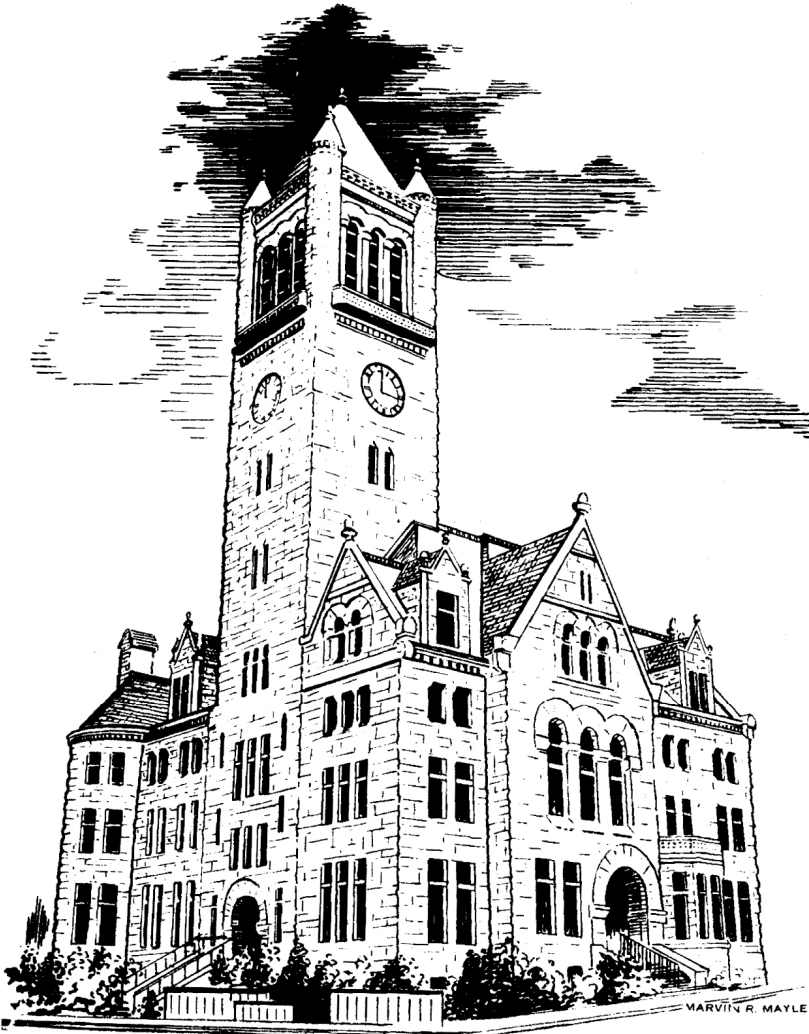


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

ANN M. BEREITER, a/k/a ANNA M. BEREITER, late of Connellsville, Fayette County, PA ⁽³⁾

Personal Representatives: Susan R. Bailey, Kathryn A. Blackstone and Jane A. Carbonara
c/o Riverfront Professional Center
208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

FRANK FRED CHROBAK, a/k/a FRANK F. CHROBAK, late of Luzerne Township, Fayette County, PA ⁽³⁾

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c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

DARREL BERGER, late of Connellsville, Fayette County, PA ⁽³⁾

Executrix: Dana A. Keck
c/o Donald McCue Law Firm, P.C.
Colonial Law Building
813 Blackstone Road
Connellsville, PA 1525
Attorney: Donald McCue

THEODORE S. KRZANOWSKI, a/k/a TED S. KRZANOWSKI, late of North Union Township, Fayette County, PA ⁽³⁾

Executor: Joseph A. Krzanowski
c/o Radcliffe Law, LLC

648 Morgantown Road, Suite B
Uniontown, PA 15401
Attorney: William M. Radcliffe

DAVID B. LOGAN, late of Connellsville, Fayette County, PA ⁽³⁾

Personal Representative: Lance Bastian
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Connellsville, PA 15425
Attorney: Richard A. Husband

ANTOINETTE M. MATTHEWS, late of North Union Township, Fayette County, PA ⁽³⁾

Administratrix: Lynette Andaloro
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

Second Publication

HENRY A. BASHOUR, a/k/a HENRY ALBERT BASHOUR, late of Redstone Township, Fayette County, PA ⁽²⁾

Personal Representative: Joanne Bashour
c/o Davis & Davis
107 East Main Street
Uniontown, Pa 15401
Attorney: James Davis

JANICE M. BOCK, a/k/a JANICE MARIE BOCK, late of Brownsville, Fayette County, PA

Executor: Debra M. Bock, a/k/a Deborah Bock Davis
P.O. Box 623
Brownsville, PA 15417
c/o 76 East Main Street
Uniontown, PA 15401
Attorney: Douglas S. Sholtis ⁽²⁾

TERESE BURKETT, late of Wharton Township, Fayette County, PA ⁽²⁾

Administrator: Robert Burkett
c/o 42944 National Pike Road
P.O. Box 245
Chalk Hill, PA 15421
Attorney: Charles C. Gentile

LOIS J. DAVIS, a/k/a LOIS JEAN DAVIS, late of Henry Clay Township, Fayette County, PA (2)

Administrator: Todd Bowser
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: Gary J. Frankhouser

WESTLEY T. DOMASKY, a/k/a WESTLEY DOMASKY, a/k/a WESTLEY TIMOTHY DOMASKY, late of Bullskin Township, Fayette County, PA (2)

Personal Representative:
Christina M. Augustine
212 Main Street
Addison, PA 15411
c/o Moore Becker Smarto & Ciszek, P.C.
121 West Second Street
Greensburg, PA 15601
Attorney: Gregory C. Moore

BERNARD A. KAPINUS, a/k/a BERNARD ANDREW KAPINUS, late of Perryopolis Borough, Fayette County, PA (2)

Personal Representative:
Darren A. Kapinus
c/o Davis & Davis
107 East Main Street
Uniontown, Pa 15401
Attorney: Jeremy J. Davis

GERALDINE M. NICHOLS, a/k/a GERALDINE NICHOLS, late of South Union Township, Fayette County, PA (2)

Personal Representative:
Donna L. Kowalsky
c/o John & John
96 East Main Street
Uniontown, PA 15401
Attorney: Simon B. John

SHIRLEY OPEL, late of Uniontown, Fayette County, PA (2)

Executor: Lois Griffin
P.O. Box 175,
Dilliner, PA 15327
c/o Sykes Elder Law
615 Washington Road, Suite 304
Pittsburgh, PA 15228
Attorney: Shelley Newlin

ARMANDO VENICASA, late of German Township, Fayette County, PA (2)

Personal Representatives: Rosella Snyder and Marcella Hyunyady
c/o Higinbotham Law Offices
45 East Main Street, Suite 500
Uniontown, PA 15401
Attorney: James Higinbotham

BETTIE J. WHITE, late of Vanderbilt, Fayette County, PA (2)

Executrix: Elizabeth Giles
c/o Molinaro Law Offices
P.O. Box 799
Connellsville, PA 15425
Attorney: Carmine V. Molinaro, Jr.

MARGARET M. WYATT, late of Redstone Township, Fayette County, PA (2)

Personal Representative: Paul K. Wyatt, Sr.
c/o Riverfront Professional Center
208 South Arch Street, Suite 2
Connellsville, PA 15425
Attorney: Richard A. Husband

First Publication

THELMA A. ANGELINE, late of Redstone Township, Fayette County, PA (1)

Personal Representative:
Thomas Ray Angeline
c/o Davis & Davis
107 East Main Street
Uniontown, PA 15401
Attorney: James T. Davis

MARTHA D. BROWNFIELD, late of South Union Township, Fayette County, PA (1)

Personal Representative:

Todd A. Brownfield
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

SAMMY LEW BURNWORTH, a/k/a SAMMY L. BURNWORTH, late of Luzerne Township, Fayette County, PA (1)

Co-Executor: Davey Lee Burnworth
116 Gwynn Road
Jefferson, PA 15344
Co-Executor: Candy Ann Rogers
358 Buckingham Road
Fredericktown, PA 15333
c/o 189 West High Street
P.O. Box 792
Waynesburg, PA 15370
Attorney: Gregory C. Hook

ROBERT M. BYBEL, late of Connellsville, Fayette County, PA (1)

Executor: Cheryl E. Anderson
c/o 17 North Diamond Street
Mt. Pleasant, PA 15666
Attorney: Marvin D. Snyder

MILDRED L. CLARK, a/k/a MILDRED LOUISE CLARK, late of Masontown, Fayette County, PA (1)

Executor: Emory E. Clark
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

JOSEPHINE E. GERBA, late of North Union Township, Fayette County, PA (1)

Executrix: Charlene G. Swenglich
c/o Webster & Webster
51 East South Street
Uniontown, PA 15401
Attorney: Webster & Webster

ELIZABETH GUZY, late of South Union Township, Fayette County, PA (1)

Executor: Cortney Kezmarsky
c/o Adams & Adams
55 East Church Street
Uniontown, PA 15401
Attorney: Jason Adams

NORMAN W. HELLER, late of Bullskin Township, Fayette County, PA (1)

Executrix: Donna Heller
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

RUTH E. HOLLIS, late of Dunbar, Fayette County, PA (1)

Executor: Milton Hollis, Jr.
c/o Casini & Geibig, LLC
815B Memorial Boulevard
Connellsville, PA 15425
Attorney: Jennifer M. Casini

HOMER L. MCCABE, late of South Union Township, Fayette County, PA (1)

Personal Representative:
Jeffrey W. McCabe
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15401
Attorney: Charles W. Watson

CECILIA A. NEIGHBORS, a/k/a CECILIA ANN NEIGHBORS, late of Dunbar, Fayette County, PA (1)

Personal Representative:
Carl L. Neighbors
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, PA 15425
Attorney: Charles W. Watson

SANDRA L. PAPKE, late of North Union Township, Fayette County, PA (1)

Executrix: Tammy L. Papke-Wilson
c/o Webster & Webster
51 East South Street
Uniontown, Pa 15401
Attorney: Webster & Webster

ERNEST A. RISHA, JR., a/k/a ERNIE RISHA, late of Uniontown, Fayette County, PA

Executrix: Elizabeth A. Brownfield (1)
c/o Zebley Mehalov & White, P.C.
18 Mill Street Square
P.O. Box 2123
Uniontown, PA 15401
Attorney: Daniel R. White

AUDREY ROBERTSON, late of Perry Township, Fayette County, PA (1)

Executor: Dana Baccino
866 Layton Road
Dawson, PA 15428
c/o 4 North Beeson Boulevard
Uniontown, PA 15401
Attorney: Sheryl Heid

EDWARD SUCHEVITS, a/k/a EDWARD E. SUCHEVITS, late of South Union Township, Fayette County, PA (1)

Administratrix: Carol Ferencak
2285 Menoher Boulevard
Johnstown, PA 15905
c/o Goodwin Como, P.C.
108 North Beeson Boulevard, Suite 400
Uniontown, PA 15401
Attorney: Benjamin Goodwin

LEGAL NOTICES

NOTICE LEGAL ADVERTISEMENT

Notice is hereby given that a hearing is scheduled for Thursday, May 2, 2019, at 1:30 p.m., before The Honorable Nancy D. Vernon, in Courtroom No. 4, of the Fayette County Courthouse, for the sale of the Clifford N. Pritts Elementary School by the Connellsville Area Board of School Directors.

Interested persons may appear at the aforementioned hearing to offer testimony in favor of or in opposition to the proposed sale.

Connellsville Area Board of School Directors
(3 of 3)

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the United States District Court for the Western District of Pennsylvania and to me directed, I shall expose to public sale the real property located at 159 Half King Colony Road, Chalk Hill, PA 15421, with a mailing address of 159 Half King Colony Road, Farmington, PA 15437, more particularly described at Fayette County Deed Book Volume 2889, Page 511.

SAID SALE to be held in the Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401 at 10:00 a.m. prevailing, standard time, on May 28, 2019. All that certain tract of land, together with the buildings, and improvements erected thereon described as Tax Parcel No.42-05-0024 recorded in Fayette County, Pennsylvania. Seized and taken in execution as the property of Patrick R. McCracken, at the suit of the United States of America, acting through the Farmers Home Administration, on behalf of United States Department of Agriculture, to be sold on Writ of Execution as Civil Action No. 2:18-CV-01344. **TERMS OF SALE:** Successful bidder will pay ten percent (10%) by certified check or money order upon the property being struck down to such bidder, and the remainder of the bid within thirty (30) days from the date of the sale and in the event the bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any

deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Sheila Blessing, 700 Grant Street, Suite 2360, Pittsburgh, PA 15219. Bidder must have deposit funds immediately available and on his person in order to bid, bidder will not be permitted to leave the sale and return with deposit funds. Notice is hereby given that a Schedule of Distribution will be filed by me on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Marshal's costs, fees and commissions are to be borne by seller. Michael Baughman, Acting United States Marshal. For additional information, please contact Cathy Diederich at 314-457-5514 or the USDA foreclosure website at www.resales.usda.gov. (2 of 4)

NOTICE OF SHERIFF'S SALE
 IN THE COURT OF COMMON PLEAS
 OF FAYETTE COUNTY, PENNSYLVANIA
 NO. 126 OF 2019 GD

WELLS FARGO BANK, N.A.
 Vs.
 TIMOTHY E. MORRELL and ANTHONY
 INTERVAL, JR

NOTICE TO: ANTHONY INTERVAL, JR

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

Being Premises: 233 WATER STREET,
 BELLE VERNON, PA 15012-1118
 Being in BELLE VERNON BOROUGH,
 County of FAYETTE, Commonwealth of
 Pennsylvania, 01030043
 Improvements consist of residential property.
 Sold as the property of TIMOTHY E.
 MORRELL and ANTHONY INTERVAL, JR

Your house (real estate) at 233 WATER
 STREET, BELLE VERNON, PA 15012-1118 is
 scheduled to be sold at the Sheriff's Sale on
 06/20/2019 at 02:00 PM, at the FAYETTE
 County Courthouse, Fayette County Courthouse,
 61 East Main Street, Uniontown, PA 15401, to

enforce the Court Judgment of \$48,741.18
 obtained by, WELLS FARGO BANK, N.A. (the
 mortgagee), against the above premises.

PHELAN HALLINAN DIAMOND & JONES, LLP
 Attorney for Plaintiff

NOTICE

Notice is hereby given pursuant to the
 Provisions of Act of Assembly No. 295,
 approved December 16, 1982, known as the
 Fictitious Names Act, of the filing in the Office
 of the Secretary of the Commonwealth of
 Pennsylvania, at Harrisburg, Pennsylvania, on
 April 12, 2019, a Certificate to conduct business
 in Fayette County, Pennsylvania, under the
 assumed or fictitious name, style or designation
 of Lafayette Wellness and Rehabilitation Center,
 with its principal place of business at 147
 Lafayette Road, Uniontown, PA 15401. The
 name and address of the entity interested in the
 said business is Lafayette Manor, 147 Lafayette
 Manor Road, Uniontown, PA 15401.

Gary J. Frankhouser, Esquire
 DAVIS & DAVIS
 107 East Main Street
 Uniontown, PA 15401

NOTICE

RE: Change of Name of Lacey Shay
 Megan Bowers also known as
 Megan Bowers an adult individual:

To Whom It May Concern:

Be advised that the Court of Common
 Pleas of Fayette County, Pennsylvania, will hear
 the Petition for the Change of Name of Lacey
 Shay Megan Bowers also known as Megan
 Bowers, an adult individual, on May 3, 2019, at
 9:30 a.m. in Courtroom No. 3. All interested
 individuals may attend at that date and time.

DAVIS & DAVIS
 BY: Jeremy J. Davis, Esquire
 107 East Main Street
 Uniontown, PA 15401

NOTICE TO: DEFENDANTS, SAS MANAGEMENT GROUP, LLC, and STEVEN ANDREW SAYERS

NOTICE IS HEREBY GIVEN to DEFENDANTS, SAS MANAGEMENT GROUP, LLC, and STEVEN ANDREW SAYERS, that on February 26, 2019, Plaintiff World Business Lenders, LLC, filed a "Writ of Revival" in the action entitled "World Business Lenders, LLC v. SAS Management Group, LLC and Steven Andrew Sayers", Court of Common Pleas of Fayette County, Pennsylvania, No. 503 OF 2014 DSB, seeking to revive a judgment.

The publication of this notice shall constitute effective service of process of the Writ of Revival.

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objection 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 PAPER 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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IN THE COURT OF COMMON PLEAS
FAYETTE COUNTY, PENNSYLVANIA

The Huntington National Bank
Plaintiff,
vs.
Unknown Heirs and/or Administrators of the Estate of John R. Muller
Defendant.

CIVIL DIVISION

Docket No.: 2018-01343

**NOTICE OF SHERIFF'S SALE
OF REAL PROPERTY PURSUANT TO
PENNSYLVANIA RULE OF CIVIL
PROCEDURE 3129**

TO: Unknown Heirs and/or Administrators of the Estate of John R. Muller
315 Perry Avenue
Belle Vernon, PA 15012

TAKE NOTICE:

That the Sheriff's Sale of Real Property (Real Estate) will be held at the Fayette County Sheriff's Office, at the Fayette County Sheriff's Office, 61 East Main Street, Uniontown, PA 15401 on August 15, 2019 at 2:00PM prevailing local time.

THE PROPERTY TO BE SOLD is delineated in detail in a legal description consisting of a statement of the measured boundaries of the property, together with a brief mention of the buildings and any other major improvements erected on the land.

The LOCATION of your property to be sold is:

315 Perry Avenue, Belle Vernon, PA 15012

The JUDGMENT under or pursuant to which your property is being sold is docketed to:

No. 2018-01343

THE NAME(S) OF THE OWNER(S) OR REPUTED OWNER(S) OF THIS PROPERTY ARE:

Unknown Heirs and/or Administrators of the Estate of John R. Muller

A SCHEDULE OF DISTRIBUTION, being a list of the persons and/or governmental or corporate entities or agencies being entitled to receive part of the proceeds of the sale received and to be disbursed by the Sheriff (for example to banks that hold mortgages and municipalities that are owed taxes), will be filed by the Sheriff thirty (30) days after the sale, and distribution of the proceeds of sale in accordance with this schedule will, in fact, be made unless someone objects by filing exceptions to it, within ten (10) days of the date it is filed. Information about the Schedule of Distribution may be obtained from the Sheriff of the Court of Common Pleas of Fayette County, at the Fayette County Sheriff's Office, 61 East Main Street, Uniontown, PA 15401.

THIS PAPER IS A NOTICE OF THE TIME AND PLACE OF THE SALE OF YOUR PROPERTY.

It has been issued because there is a Judgment against you. It may cause your property to be held, to be sold or taken to pay the Judgment. You may have legal rights to prevent your property from being taken. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, you must act promptly.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET FREE LEGAL ADVICE.

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108

(800) 692-7375

THE LEGAL RIGHTS YOU MAY HAVE ARE:

1. You may file a petition with the Court of Common Pleas of Fayette County to open the Judgment if you have a meritorious defense against the person or company that has entered

judgment against you. You may also file a petition with the same Court if you are aware of a legal defect in the obligation or the procedure used against you.

2. After the Sheriff's Sale, you may file a petition with the Court of Common Pleas of Fayette County to set aside the sale for a grossly inadequate price or for other proper cause. This petition must be filed before the Sheriff's Deed is delivered.

3. A petition or petitions raising the legal issues or rights mentioned in the preceding paragraphs must be presented to the Court of Common Pleas of Fayette County. The petition must be served on the attorney for the creditor or on the creditor before presentation to the Court and a proposed order or rule must be attached to the petition. If a specific return date is desired, such date must be obtained from the Court Administrator's Office, Fayette County Courthouse, 61 East Main Street, Uniontown, PA 15401, before presentation of the petition to the Court.

Dated: 3/28/19

Kimberly J. Hong, Esquire (74950)
Scott A. Dietterick, Esquire (55650)
Michael E. Carleton, Esquire (203009)
Meredith H. Wooters, Esquire (307207)
Justin F. Kobeski, Esquire (200392)
Matthew P. Curry, Esquire (322229)
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Columbus, OH 43216-5028
Telephone: 614-222-4921
Fax: 614-220-5613
Email: kjhong@manleydeas.com
Attorney for Plaintiff

JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

STARR INDEMNITY &	:
LIABILITY CO.,	:
Plaintiff,	:
v.	:
BROWNSVILLE MARINE PRODUCTS,	:
LLC; and JAVIER SARDINA-GARCIA,	:
Defendants,	:
v.	:
BENCHMARK INSURANCE CO.;	:
SYNERGY COMP INSURANCE CO.;	:
SYNERGY SELECT, LP; and MK	:
INDUSTRIES, INC.,	: Honorable Judge Linda R. Cordaro
Additional Defendants.	: No. 381 of 2017, G.D.

OPINION

Linda R. Cordaro, J.

October 12, 2018

SUMMARY

Plaintiff, Starr Indemnity, is an insurance company who brought a declaratory judgment action against Defendants including Brownsville Marine, the insured. Starr Indemnity is asking this Court to determine that it does not have a duty to defend or indemnify Brownsville Marine in an underlying tort action. The underlying action involves an alleged injury that Defendant Javier Sardina-Garcia suffered while working on Brownsville Marine's premises. Defendants contend that Starr does have a duty to defend and indemnify Brownsville Marine against the underlying complaint. Starr Indemnity subsequently filed a motion for judgment on the pleadings.

After the current action began, Brownsville Marine filed a Complaint to join Additional Defendants {1}, with whom Brownsville Marine had a separate insurance agreement. Additional Defendants Benchmark Insurance, Synergy Comp, and Synergy Select are now also seeking declaratory judgment through a motion for judgment on the pleadings, asking this Court to find that they do not have a duty to defend or indemnify Brownsville Marine.

Both Plaintiffs and Additional Defendants' Motions for Judgment on the Pleadings are now under consideration by this Court. For the following reasons, both Motions are Denied.

{1} Additional Defendants also include the staffing agency MK Industries, which is not part of either motion for judgment on the pleadings.

BACKGROUND

The current action giving rise to the motions for judgment on the pleadings stems from an underlying action in tort.

On September 6, 2016, Javier Sardina-Garcia filed the underlying complaint in the Fayette County Court of Common Pleas. (Starr Indemnity's Complaint at ¶7.) Mr. Sardina-Garcia claims that he was "employed as a shipfitter by MK Industries... and had been assigned by MK Industries to perform work involved in construction of new barges at [Brownsville Marine's] barge construction facility." (Starr Indemnity's Complaint, Exhibit B at ¶4.) MK Industries, Inc. is a staffing employment company based in the State of Georgia, and also has an office and conducts business in Fayette County, Pennsylvania. (Brownsville Marine's Complaint to Join Additional Defendants at ¶7.)

On May 14, 2015, while working at Brownsville Marine's facility, Mr. Sardina-Garcia was "carrying a large jack" when he "encountered an unguarded opening in the floor of the work site, requiring [him] to jump over the opening" to avoid falling into it. (Starr Indemnity's Complaint, Exhibit B at ¶¶5-6.) He landed on scrap metal and sustained injuries to his foot and ankle. (Id. at ¶6.) Mr. Sardina-Garcia alleged negligence against Brownsville Marine and requested damages in excess of \$50,000. (Id. at ¶7, "Wherefore Clause.")

After receiving the underlying complaint, Brownsville Marine tendered it to Starr Indemnity, seeking that Starr defend and indemnify Brownsville Marine against Mr. Sardina-Garcia. (Starr's Complaint at ¶8) Brownsville Marine has a Commercial Marine Liability Policy with Starr Indemnity, covering the period of March 4, 2015 to December 1, 2015. (Id., See also, Exhibit A to Starr's Complaint.)

Upon receiving the underlying complaint, Starr Indemnity advised Brownsville Marine of Starr's initial intention to defend, subject to a reservation of rights. (Id. at ¶21.) As will be discussed in more detail later, after reviewing the responses provided by Brownsville Marine, Starr concluded it did not have a duty to defend or indemnify Brownsville Marine. On February 24, 2017, Starr filed this Complaint in an action for Declaratory Judgment, asking this Court to determine that it did not have a duty to defend or indemnify Brownsville Marine based on their Marine Liability Agreement.

On May 31, 2017, Brownsville Marine filed a Complaint to add Additional Defendants. These included Benchmark, Synergy Comp, Synergy Select, and MK Industries. Brownsville Marine had an insurance policy with Benchmark and claims that Synergy Comp and Synergy Select are part of that agreement. MK Industries is the firm that allegedly hired Mr. Sardina-Garcia.

On July 24, 2017, Starr filed its First Motion for Judgment on the Pleadings. That Motion was denied without prejudice on October 6, 2017, and the parties were directed to comply with a discovery order.

On March 14, 2018, after pleadings closed, Starr filed its Renewed Motion for Judgment on the Pleadings. This Court heard oral argument for the Motion on May 16, 2018. The parties were given additional time after argument to provide the Court with supplemental briefs.

Before Starr Indemnity's Renewed Motion for Judgment on the Pleadings was decided, Additional Defendants Benchmark, Synergy Comp, and Synergy Select filed a Motion for Judgment on the Pleadings on May 9, 2018. This Court heard oral argument for Additional Defendants' Motion on July 18, 2018. The parties were again given an opportunity to provide the Court with supplemental briefs after the argument.

Because of the substantial overlap between the parties and issues involved in both motions for judgment on the pleadings, this Court decided to address them together. Both motions for judgment on the pleadings are now under consideration by this Court.

DISCUSSION

The motions for judgment on the pleadings in this case will be discussed separately. However, the legal principles that are relevant to both motions will be discussed first.

Judgment on the Pleadings

After the pleadings are closed, any party can move for judgment on the pleadings. Pa.R.C.P. 1034(a). In determining a motion for judgment on the pleadings, a court may only consider the pleadings themselves as well as any documents or exhibits properly attached. *Rubin v. CBS Broadcasting Inc.*, 170 A.3d 560,564 (Pa. Super. Ct. 2017) (citing *Kelly v. Nationwide Ins. Co.*, 606 A.2d 470, 471-72 (Pa. Super. Ct. 1992)). Under Pa.R.C.P. 1017, the pleadings include: (1) a complaint and an answer thereto, (2) a reply if the answer contains new matter, a counterclaim, or a cross-claim, (3) a counter-reply if the reply to a counterclaim or cross-claim contains new matter, and (4) any preliminary objections and responses thereto. The pleadings in this case are now closed.

In a motion for judgment on the pleadings, a court "must accept as true all well pleaded statements of fact, admissions, and any documents properly attached to the pleadings presented by the party against whom the motion is filed, considering only those facts which were specifically admitted." *Steiner v. Bell of Pa.*, 626 A.2d 584, 586 (Pa. Super. Ct. 1993) (citing *Koser v. Harleysville Mut. Ins. Co.*, 595 A.2d 128, 129 (Pa. Super. Ct. 1991)). Granting judgment on the pleadings is only proper where there are no material facts in dispute, such that a trial by jury would be necessary. *Erie Ins. Exchange v. Conley*, 29 A.3d 389,391 (Pa. Super. Ct. 2011).

Declaratory Judgments Act

Under the Declaratory Judgments Act, courts have the power to declare the rights, status, and other legal relations of parties. 42 Pa.C.S.A. §7532. Parties may invoke the

Declaratory Judgment Act to interpret their obligations under an insurance contract. *Erie Ins. Exchange v. Lobenthal*, 114 A.3d 832, 836 (Pa. Super. Ct. 2015). This includes whether an insurer has a duty to defend or indemnify the insured under the terms of the agreement. *Id.*

Interpretation of Insurance Policies

"Insurance policies are contracts, and the rules of contract interpretation provide that the mutual intention of the parties at the time they formed the contract governs its interpretation." *Am. and Foreign Ins. Co. v. Jerry's Sport Center, Inc.*, 2 A.3d 526,540 (Pa. 2010). Interpreting an insurance contract is generally performed by a court rather than a jury. *Government Employees Ins. Co. v. Ayers*, 955 A.2d 1025, 1028 (Pa. Super. Ct. 2008). When construing a policy, words of common usage are to be construed in their natural, plain, and ordinary sense. *Municipality of Mt. Lebanon v. Reliance Ins. Co.*, 778 A.2d 1228, 1232 (Pa. Super. Ct. 2001). A court may inform its understanding of policy terms by considering their dictionary definitions. *Id.*

Moreover, where the language of a policy is clear and unambiguous, "a court is required to give effect to that language." *Id.* (citing *Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999)). However, when a provision of a policy is ambiguous, "the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement." *Mun'ity of Mt. Lebabon* at 1232 (citing *Madison* at 106). Contractual terms are ambiguous if they are "capable of being understood in more than one sense" or "subject to more than one reasonable interpretation when applied to a particular set of facts." *Madison* at 106 (Internal citations omitted). If doubt or ambiguity exists, it should be resolved in favor of the insured. *Jerry's Sport Center* at 540.

Insurer's Duty to Defend and Duty to Indemnify

An insurer's duty to defend or indemnify an insured in a suit brought by a third party "depends upon a determination of whether the third party's complaint triggers coverage." *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 896 (Pa. 2006) (citing *Mut. Benefit Ins. Co. v. Haver*, 725 A.2d 743, 745 (Pa. 1999)). To begin with is an insurer's duty to defend:

An insurer's duty to defend is broader than its duty to indemnify. It is a distinct obligation, separate and apart from the insurer's duty to provide coverage. An insurer is obligated to defend its insured if the factual allegations of the complaint on its face encompass an injury that is actually or potentially within the scope of the policy.... As long as the complaint "might or might not" fall within the policy's coverage, the insurance company is obliged to defend.

Jerry's Sport Center at 540-41 (Internal citations omitted). Further, whether a claim is potentially covered by the policy is determined by "comparing the four corners of the

insurance contract to the four corners of the complaint." *Id.* at 541. The nature of the claim, rather than the actual details of the injury, determines whether the insurer is required to defend. *Springfield Twp. v. Indem. Ins. Co. of N. Am.*, 64 A.2d 761, 762 (Pa. 1949).

There is a reason behind the longstanding rule that an insurer's duty to defend is triggered, if at all, by the factual averments contained in the complaint itself. As the Superior Court explained in *Scopel v. Donegal Mutual*, if that were not the case, an insurer would "be required to monitor the pre-trial developments of a case in which coverage was denied to [ensure] that no discovery sheds light upon a possible claim for which a defense is mandated." *Scopel v. Donegal Mut. Ins. Co.*, 698 A.2d 602, 605 (Pa. Super. Ct. 1997).

However, since an insurer's duty to defend arises from the potential that an underlying claim falls within the scope of the policy, an insurer who denies its duty to defend at the outset of a controversy does so at its own peril. *Cadwallader v. New Amsterdam Cas. Co.*, 152 A.2d 484,488 (Pa. 1959).

If an insurer does not have a duty to defend, it also does not have a duty to indemnify. *Scopel* at 605. If, on the other hand, an insurer does have a duty to defend, it may also have a duty to indemnify. The duty to indemnify "arises only when the insured is determined to be liable for damages within the coverage of the policy." *Selective Way Ins. Co. v. Hospitality Grp. Services, Inc.*, 119 A.3d 1035, 1046 (Pa. Super. Ct. 2015) (citing *Regis Ins. Co. v. All Am. Rathskeller, Inc.*, 976 A.2d 1157, 1161 (Pa. Super. Ct. 2009)). Unlike the duty to defend, the duty to indemnify "cannot be determined merely on the basis of whether the factual allegations of the [underlying] complaint potentially state a claim against the insured." *Regis* at 1161 (citing *Am. States Ins. Co. v. State Auto Ins. Co.*, 721 A.2d 56, 63 (Pa. Super. Ct. 1998)).

This Court now addresses each motion for judgment on the pleadings with these principles in mind.

1. Starr Indemnity's Motion for Judgment on the Pleadings

Starr Indemnity argues that it does not have a duty to indemnify Brownsville Marine based on an exclusion from coverage for employees and leased workers. As the insurer, Starr has the burden of proving that an exception to its policy with Brownsville Marine applies. *Spece v. Erie Ins. Group*, 850 A.2d 679, 682 (Pa. Super. Ct. 2004) ("Where an insurer relies on a policy exclusion as the basis for its denial of coverage..., the insurer has asserted an affirmative defense, and accordingly, bears the burden of proving such defense." (citing *Madison* at 106)).

Starr Indemnity had a Commercial Marine Liability Policy with Brownsville Marine for the period of March 4, 2015 until December 1, 2015. (Starr's Complaint, Exhibit A at Unnumbered 1.) The Insuring Agreement within the policy states:

[Starr Indemnity] will pay those sums that [Brownsville Marine] becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. [Starr] will have the right and duty to defend [Brownsville] against any "suit" seeking those damages. However, [Starr] will have no duty to defend [Brownsville] against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. [Starr] may, at [its] discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

(Starr's Complaint, Exhibit A at Page 5, Section 1(1)(a).)

The parties do not dispute that Mr. Sardina-Garcia's alleged bodily injuries resulted from an occurrence within the territory covered under the policy and during the policy period. Rather, Starr argues that an exclusion to the coverage applies. The policy states that the insurance does not apply to "bodily injury" that happens to an "employee" of Brownsville Marine "arising out of and in the course of employment by [Brownsville] or performing duties related to the conduct of [Brownsville's] business..." (Starr's Complaint, Exhibit A at Page 6, Section 1(2)(e)(1)(a) and (b).)

In the definitions, the policy states that the term "employee" includes leased workers but does not include temporary workers. (Starr's Complaint, Exhibit A at Page 21, Section 8(6).) A "leased worker" is further defined as:

[A] person leased to [Brownsville Marine] by a labor leasing firm under an agreement between [Brownsville] and the labor leasing firm, to perform duties related to the conduct of [Brownsville's] business. "Leased Worker" does not include a "temporary worker."

(Id. at Page 23, Section 8(11).) On the other hand, a "temporary worker" is defined as:

[A] person who is furnished to [Brownsville] to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

(Id. at Page 25, Section 8(21).) The term "employee" itself is not defined apart from the statement that it includes leased workers but not temporary workers.

Starr Indemnity argues that the Policy provides coverage for bodily injuries occurring on Brownsville's property, but not to employees, unless they fit the definition of a "temporary employee." Starr also argues that, based on the responses Brownsville Marine provided to Starr when determining coverage, Mr. Sardina-Garcia did not fit the definition of a temporary employee.

In other words, in order to qualify as a temporary employee, a worker must meet one of two conditions: either that person is furnished to substitute for a permanent employee on leave, or that person is furnished to meet seasonal or short-term workload

conditions. The Policy does not define "seasonal" or "short-term."

In response to Starr's request for additional information regarding the incident, Brownsville Marine provided Starr with a copy of a General Staffing Agreement between Brownsville and MK Industries (Exhibit F to Starr's Complaint), and work records for Mr. Sardina-Garcia (Exhibit H). Brownsville also provided a written response to questions asked by Starr (Exhibit G).

Brownsville Marine now argues that those documents cannot be used to determine Starr Indemnity's duty to defend and indemnify. This Court disagrees.

In determining a motion for judgment on the pleadings, a court may consider the pleadings themselves as well as any documents or exhibits properly attached. *Rubin v. CBS Broadcasting Inc.*, 170 A.3d 560,564 (Pa. Super. Ct. 2017) (citing *Kelly v. Nationwide Ins. Co.*, 606 A.2d 470, 471-72 (Pa. Super. Ct. 1992)). Notably, Brownsville Marine does not dispute the authenticity of the documents anywhere in the pleadings; Brownsville only disputes whether the Court can consider the documents when determining Starr's duty to defend and indemnify.

Brownsville Marine's argument relies on the rule in Pennsylvania that, "an insurer's duties under an insurance policy are triggered by the language of the complaint against the insured." *Kvaerner Metals Div. of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888, 896 (Pa. 2006). The Supreme Court in *Kvaerner* determined that a court cannot look beyond the allegations raised in the underlying complaint to determine whether an insurer has a duty to defend the insured. *Id.* at 896.

However, Brownsville Marine's argument does not take into account that the Court may consider documents properly attached to the pleadings. Further, Brownsville's argument also ignores the rule that an insurer's duty to indemnify "cannot be determined merely on the basis of whether the factual allegations of the [underlying] complaint potentially state a claim against the insured." *Regis* at 1161 (citing *Am. States Ins. Co. v. State Auto Ins. Co.*, 721 A.2d 56, 63 (Pa. Super. Ct. 1998)). While an insurer's duty to defend can be determined solely by comparing the factual allegations in the underlying complaint to the terms of the policy, it would be impossible for a court to determine whether an insurer has a duty to indemnify without additional information that would show whether the damages are actually covered by the policy.

Considering the documents that Starr Indemnity attached to its Complaint, the issue now is whether Mr. Sardina-Garcia falls under the employee exclusion, such that Starr would not have a duty to indemnify Brownsville Marine for his alleged injuries. As mentioned above, the Policy does not cover bodily injuries to an "employee" of Brownsville Marine; however, "employee" does not include a "temporary employee." A temporary employee is a person furnished to Brownsville either to replace a permanent employee on leave, or to meet seasonal or short-term workload conditions.

Based on the documents attached to Starr's Complaint, Mr. Sardina-Garcia clearly was not furnished to Brownsville Marine to replace a permanent employee on leave. Exhibit G to Starr's Complaint is Brownsville Marine's responses to Starr Indemnity's information requests. In that document, Starr asks that, "[i]f Sardina- Garcia substituted for a specific permanent employee who was on leave, please identify the employee." Brownsville responds, "[h]e did not replace a specific employee." Brownsville Marine does not dispute the authenticity of this document in its pleadings.

Brownsville Marine can also show that Mr. Sardina-Garcia was a temporary employee, and thus subject to coverage, by showing that he was furnished to meet seasonal or short-term workload conditions.

Starr Indemnity attempts to show that Mr. Sardina-Garcia was not furnished to Brownsville Marine to meet a seasonal or short-term work load by providing Mr. Sardina-Garcia's "Time and Job Card Comparison," attached to Starr's Complaint at Exhibit H. That exhibit shows that Mr. Sardina Garcia worked a total of roughly 3,150 hours while at Brownsville Marine for 19 months from October 15, 2013 to May 16, 2015-an average of around 165 hours each month. Brownsville Marine does not dispute the authenticity of this document or these facts in its pleadings.

Starr argues that the length of time Mr. Sardina-Garcia worked at Brownsville Marine, as well as the number of hours he worked each month, show that he was not furnished to meet seasonal or short-term workload conditions. The Policy does not define "seasonal" or "short-term." As such, this Court may consider their dictionary definitions to determine their ordinary meanings.

Black's Law Dictionary defines "seasonal employment" as "[a]n occupation possible only during limited parts of the year, such as a summer-camp counselor, a baseball-park vendor, or a shopping-mall Santa." Black's Law Dictionary 605 (9th ed. 2009). The American Heritage Dictionary defines "seasonal" as "[r]elating to, occurring in, or varying with a particular season..." American Heritage Dictionary 1581 (5th ed. 2011). Both definitions contemplate that something is "seasonal" when it occurs only during a certain part of the year. According to Exhibit H, Mr. Sardina-Garcia worked at Brownsville Marine's facility roughly the same number of hours each month for the 19-month period that he was there. As such, this Court cannot find that Mr. Sardina- Garcia's employment was "seasonal."

Black's Law Dictionary does not provide a definition for "short-term." The American Heritage Dictionary defines "short-term" as "[i]nvolving or lasting a relatively brief time." American Heritage Dictionary 1622 (5th ed. 2011). Webster's Third New International Dictionary defines "short-term" as "occurring over or involving a relatively short period of time-opposed to long-term." Webster's Third New International Dictionary, Unabridged 2103 (2002) (*Italics in original*).

Unlike "seasonal," the concepts of a "brief time" or a "relatively short period of

time" are not very specific. On their own, the adjectives "short" and "brief" when applied to the concept of time do not indicate a certain length of time—they need to contrast with something that is "long." This varies depending on the context. For example, in the context of one day, a "short" commute to work might be 10 minutes, whereas a "long" commute might be an hour. In contrast, whether a period of geological time is "short" or "long" might depend on a factor of millions of years.

Here, whether Mr. Sardina-Garcia's employment was "short-term" or "long-term" depends on a number of factors, none of which Starr has established in the pleadings. For one thing, short or long-term employment depends on a specific industry. A teacher might be considered a long-term sub when brought in for three months, whereas a law clerk might work for a judge for two years and be considered short-term. Even within the same industry, there might be different standards for what is considered short-term or long-term employment. The speculative nature of determining what should be considered short-term or long-term contributes to the ambiguity of the term as used in the Policy between Starr Indemnity and Brownsville Marine.

There does not appear to be any controlling, Pennsylvania-specific caselaw that addresses the term "seasonal or short-term workload conditions" as used in an insurance policy. However, other courts have addressed identical language and found it to be ambiguous. In *Bituminous Cas. Corp. v. Mike Ross, Inc.*, 413 F. Supp. 2d 740, 741 (N.D.W.Va. 2006), the Honorable Joseph R. Goodwin, writing for the Northern District of West Virginia, held that "the ambiguities in the policy's definition of 'temporary worker' create a question of fact as to the objectively reasonable expectations of the parties when the insurance contract was entered into." *Id.* at 746. As in the case at hand, the insurance policy in *Mike Ross* defined the term "temporary worker" as "a person who is furnished to [the insured] to substitute for a permanent 'employee' on leave or to meet seasonal or short-term workload conditions." *Id.* at 744. That court noted:

In addition, no definition exists in the policy for the phrase "short-term workload conditions." Does this phrase mean a worker can work only one hour to be considered "temporary?" Five hours? Ten hours? One day? Ten days? Four months? Six months? One year? This question is impossible to answer based on the language in the policy.

Id. at 745.

In another example, the Massachusetts Appeals Court looked at an identical provision in an insurance policy and found that, contrary to the insurer's argument, "[a] short-term workload condition need not necessarily be of finite duration." *Central Mut. Ins. Co. v. True Plastics, Inc.*, 992 N.E.2d 385,391 (Mass. App. Ct. 2013). That court also found that "[t]he phrase 'short-term workload condition' is undefined and 'is a relative term [that] can include a wide variety of temporal periods.'" *Id.* at 390 (citing Steven P. Perlmutter, *The Law of "Leased Worker" and "Temporary Worker" under a CGL Policy*, 45 *Tort Trial & Ins. Prac. L.J.* 761,793 (2010)).

These cases are persuasive in the analysis of the insurance policy at issue.

This Court notes that Starr Indemnity cited one Pennsylvania case, *Westfield Ins. Co. v. Astra Foods, Inc.*, 134 A.3d 1045 (Pa. Super. Ct. 2016), in support of its argument that Mr. Sardina-Garcia was a leased worker and thus excluded from coverage. In *Astra*, the Pennsylvania Superior Court found that a worker was "leased" as per the terms of the parties' agreement, and therefore excluded from coverage. *Id.* at 1054. However, the factual, procedural, and legal issues in *Astra* are all distinct from the case at hand. In *Astra*, the court does not address a "temporary worker" exception to a "leased worker" exclusion, as is the case here, nor does it consider the ambiguity of a provision in an insurance agreement. Further, the insured in *Astra* was arguing collateral and judicial estoppel, as well as unconscionability of a provision as against public policy. *Id.* at 1048-49. The *Astra* decision is simply not relevant to the issue at hand.

Starr Indemnity does not provide sufficient evidence in the Record at this stage of the proceedings to show that Mr. Sardina-Garcia was a short-term worker, or that there is no material dispute of fact as to what constitutes a person furnished to meet short-term workload conditions. As the burden of proof is on Starr as the moving party, this Court finds that Starr has failed to meet its burden. Starr's Motion for Judgment on the Pleadings is therefore denied.

2. Additional Defendants' Motion for Judgment on the Pleadings

Additional Defendants Benchmark, Synergy Select, and Synergy Comp argue that they do not have a duty to defend or indemnify Brownsville Marine based on the language of the underlying complaint. Additionally, Synergy Select and Synergy Comp argue that even if Benchmark has a duty to defend or indemnify Brownsville Marine, Synergy Select and Synergy Comp should be dismissed as parties to the action because they were not parties to the insurance agreement with Brownsville Marine.

Benchmark's principal argument can be summarized as follows: 1) The underlying complaint of Mr. Sardina-Garcia alleges that he "was employed as a shipfitter by MK Industries, Inc." during the time of the incident; 2) Benchmark had an insurance agreement with Brownsville Marine, in which Benchmark agreed to defend and indemnify Brownsville Marine for injuries to Brownsville's employees; 3) According to Kvaerner and other cases, the duty to defend or indemnify arises solely from the factual allegations in the underlying complaint; and 4) Because Mr. Sardina-Garcia's underlying complaint did not allege he was an employee of Brownsville Marine, Mr. Sardina-Garcia's claims do not fall under the terms of the insurance agreement, and therefore Benchmark does not have a duty to defend or indemnify Brownsville Marine.

Benchmark's recitation of the underlying complaint is not completely accurate. While it is true that Mr. Sardina-Garcia states that he was "employed as a shipfitter by MK Industries, Inc." when the incident occurred, it is also true that Mr. Sardina-Garcia states that he "had been assigned by MK Industries to perform work involved in con-

struction of new barges at [Brownsville Marine's] barge construction facility." Complaint to Join Additional Defendants, Exhibit A at ¶4.

Whether an insurer has a duty to defend is determined by comparing the factual allegations in the underlying complaint to the four corners of the insurance agreement. Here, the issue is whether Mr. Sardina-Garcia's allegation that he was "assigned... to perform work" in the construction of barges at Brownsville Marine's facility is a sufficient allegation that he is Brownsville Marine's employee.

Benchmark's Workers Compensation and Employers Liability Policy with Brownsville Marine states that Benchmark "will pay all sums that [Brownsville Marine] legally must pay as damages because of bodily injury to your employees..." (Brownsville's Complaint to Join Additional Defendants, Exhibit E at Numbered Page 4 of 10, Part Two, Section B.) Notably, Section B-4 specifically states that Benchmark will pay damages that arise, "[b]ecause of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer." (Emphasis added.) Benchmark's entire argument stems from the language in Mr. Sardina-Garcia's underlying complaint that does not claim Mr. Sardina-Garcia is an employee of Brownsville Marine. In light of this provision in the Insurance Policy, it does not matter that Mr. Sardina-Garcia does not state he is an employee of Brownsville Marine in his underlying complaint; what matters is whether he was in-fact an employee of Brownsville Marine.

The Policy between Benchmark and Brownsville Marine does not define the term "employee." It is therefore appropriate to consider the dictionary definition to determine its ordinary meaning. Black's Law Dictionary defines an employee as "[a] person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." Black's Law Dictionary 602 (9th ed. 2009). The American Heritage Dictionary defines an employee as "[a] person who works for another in return for financial or other compensation." American Heritage Dictionary 585 (5th ed. 2011).

Looking at those definitions of "employee," it is far from clear whether Mr. Sardina-Garcia should be considered an employee of Brownsville Marine. The general agreement among the definitions for employee is that an employee works for another for compensation. That Mr. Sardina-Garcia states that he was an employee of MK Industries does not in and of itself exclude him from being an employee of Brownsville Marine. Further, that Mr. Sardina-Garcia alleges that he was "assigned" to work at Brownsville Marine's facility lends support to him being Brownsville Marine's employee, at least as considered by the terms of the Policy.

Benchmark believes the underlying complaint does not allege that Mr. Sardina-Garcia is an employee of Brownsville Marine, and rests its argument entirely on that belief. As a result, Benchmark does not provide any evidence, information, or argument as to why Mr. Sardina-Garcia was not in-fact an employee of Brownsville Marine.

Because Benchmark has failed to show any evidence that Mr. Sardina-Garcia was not an employee of Brownsville Marine at the time the incident allegedly occurred, this Court denies Benchmark's Motion for Judgment on the Pleadings. Further, this Court finds that Benchmark has a duty to defend Brownsville Marine against the underlying complaint, and that Benchmark's duty to defend began the day Brownsville Marine tendered the underlying complaint to Benchmark.

Additional Defendants Synergy Comp and Synergy Select

The final issue in the Additional Defendants' Motion for Judgment on the Pleadings is whether Synergy Comp and Synergy Select should be dismissed from this action because, as Benchmark claims, they were not parties to the Insurance Agreement with Brownsville Marine.

While Additional Defendants argue that Synergy Comp and Synergy Select are not parties to the Insurance Agreement, neither Benchmark nor Brownsville Marine identify who these parties are or what relationship they have with Benchmark. After reviewing the Insurance Agreement between Benchmark and Brownsville Marine, there appears to be one reference to Synergy Comp and one reference to Synergy Select.

Exhibit E to Brownsville Marine's Complaint to Join Additional Defendants is the Insurance Agreement between Brownsville Marine and Benchmark. The unnumbered second page of the Exhibit is a letter from Lew Kachulls, thanking Brownsville Marine for renewing its Workers' Compensation Insurance with Benchmark, dated December 1, 2014. The heading at the top of the page says "Benchmark Insurance Company" in large, capital letters. Lew Kachulls is identified under his signature as "President-Synergy Comp Insurance Company." This is the only information the Court has in the Record to decide whether Synergy Comp is a party to the Insurance Agreement. As the President of Synergy Comp is thanking Brownsville Marine for renewing an Insurance Policy, it appears as though Synergy Comp is possibly a party to the Insurance Agreement. Benchmark and Synergy Comp fail to identify who Synergy Comp is or its relationship with Benchmark in their Motion for Judgment on the Pleadings, or in any brief in support thereof. They also fail to provide any caselaw to support their position. Because the standard for a Motion for Judgment on the Pleadings requires the moving party to establish that there are no material facts in dispute, this Court finds that Synergy Comp has not sustained this burden and this part of the Additional Defendant's Motion is denied.

Likewise, there is only one mention of Synergy Select in the Insurance Agreement between Benchmark and Brownsville Marine. On unnumbered Page 11 of Exhibit E, the heading on the page says "Synergy Select" in large, capital letters. The document is titled "Electronic Funds Transfer Authorization." Again, Additional Defendants fail to provide this Court any information regarding the identify of Synergy Select, its relationship to Benchmark or to the Insurance Agreement, or any caselaw in support of its position. As such, the Court finds that Synergy Select has not sustained its burden

and this part of the Additional Defendant 's Motion is denied.

SUMMARY

As a result of the foregoing analysis, both motions for judgment on the pleadings are denied.

Starr Indemnity continues to have a duty to defend Brownsville Marine against the underlying complaint filed by Mr. Sardina-Garcia.

Benchmark Insurance also has a duty to defend Brownsville Marine against the underlying complaint filed by Mr. Sardina-Garcia.

ORDER

AND NOW, this 12th day of October, 2018, in consideration of the Motion for Judgment on the Pleadings filed by Plaintiff, Starr Indemnity, it is hereby ORDERED and DIRECTED that said Motion is DENIED.

Further, in consideration of the Motion for Judgment on the Pleadings filed by Additional Defendants Benchmark Insurance, Synergy Comp Insurance, and Synergy Select, it is hereby ORDERED and DIRECTED that said Motion is DENIED.

The parties are referred to this Court's accompanying Opinion for a discussion of the reasons why the motions for judgment on the pleadings are denied.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Nina Capuzzi Frankhouser
Prothonotary

LUNCH & LEARN SERIES

FCBA LUNCH & LEARN SERIES

The Fayette County Bar Association's next presentation in its Lunch & Learn Series will be:

- Date: **Wednesday, May 15th** from 12:00 p.m. to 1:30 p.m.
- Location: Courtroom No. 1 of the Fayette County Courthouse
- Discussion topic: **Pennsylvania's Medical Cannabis Law**
- Presenter: Patrick K. Nightingale, Esquire

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1.5 hours of Substantive CLE credit for the program. The fees are as follows:

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- \$10 fee for attendance with CLE Credit

Attorneys admitted to practice in Pennsylvania after January 1, 2012

- No charge for attendance with CLE Credit

Non-members of the FCBA

- \$10 fee for attendance without CLE Credit
- \$20 fee for attendance with CLE Credit

**** All fees to be paid at the door ****

A light lunch will be provided.

If interested in attending, please call Cindy at the Bar office at 724-437-7994 or by email to cindy@fcbar.org on or before Monday, May 13th.

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