECKER, late of Contra Costa County, California, and formerly of Lower Paxton Township, Dauphin County, Pennsylvania (died June 8, 2011). Executrix: Sue Ann Adams. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. j25-f8

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**SECOND PUBLICATION**

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**Estate Notices**

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ESTATE OF MARY C. KOLVA, late of the Borough of Hummelstown, Dauphin County, Pennsylvania (died December 31, 2012). Administrator: John R. Kolva, 130 Christian Drive, Hummelstown, PA 17036. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023.. j25-f8

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ESTATE OF ELEANORE S. LONG a/k/a ELEANORE H. LONG a/k/a ELEANORE S. LONG, late of Middletown Borough, Dauphin County, Pennsylvania. Executrix: Carina L. Bolton. Attorney: Lisa Marie Coyne, Esq., Coyne & Coyne, P.C., 3901 Market Street, Camp Hill, PA 17011-4227. j25-f8

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ESTATE OF LEONA C. RHODES, late of Lower Swatara Township, Dauphin County, Pennsylvania (died January 3, 2013). Executor: Duane B. Rhodes, 3268 Fulling Mill Road, Middletown, PA 17057. Attorney: Jean D. Seibert, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. j25-f8

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ESTATE OF WILLARD H. WEAVER, late of the Borough of Halifax, Dauphin County, Pennsylvania (died January 9, 2013). Executrix: Colleen J. Gonsar, 517 Boyer Street, Halifax, PA 17032. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023. j25-f8

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ESTATE OF PHILIP E. PAULES, late of Lower Paxton Township, Dauphin County, Pennsylvania (died December 12, 2012). Executor: Roy Seibert, 352 Sand Valley Road, Richfield, PA 17086. Attorney: Jean D. Seibert, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. j25-f8

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ESTATE OF DORIS E. HOFFMAN a/k/a DORIS E. MICHAEL, late of Millersburg Borough, Dauphin County, Pennsylvania. Executor: Michael G. Hoffman, 614 Light Street, Millersburg, PA 17061. Attorney: Earl Richard Etzweiler, Esq., 105 North Front Street, Harrisburg, PA 17101. Telephone (717) 234-5600. j25-f8

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ESTATE OF CLINTON E. STRICKER, late of Harrisburg, Dauphin County, Pennsylvania (died December 29, 2012). Personal Representatives: Allen L. Beard and Cleo E. Shope. Attorney: David C. Miller, Jr., Esq., 1100 Spring Garden Drive, Suite A, Middletown, PA 17057. Telephone (717) 939-9806 and email: DavidCMillerJr@verizon.net. j25-f8

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ESTATE OF JOHN F. CAUFFMAN, JR., late of Susquehanna Township, Dauphin County, Pennsylvania (died January 4, 2013). Executor: Bahner W. Cauffman. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. j25-f8

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ESTATE OF BESSIE R. GEORGE, late of Harrisburg, Dauphin County, Pennsylvania (died October 18, 1997). Administratrix: Christine George, 431 N. 50th Street, Harrisburg, PA 17111. Attorney: Gary J. Imblum, Esq., Imblum Law Offices, P.C., 4615 Derry Street, Harrisburg, PA 17111. j25-f8

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**SECOND PUBLICATION**

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**Estate Notices**

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ESTATE OF ROBERT G. LIPMAN a/k/a ROBERT GERSON LIPMAN, late of Dauphin County, Pennsylvania (died January 4, 2013). Executor: Rodney C. Lipman, 136 Penrose Drive, Pittsburgh, PA 15208. Attorney: Steven J. Schiffman, Esq., Serratelli, Schiffman & Brown, P.C., 2080 Linglestown Road, Suite 201, Harrisburg, PA 17110. j25-f8

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ESTATE OF MARY E. SZADA, late of the Borough of Steelton, Dauphin County, Pennsylvania (died December 20, 2012). Executrix: Brenda L. Szada, 464 N. Front Street, Steelton, PA 17113. Attorney: Jeffrey R. Boswell, Esq., Boswell, Tintner & Piccola, 315, North Front Street, Harrisburg, PA 17101. j25-f8

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**THIRD PUBLICATION**

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ESTATE OF THELMA MARIE MILIKIN, late of Swatara Township, Dauphin County, Pennsylvania (died December 3, 2012). Administratrix: Amira S. Milikin. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. j18-f1

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ESTATE OF PEARL F. WITMER, late of Susquehanna Township, Dauphin County, Pennsylvania (died October 26, 2012). Executor: R. Scott Witmer, 4455 Saybrook Lane, Harrisburg, PA 17110. Attorney: Richard F. Maffett, Jr., Esq., 2201 North Second Street, Harrisburg, PA 17101. j18-f1

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ESTATE OF HOWARD E. KEGERREIS, late of West Hanover Township, Dauphin County, Pennsylvania (died October 25, 2012). Executor: Fulton Bank, N.A., P.O. Box 7989, Lancaster, PA 17604. Attorney: Elizabeth H. Feather, Esq., Caldwell & Kearns, P.C., 3631 North Front Street, Harrisburg, PA 17110. Telephone (717) 232-7661. j18-f1

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ESTATE OF GARY KENNETH YOST, late of the City of Harrisburg, Dauphin County, Pennsylvania (died June 30, 2012). Administratrix, C.T.A.: Shirley A. Turner, c/o James D. Cameron, Esq., 1325 North Front Street, Harrisburg, PA 17102. Attorney: James D. Cameron, Esq., 1325 North Front Street, Harrisburg, PA 17102. j18-f1

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ESTATE OF HENRY E. BOWMAN, late of the Township of Swatara, Dauphin County, Pennsylvania. Executor: Martin Bowman, 458 Sue Drive, Hummelstown, PA 17036. Attorney: Charles E. Petrie, Esq., 3528 Brisban Street, Harrisburg, PA 17111. j18-f1

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ESTATE OF MARIE D. LINDEMUTH, late of Lower Paxton Township, Dauphin County, Pennsylvania (died December 28, 2012). Executrix: Barbara Lindemuth. Attorney: Cara A. Boyanowski, Esq., Serratelli Schiffman & Brown, 2080 Linglestown Road, Suite 201, Harrisburg, PA 17110. j18-f1

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ESTATE OF HELEN G. WALBURN, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 30, 2012). Co-Executors: Terry L. Walburn and Linda L. Howard, c/o Marielle F. Hazen, Esq., 2000 Linglestown Road, Suite 202, Harrisburg, PA 17110. Attorney: Marielle F. Hazen, Esq., 2000 Linglestown Road, Suite 202, Harrisburg, PA 17110. j18-f1

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**THIRD PUBLICATION**

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**Estate Notices**

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ESTATE OF JOHN E. YENTZER, JR., late of Steelton Borough, Dauphin County, Pennsylvania (died November 23, 2012). Executor: Samuel Andreoli, 20 Appaloosa Way, Carlisle, PA 17015. Attorney: Robert G. Radebach, Esq., 912 North River Road, Halifax, PA 17032. j18-fl

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ESTATE OF MAURICE H. COURTS, late of Harrisburg, Dauphin County, Pennsylvania. Executrix: Sonya M. Woodard, 501 Pine Street, Steelton, PA 17113. Attorney: Heather D. Royer, Esq., Smigel, Anderson & Sacks, LLP, 4431 North Front Street, Harrisburg, PA 17110. j18-fl

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**FIRST PUBLICATION**

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**Corporate Notices**

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NOTICE IS HEREBY GIVEN to all creditors and claimants of **THE DIOCESE OF THE EASTERN STATES OF THE ANGLICAN PROVINCE OF CHRIST THE KING, INC.**, a Pennsylvania (PA) corporation, which on 9/22/1993, was incorporated in the Commonwealth of PA, that said company intends to file Articles of Dissolution with the Dept. of State under the provisions of PA Business Corporation Law. fl

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NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 1/3/2013 under the Domestic Business Corporation Law, for **HSR Global Services, Inc.**, and the name and county of the commercial registered office provider is c/o: Corporation Service Co., Dauphin County. fl

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NOTICE IS HEREBY GIVEN that **The Japan Equity Fund, Inc.**, a foreign business corporation incorporated under the laws of Maryland, with its princ. office located at c/o CSC-Lawyers Incorporating Service Co., 7 St. Paul St., Ste. 1660, Baltimore, MD 21202, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. fl

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NOTICE IS HEREBY GIVEN that **The Singapore Fund, Inc.**, a foreign business corporation incorporated under the laws of Maryland, with its princ. office located at c/o CSC-Lawyers Incorporating Service Co., 7 St. Paul St., Ste. 1660, Baltimore, MD 21202, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. fl

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NOTICE IS HEREBY GIVEN that **The Thai Capital Fund, Inc.**, a foreign business corporation incorporated under the laws of, with its princ. office located at c/o CSC-Lawyers Incorporating Service Co., 7 St. Paul St., Ste. 1660, Baltimore, MD 21202, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. fl

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NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State for **OBI America Insurance Company**, a corporation organized under the Pennsylvania Business Corporation Law of 1988. fl

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that pursuant to the provisions of Section 4129/6129 of the Pennsylvania (PA) Bus. Corp. Law of 1988, **BETAC CORPORATION**, a corporation incorporated under the laws of the State of Virginia with its principal office located at 2001 Beauregard St., Alexandria, VA 22311 and a registered office in PA at c/o Corporation Service Co., Dauphin County, which on 01/18/1995, was granted a Certificate of Authority to transact business in the Commonwealth of PA, intends to file an Application for Termination of Authority with the Dept. of State. f1

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NOTICE IS HEREBY GIVEN that **Galera Therapeutics, Inc.**, a foreign business corporation incorporated under the laws of Delaware, with its princ. office located at 2711 Centerville Rd., Ste. 400, Wilmington, DE 09808, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. f1

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NOTICE IS HEREBY GIVEN that **Lloyd's Register Drilling Integrity Services, Inc.**, a foreign business corporation incorporated under the laws of Delaware, with its princ. office located at 1330 Enclave Pkwy., Ste. 200, Houston, TX 77077, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. f1

NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority was filed with the PA Dept. of State on 01/15/2013 by **GSIS Inc.**, a foreign corporation formed under the laws of the state of CA with its principal office located at 1409 Lynngrove Drive, Manhattan Beach, CA 90266, to do business in PA under the provisions of the Business Corporation Law of 1988. The registered office in PA shall be deemed for venue and official publication purposes to be located in Dauphin County. f1

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NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on or about December 31, 2012, for a foreign corporation with a registered address in the state of Pennsylvania as follows: **M B Construction Inc.**, d/b/a **Mike Breske Construction Inc.**, c/o National Registered Agents, Inc.

This corporation is incorporated under the laws of Idaho.

The address of its principal office under the laws of its jurisdiction in which it is incorporated is 2648 Hwy. 95, Council, ID 83612.

The corporation has been qualified in Pennsylvania under the provisions of the Business Corporation Law of 1988, as amended. f1

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NOTICE IS HEREBY GIVEN that **Axis Appraisal Management Solutions**, a foreign business corporation incorporated under the laws of the State of California, where its principal office is located at 1299 4th Street, Suite 304 San Rafael, CA 94901, has applied for a Certificate of Authority in Pennsylvania, where its registered office is located at 7208 Red Top Road Hummelstown, PA 17036. The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania. f1

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on January 7, 2013 with respect to a proposed non-profit corporation, **Allison Hill Community Ministry, Inc.** which has been incorporated under the non-profit Corporation Law of 1988. A brief summary of the purposes for which said corporation is organized is: to provide human and social services to individuals in the community. fl

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NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority has been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on or about January 9, 2013, for a foreign corporation with a registered address in the state of Pennsylvania as follows: **Ace Info Solutions, Inc.** c/o Incorporating Services, Ltd.

This corporation is incorporated under the laws of Virginia.

The address of its principal office under the laws of its jurisdiction in which it is incorporated is 11490 Commerce Park Drive, Suite 340, Reston, VA 20191.

The corporation has been qualified in Pennsylvania under the provisions of the Business Corporation Law of 1988, as amended. fl

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NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 1/18/2013 under the Domestic Business Corporation Law, for **NVA Golden Strip Veterinary Management, Inc.**, and the name and county of the commercial registered office provider is c/o: Corporation Service Co., Dauphin County. fl

NOTICE IS HEREBY GIVEN that **Power Support Services, Inc.**, a foreign business corporation under the laws of the State of Connecticut, where its principal office is located at 2614 Boston Post Rd, Gatehouse 34B, Guilford, CT 06437, has applied for a Certificate of Authority in Pennsylvania, where its registered office is located at c/o Incorp Services, Inc. Dauphin County. The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County Pennsylvania. fl

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NOTICE IS HEREBY GIVEN that **M.I.T. ENTERPRISE FORUM OF PHILADELPHIA, INC.**, a foreign business corporation under the laws of the Commonwealth of Massachusetts, where its principal office is located at One Main St., 13th Floor C/O Technology Review, Cambridge, MA 02142, has applied for a Certificate of Authority in Pennsylvania, where its registered office is located at c/o Incorp Services, Inc. Dauphin County. The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania. fl

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NOTICE IS HEREBY GIVEN that **Mulcare Pipeline Solutions, Inc.**, a foreign business corporation incorporated under the laws of New Jersey, with its princ. office located at 9 Mars Ct., Unit C-4, Boonton, NJ 07005, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. fl

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, for the purpose of obtaining a Certificate of Incorporation of a proposed nonprofit corporation to be organized under the Nonprofit Corporation Law of the Commonwealth of Pennsylvania, 1988, December 21, P.L. 1444, No. 177, and its amendments and supplements. The name of the corporation is: **Middletown Public Library**. The purposes of the organization are to provide public library services for the residents of the Borough of Middletown and visitors to the community; and to engage in any activity concerning or relating to any lawful purpose for which nonprofit corporations may be incorporated under the Non-Profit Corporation Law of the Commonwealth of Pennsylvania.

YVONNE M. HURSH, Treasurer  
Middletown Public Library  
20 North Catherine Street  
Middletown, PA 17057

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NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on or before 1/15/2013, with respect to a proposed nonprofit corporation, **Webitis Association**, which has been incorporated under the Nonprofit Corporation Law of 1988. A brief summary of the purpose or purposes for which said corporation is organized is: an internet social community where people from all ages and walks of life, with different and common interests, gather and share their views joining forces in various causes helping heal a wounded world.

f1

NOTICE IS HEREBY GIVEN that **CORDES & COMPANY**, a foreign business corporation incorporated under the laws of Colorado, with its princ. office located at 5299 DTC Boulevard Ste. 815, Greenwood Village, CO 80111, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County.

f1

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NOTICE IS HEREBY GIVEN that **Sierra Systems Inc.**, a foreign business corporation incorporated under the laws of Washington, with its princ. office located at 111 Market St. NE, Olympia, WA 98501, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County.

f1

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NOTICE IS HEREBY GIVEN that **THE SCHUMACHER GROUP OF PENNSYLVANIA, INC.** HAS FILED A CERTIFICATE OF INCORPORATION ON AUG. 17, 2009 IN THE COMMONWEALTH OF PENNSYLVANIA UNDER THE PROVISIONS OF PENNSYLVANIA BUSINESS CORPORATION LAW OF 1988.

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NOTICE IS HEREBY GIVEN that **SCRANTON EMERGENCY GROUP, PC** HAS FILED A CERTIFICATE OF INCORPORATION ON JAN. 10, 2013 IN THE COMMONWEALTH OF PENNSYLVANIA UNDER THE PROVISIONS OF PENNSYLVANIA BUSINESS CORPORATION LAW OF 1988.

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FIRST PUBLICATION

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**Corporate Notices**

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NOTICE IS HEREBY GIVEN that **LACKAWANNA EMERGENCY GROUP, PC** HAS FILED A CERTIFICATE OF INCORPORATION ON JAN. 10, 2013 IN THE COMMONWEALTH OF PENNSYLVANIA UNDER THE PROVISIONS OF PENNSYLVANIA BUSINESS CORPORATION LAW OF 1988. fl

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 1/25/13, by **Argo Medical Technologies Inc.**, a foreign corporation formed under the laws of the State of Delaware where its principal office is located at 33 Locke Drive, Marlborough, MA 01752, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. fl

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on January 15, 2013, by **Accubuilt, Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 1209 Orange St., Wilmington, DE 19801 for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. fl

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **CXA-II Corporation**, a corporation of the State of Texas, with principal office located at 6000 Legacy Dr., Plano, TX 75024, and having a Commercial Registered office Provider and county of venue as follows: CT Corporation System, Dauphin County, which on October 28, 2010, was granted a Certificate of Authority, to transact business in the Commonwealth, intends to file an Application for Termination of Authority with the Department of State. fl

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FIRST PUBLICATION

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**Fictitious Notices**

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NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on December 31, 2012 for **Body Sense by Hilary** located at 101 Pine Street Gratz PA 17030. The name and address of each individual interested in the business is Hilary Marie Wenrich 101 Pine Street Gratz PA 17030. This was filed in accordance with 54 PaC.S. 311. fl

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FIRST PUBLICATION

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Miscellaneous Notices

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IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA

No. 2012-CV-5327-MF

NOTICE OF SHERIFF'S SALE

WELLS FARGO BANK, N.A.,  
S/B/M WACHOVIA MORTGAGE  
CORPORATION, Plaintiff

vs.

JENNIFER ORDAZ, Defendant

NOTICE

TO: JENNIFER ORDAZ

NOTICE OF SHERIFF'S SALE  
OF REAL PROPERTY

BEING PREMISES: 9 DARTMOUTH  
STREET, HARRISBURG, PA 17109-4435.

BEING in LOWER PAXTON TOWN-  
SHIP, County of DAUPHIN, Common-  
wealth of Pennsylvania, 35-060-024-000-  
0000.

IMPROVEMENTS consist of residential  
property.

SOLD as the property of JENNIFER  
ORDAZ.

YOU ARE HEREBY NOTIFIED that your  
house (real estate) at 9 DARTMOUTH  
STREET, HARRISBURG, PA 17109-4435 is  
scheduled to be sold at the Sheriff's Sale on  
04/11/2013 at 10:00 AM, at the DAUPHIN  
County Courthouse, 101 Market Street,  
Harrisburg, PA 17107-2012, to enforce the  
Court Judgment of \$150,505.76 obtained by,  
WELLS FARGO BANK, N.A., S/B/M  
WACHOVIA MORTGAGE CORPORA-  
TION (the mortgagee), against the above  
premises.

f1 PHELAN HALLINAN, LLP

IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA

ORPHANS' COURT DIVISION

NOTICE OF HEARING  
TO TERMINATE PARENTAL RIGHTS

Hearing Date: March 7, 2013  
Time: 9:00 A.M.

TO: Unknown Father, father,  
Docket No. 129-Adopt-2012,  
In Re: Male child, J.R.G.,  
born 02/20/08

YOU ARE HEREBY NOTIFIED that a  
petition has been filed asking the Court to  
put an end to all rights you have to your  
child. The Court has set a hearing to consid-  
er ending your rights to your child. That  
hearing will be held in Dauphin County  
Juvenile Justice Center, 25 North Front  
Street, Harrisburg, Pennsylvania, in  
Courtroom No. 1, Seventh Floor, on the date  
and time specified. You are warned that even  
if you fail to appear at the scheduled hearing,  
the hearing will go on without you and your  
Rights to your child may be ended by the  
Court without your being present. You have a  
right to be represented at the hearing by a  
lawyer. You should take this notice to your  
lawyer at once. If you do not have a lawyer,  
go to or telephone the office set forth below  
to find out where you can get legal help. You  
are also warned that if you fail to file either  
an acknowledgement or paternity pursuant to  
23 Pa.C.S.A. Section 5103 and fail to either  
appear at the hearing to object to the termina-  
tion of your rights or file a written objection  
to such termination with the Court prior to  
the hearing; your rights may also be termi-  
nated under Pa.C.S.A. Section 2503(d) or  
section 2504(c) of the Adoption Act.

DAUPHIN COUNTY  
LAWYER REFERRAL SERVICE  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**CIVIL ACTION – LAW**

**No. 2010-CV-16284-MF**

**PENNSYLVANIA STATE EMPLOYEES  
CREDIT UNION, Plaintiff**

vs.

**LINDA M. GEPPERT and  
STEPHEN G. GEPPERT Defendants**

**NOTICE**

**TO: STEPHEN G. GEPPERT,**

YOU ARE HEREBY NOTIFIED that on January 22, 2013, Plaintiff, Pennsylvania State Employees Credit Union, filed an Amended Petition to Fix Fair Market Value of Real Estate against you in the Court of Common Pleas of Dauphin County, Pennsylvania, docketed to No. 2010-CV-16284-MF, wherein Plaintiff seeks to enforce its rights under its loan documents.

SINCE YOUR CURRENT WHEREABOUTS are unknown, the Court by Order dated April 11, 2012, ordered notice of said facts and the filing of the Amended Petition to be served upon you as provided by R.C.P.430(b).

YOU ARE HEREBY NOTIFIED to plead to the above referenced Amended Petition on or before 20 DAYS from the date of this publication or Judgment will be entered against you.

**NOTICE**

YOU HAVE BEEN SUED IN COURT. If you wish to defend, you must enter a written appearance personally or by attorney, and file your defenses or obligations in writing with the Court. You are warned that if you fail to do so, the case may proceed without you and a Judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

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

DAUPHIN COUNTY  
LAWYER REFERRAL SERVICE  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

SHAWN M. LONG, Esq.  
BARLEY SNYDER LLP  
126 East King Street  
Lancaster, PA 17602  
(717) 299-5201

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FIRST PUBLICATION

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Miscellaneous Notices

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IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA

No. 2013 CV 21 NC

PETITION FOR  
CHANGE OF NAME

NOTICE

NOTICE IS HEREBY GIVEN that on January 2, 2013, the Petition of **Mu-Chen Li a/k/a Muchen Li** was filed in the above named court, requesting a decree to change his name from **Mu-Chen Li** to **Eric Muchen Li**.

The Court has fixed March 5, 2013 at 1:30 p.m. in Courtroom No. 11, at the Juvenile Justice Center, 25 South Front Street, 7th Floor, Harrisburg, PA, as the time and place for the hearing on said Petition, when and where all persons interested may appear and show cause if any they have, why the prayer of the said Petition should not be granted.fl

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IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA

CIVIL ACTION – QUIET TITLE

No. 2012CV9917QT

**ZEAGER BROS., INC., Plaintiff**

vs.

**JOHN BORRELL, and his heirs,  
devisees, successors, assigns and personal  
representatives, known and unknown  
Defendant(s)**

NOTICE

**TO: JOHN BORRELL and his heirs,  
devisees, successors, assigns and  
personal representatives, known  
and unknown**

YOU ARE HEREBY NOTIFIED that on November 19, 2012, Plaintiff, ZEAGER BROS., INC, filed a Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of DAUPHIN County Pennsylvania, docketed to No. 2012CV9917QT. Wherein Plaintiff seeks to be awarded ownership of property described in Instrument No. 20100026556, including the one (1) acre conveyed to John Borrell as set forth in a Deed dated November 20, 1946 and recorded in the Recorder's Office on November 22, 1946 to Deed Book F, Volume 29, Page 155. The Complaint requests that the Court extinguish any right, title or interest of the Defendant, his heirs, devisees, successors, assigns and personal representatives, of any nature whatsoever in and to the property, and declaring Plaintiff the sole owner of the property.

YOU ARE HEREBY NOTIFIED to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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**Miscellaneous Notices**

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

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

DAUPHIN COUNTY  
LAWYER REFERRAL SERVICE  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**CIVIL ACTION – LAW**

**No. 2012-CV-7654-MF**

**NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE**

**DEUTSCHE BANK NATIONAL  
TRUST COMPANY, AS TRUSTEE  
FOR LONG BEACH MORTGAGE  
LOAN TRUST 2005-WL1, Plaintiff**

vs.

**CURTIS FRY, Defendant**

**NOTICE OF SHERIFF'S SALE  
OF REAL PROPERTY**

**TO: Curtis Fry, Defendant,  
whose last known address is  
212 214 Water Street  
Williamstown, PA 17098**

YOU ARE HEREBY NOTIFIED that your house (real estate) at: 212 214 Water Street, Williamstown, PA 17098, 71-005-011 & 71-006-057, is scheduled to be sold at Sheriff's Sale on April 11, 2013 at 10:00AM, at Dauphin County Admin. Bldg., 4th Fl. - Commissioners Hearing Rm., Market Sq. (former Mellon Bank Bldg.), Harrisburg, PA 17101, to enforce the court judgment of \$108,695.35, obtained by Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2005-WL1 (the mortgagee) against you.

**NOTICE OF OWNER'S RIGHTS**

YOU MAY BE ABLE TO PREVENT THIS SHERIFF'S SALE To prevent this Sheriff's Sale you must take immediate action: 1. The sale will be cancelled if you pay back to Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2005-WL1 the amount of the judgment plus costs or the back payments, late charges, costs, and reasonable attorneys fees due. To find out how much you must pay, you may call: 610.278.6800. 2. You may be able to stop the sale by filing a petition asking the Court to strike or open the judgment, if the judgment was improperly entered. You may also ask the Court to postpone the sale for good cause. 3. You may be able to stop the sale through other legal proceedings. 4. You may need an attorney to assert your rights. The sooner you contact one, the more chance you will have of stopping the sale. (See notice below on how to obtain an attorney.) YOU MAY STILL BE ABLE TO SAVE YOUR PROPERTY AND YOU HAVE OTHER RIGHTS EVEN IF THE SHERIFF'S SALE DOES TAKE PLACE. 5. If the Sheriff's Sale is not stopped, your property will be sold to the highest bidder. You may find out the price bid by calling 610.278.6800. 6. You may be able to petition the Court to set aside the sale if the bid price was grossly inadequate compared to the value of your property. 7. The sale will go through only if the buyer pays the Sheriff the full amount due in the sale. To find out if this has happened you may call 717.255.2660. 8. If the amount due from the buyer is not paid to the Sheriff, you will remain the owner of the property as if the sale never happened. 9. You

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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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have a right to remain in the property until the full amount due is paid to the Sheriff and the Sheriff gives a deed to the buyer. At that time, the buyer may bring legal proceedings to evict you. 10. You may be entitled to a share of the money, which was paid for your house. A schedule of distribution of the money bid for your house will be filed by the Sheriff no later than thirty days after the Sheriff Sale. This schedule will state who will be receiving the money. The money will be paid out in accordance with this schedule unless exceptions (reasons why the proposed distribution is wrong) are filed with the Sheriff within ten (10) days after the date of filing of said schedule. 11. You may also have other rights and defenses or ways of getting your house back, if you act immediately after the sale. **YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE LISTED BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.** Dauphin County Local Counsel & Lawyer Referral Service, 213 N. Front St., Harrisburg, PA 17101, 717.232.7536. PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT YOU ARE ADVISED THAT THIS LAW FIRM IS DEEMED TO BE A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

CHRISTOPHER A. DeNARDO, Esq.  
Shapiro & DeNardo, LLC  
3600 Horizon Dr., Ste. 150  
King of Prussia, PA 19406  
fl (610) 278-6800

**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**CIVIL ACTION – LAW**

**No. 2011-CV-00486-MF**

**NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE**

**PNC BANK, NATIONAL ASSOCIATION,  
Plaintiff**

vs.

**DANIEL YOUNG &  
JENNIFER YOUNG  
a/k/a JEFFIFER YOUNG, Defendants**

**NOTICE OF SALE  
OF REAL PROPERTY**

**TO: Daniel Young & Jennifer Young  
a/k/a Jeffifer Young, Defendants,  
whose last known address is  
231 South 19th St.  
Harrisburg, PA 17104**

YOU ARE HEREBY NOTIFIED that your house (real estate) at 231 South 19th Street, Harrisburg, PA 17104, is scheduled to be sold at the Sheriff's Sale on April 11, 2013 at 10:00 a.m. in the Dauphin County Admin. Bldg., 4th Fl., 2nd & Market Streets, Commissioners Hearing Room, Harrisburg, PA 17101, to enforce the court judgment of \$66,547.68, obtained by Plaintiff above (the mortgagee) against you. If the sale is postponed, the property will be relisted for the Next Available Sale.

**PROPERTY DESCRIPTION**

ALL THAT CERTAIN PIECE OR PARCEL OF LAND WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATED IN THE 9TH WARD OF THE CITY OF HARRISBURG, DAUPHIN COUNTY, COMMONWEALTH OF PENNSYLVANIA, BOUNDED AND DESCRIBED AS FOLLOWS TO WIT: BEGINNING AT A POINT ON THE

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FIRST PUBLICATION

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Miscellaneous Notices

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NORTHEASTERLY CORNER OF NINETEENTH STREET AND ELISWORTH ALLEGHENY; THENCE ALONG THE EASTERLY LINE OF NINETEENTH STREET NORTH 10 DEGREES 0 MINUTES WEST 14.33 FEET TO A POINT; THENCE IN THE CENTER OF A PARTY WALL AND BEYOND NORTH 80 DEGREES 00 MINUTES EAST, 120 FEET TO A POINT ON THE WESTERLY LINE OF SPOTZ ALLEY; THENCE ALONG SAME, SOUTH 10 DEGREES 10 MINUTES EAST, 14.33 FEET TO AN IRON PIN ON THE NORTHERLY LINE OF ELISWORTH ALLEY; THENCE ALONG THE SAME SOUTH 80 DEGREES 00 MINUTES WEST, 120 FEET TO A POINT, THE PLACE OF BEGINNING.

HAVING THEREON ERECTED A TWO-STORY SEMI DETACHED KNOWN AS 231 SOUTH 19TH STREET, HARRISBURG, PENNSYLVANIA.

BEING KNOWN AS: 231 SOUTH 19TH STREET, HARRISBURG, PA 17104. PROPERTY ID NO.: 09-086-048.

TITLE TO SAID PREMISES IS VESTED IN DANIEL YOUNG AND JENNIFER YOUNG, HUSBAND AND WIFE BY DEED FROM JOSH SCHOENLY AND PAMELA SCHOENLY, HUSBAND AND WIFE DATED 01/18/2007 RECORDED 02/01/2007 IN DEED BOOK INSTRUMENT #20070004597.

UDREN LAW OFFICES, P.C.  
111 Woodcrest Rd., Ste. 200  
Cherry Hill, NJ 08003  
(856) 482-6900

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IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA

CIVIL ACTION – LAW

CIVIL DIVISION

No. 2012-CV-5261-MF

NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE

WELLS FARGO BANK, N.A., Plaintiff

vs.

CHRISTOPHER W. DOUGHTY, SR., and  
CARMEN DOUGHTY, Defendants

NOTICE

TO: CHRISTOPHER W. DOUGHTY,  
SR

YOU ARE HEREBY NOTIFIED that on June 21, 2012, Plaintiff, WELLS FARGO BANK, N.A., filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of DAUPHIN County Pennsylvania, docketed to No. 2012-CV-5261-MF. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 21 CHESTNUT STREET, STEELTON, PA 17113-2518 whereupon your property would be sold by the Sheriff of DAUPHIN County.

YOU ARE HEREBY NOTIFIED to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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**NOTICE**

IF YOU WISH TO DEFEND, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

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

DAUPHIN COUNTY  
LAWYER REFERRAL SERVICE  
213 North Front Street  
Harrisburg, PA 17101  
(717) 232-7536

fl

**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**CIVIL ACTION – LAW**

**No. 2012-CV-2495-MF**

**NOTICE OF SHERIFF'S SALE**

**CITIMORTGAGE, INC.  
S/B/M TO ABN AMRO MORTGAGE  
GROUP, INC., Plaintiff**

**vs.**

**KELLY L. BROOKS, Defendant**

**NOTICE**

**TO: KELLY L. BROOKS**

**NOTICE OF SHERIFF'S SALE  
OF REAL PROPERTY**

BEING PREMISES: 1279 COTTAGE DRIVE, HARRISBURG, PA 17112-8882

BEING in West Hanover Township, County of DAUPHIN, Commonwealth of Pennsylvania, 68-010-060-000-0000.

IMPROVEMENTS consist of residential property.

SOLD as the property of KELLY L. BROOKS

YOU ARE HEREBY NOTIFIED that your house (real estate) at 1279 COTTAGE DRIVE, HARRISBURG, PA 17112-8882 is scheduled to be sold at the Sheriff's Sale on 04/11/2013 at 10:00 AM, at the DAUPHIN County Courthouse, 101 Market Street, Harrisburg, PA 17107-2012, to enforce the Court Judgment of \$88,388.25 obtained by, CITIMORTGAGE, INC. S/B/M TO ABN AMRO MORTGAGE GROUP, INC. (the mortgagee), against the above premises.

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PHELAN HALLINAN, LLP

**NOTICE**

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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY  
PENNSYLVANIA**

**CIVIL ACTION – LAW**

**CIVIL DIVISION**

**No. 2012 CV 4007 MF**

**NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE**

**METLIFE HOME LOANS,  
A DIVISION OF METLIFE BANK, N.A.,  
Plaintiff**

**vs.**

**JOSEPH GONIS, Defendant**

**NOTICE**

**TO: JOSEPH GONIS**

YOU ARE HEREBY NOTIFIED that on May 18, 2012, Plaintiff, METLIFE HOME LOANS, A DIVISION OF METLIFE BANK, N.A., filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of DAUPHIN County Pennsylvania, docketed to No. 2012 CV 4007 MF. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 6212 NORTH HIGHLANDS COURT, HARRISBURG, PA 17111-6909 whereupon your property would be sold by the Sheriff of DAUPHIN County.

YOU ARE HEREBY NOTIFIED to plead to the above referenced Complaint on or before 20 days from the date of this publication or a Judgment will be entered against you.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

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

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f1

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FIRST PUBLICATION

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Miscellaneous Notices

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NOTICE OF AUDIT

TO LEGATEES, NEXT OF KIN,  
CREDITORS AND ALL  
OTHER PERSONS CONCERNED

NOTICE IS HEREBY GIVEN that the following accounts have been filed by the respective accountants in the Office of the Register of Wills or with the Clerk of the Orphans' Court Division of the Common Pleas of Dauphin County, as the case may be, and that the same shall be duly presented to the said Orphans' Court Division at the Office of the Court Administrator for Audit, Confirmation and Distribution of the said ascertained balances to and among those legally entitled there to *on Wednesday, March 6, 2013*. Pursuant to Dauphin County Orphans' Court Rule 6.10.1, objections to an account must be filed in writing with the Register or Clerk *no later than the close of business on Tuesday, March 5, 2013*.

1. BASTI, HELEN MEYERS, Deceased, First and Final Account of Neil Fasnacht and John B. N. Dunn, Executors.
2. BECHTEL, MARY L., Deceased, First and Partial Account of Donald R. Bechtel and Michael T. Bechtel, Executors.
3. BRADY, DONALD J., Deceased, First and Final Account of Susan Brady McCabe, Administratrix.
4. DILL VANCE R., Incapacitated now Deceased, First and Final Account of Keystone Guardianship Services, Guardian.
5. FERRELL, CHARLES T., Deceased, First and Final Account of Bridget M. Gallagher, Administratrix.

6. GRIER, JOSEPH E. Deceased, First and Final Account of Cherla D. Brooks, Administratrix.
7. PHIPPS, RUTH I, Incapacitated now Deceased, First and Final Account of Keystone Guardianship Services, Guardian.
8. SENTIWANY EUGENE R., Incapacitated now Deceased, First and Final Account of Keystone Guardianship Services, Gaurdian.
9. SMITH, GLENN A., Deceased, First and Final Account of Isabelle Cameron Smith, Executrix.
10. SOUDERS FLORENCE, Incapacitated now Deceased, First and Final Account of Keystone Gaurdianship Services, Guardian.
11. SPURLOCK, BESSIE L., Incapacitated now Deceased, First and Final Account of Keystone Guardianship Services, Guardian.
12. STOBER, JUDITH A., Deceased, First and Final Account of Richard L. Placey, Executor.
13. TATE, LINDA A., Deceased, First and Final Account of Kimberly A. Houtz, Administratrix CTA.
14. TURNBAUGH, THOMAS E., Deceased, First and Final Account of Janet M. Hoch (Ahrens), Executrix.
15. VAGO GERTRUDE BABETTE, Deceased, Second and Final Account of Lydia Baker, Administratrix.

Dated: January 25, 2013

/s/ JEAN MARFIZO KING  
Register of Wills and  
f1-f8 Clerk of the Orphans' Court Division

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**SECOND PUBLICATION**

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**Miscellaneous Notices**

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**IN THE COURT OF COMMON PLEAS  
OF DAUPHIN COUNTY,  
PENNSYLVANIA**

**NOTICE OF ACTION  
IN MORTGAGE FORECLOSURE**

**No. 2012 CV 7840 MF**

**U.S. BANK NATIONAL ASSOCIATION,  
TRUSTEE FOR THE PENNSYLVANIA  
HOUSING FINANCE AGENCY,  
Plaintiff**

**vs.**

**CHRISTOPHER M. STICKLE  
and CHARITY L. STICKLE,  
Defendants**

**NOTICE OF SHERIFF SALE  
OF REAL PROPERTY**

TAKE NOTICE that the real estate located at 342 South Catherine Street, Middletown, PA 17057, originally scheduled to be sold at Sheriff's Sale on Thursday, January 17, 2013, has been rescheduled to be sold at Sheriff's Sale on Thursday, March 7, 2013 at 10:00 A.M., in the Main Lobby of the Dauphin County Courthouse, Corner of Front and Market Streets, Harrisburg, PA, to enforce the court judgment of \$107,231.36 obtained by U.S. BANK NATIONAL ASSOCIATION, TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY (the mortgage).

PROP. SITUATE in the Borough of Middletown, County of Dauphin, Commonwealth of PA.

BEING PREMISES: 342 South Catherine Street, Middletown, PA 17057, Tax ID No. 40-003-022. Improvements consist of a three-story residential dwelling.

SOLD as the property of Christopher M. Stickle and Charity L. Stickle.

TERMS OF SALE: Successful bidder shall provide payment in full at the Sheriff's Office, Room 104 of the Court House, by 2:00 p.m. on the day of the sale, in the form of cash (in exact amount, large denominations only), certified bank check or money order. No personal checks are accepted. If payment is not presented by 2:00 p.m., the property is re-auctioned at 3:00 p.m. at the Sheriff's Office, the same day of the sale. The original purchaser at sale shall be held liable for the deficiencies of the re-auction and additional cost of sale.

TAKE NOTICE that a Schedule of Distribution will be filed by the Sheriff not later than 30 days from date of sale and that distribution will be made in accordance with the schedule unless exceptions are filed there-to within ten (10) days thereafter.

BRETT A. SOLOMON, Esq.  
Michael C. Mazack, Esq.  
Tucker Arensberg, P.C.  
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j25-f15

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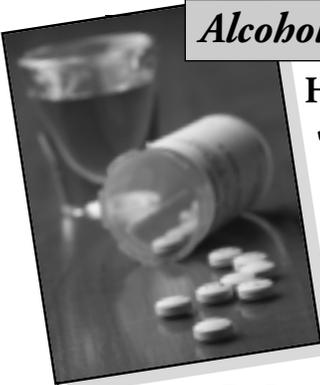
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The Board of Directors of the Bar Association meets on the third Thursday of the month at the Bar Association headquarters. Anyone wishing to attend or have matters brought before the Board should contact the Bar Association office in advance.

**REPORTING OF ERRORS IN ADVANCE SHEET**

The Bench and Bar will contribute to the accuracy in matters of detail of the permanent edition of the Dauphin County Reporter by sending to the editor promptly, notice of all errors appearing in this advance sheet. Inasmuch as corrections are made on a continuous basis, there can be no assurance that corrections can be made later than thirty (30) days from the date of this issue but this should not discourage the submission of notice of errors after thirty (30) days since they will be handled in some way if at all possible. Please send such notice of errors to: Dauphin County Reporter, Dauphin County Bar Association, 213 North Front Street, Harrisburg, PA 17101-1493.

**DAUPHIN COUNTY COURT SECTION**

*Opinions Not Yet Reported*

January 14, 2013 – Turgeon, J., **Commonwealth v Brabham-Lawrence**, No. CP-22-CR-4943-2011

**BAR ASSOCIATION PAGE – Continued**

**MISCELLANEOUS SECTION**

**LEGAL ASSISTANT** — Harrisburg law firm has an immediate opening for a full time Legal Assistant with a minimum of 3 to 5 years legal experience in personal injury litigation. Applicants must have strong communication skills, be extremely organized, and have the ability to multi-task. Duties include transcription, scheduling, client contact, requesting records, etc. Excellent benefits package and paid parking. Salary will be commensurate with experience. Please send resume to [dtrostle@schmidtkramer.com](mailto:dtrostle@schmidtkramer.com). j18-f1

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**PARALEGAL** — Established law firm is seeking a full time Paralegal with two to four years of experience. Applicant must have good organizational skills and be able to work with electronic documents. Knowledge of Word and Excel programs is also a must. Hourly pay based upon experience. Benefits included. Applicants must submit a cover letter and a resume to: Kope & Associates, 395 St. Johns Church Road, Suite 101, Camp Hill, PA 17011 Attn: Office Manager. f1-f15

**BAR ASSOCIATION PAGE – Continued**  
**MISCELLANEOUS SECTION**

**DAUPHIN COUNTY COURT OF COMMON PLEAS**

As a service to members of the *Dauphin County Bar Association*, a brief synopsis of verdicts from each civil trial term will be printed.

**Summary of Verdicts from the December 2012 Civil Jury Term**

The Judges have completed the December 2012 civil jury term. One civil case reached verdict during the December civil term and the summary is as follows:

**LINDA N. SMITH, EXECUTRIX OF THE ESTATE OF WILLIAM H. SMITH v. MGD QUIPTECH, INC. T/D/B/A MGD TRACTOR & EQUIPMENT v. ROBERT E. WEIS AND RAYNOR FARM SERVICES, INC. (2007 CV 14065)**

On January 3, 2006, William Smith was killed in an unusual vehicular accident on Interstate 83 near the Paxton Street overpass. Mr. Smith was operating a pickup truck northbound and in the passing lane on Interstate 83 and approaching the underpass. Mr. Weis was operating a tractor trailer pulling a flatbed on which it was alleged that MGD's employees had loaded a backhoe. The front arm of the backhoe allegedly struck the overpass as Mr. Weis was traveling southbound on Interstate 83. The collision of the front arm of the backhoe caused the equipment to spin or turn to the left on the flatbed trailer. The 'bucket' end of the arm swung over the Jersey barriers and struck the windshield of the Plaintiff decedent's truck, killing him instantly.

|                         |  |
|-------------------------|--|
| Counsel for Plaintiff:  | Guy H. Brooks  |
| Counsel for Defendants: | Jeffrey T. Rettig<br>Brian McCall  |
| Judge:                  | Bruce F. Bratton   |
| Verdict:                | Plaintiff —Survival Claim \$1,700,000.00<br>Wrongful Death 1,155,625.00<br>Percentage of causal negligence attributed to Defendant MGD Quiptech was 35%<br>Percentage of causal negligence attributed to Defendant Robert E. Weis and Raynor Farm Services, Inc. was 65% |



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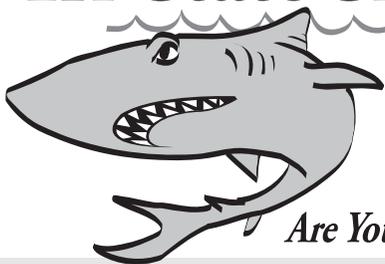
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