

ADVANCE SHEET

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Bar Association Page

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INTELLECTUAL PROPERTY LAW

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TERMS

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Estate Notices

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 ELIZABETH J. REINHARD, late of the Township of Swatara, Dauphin County, Pennsylvania (died December 3, 2008). Executrix: Mary Lou Hoffman, 625 North Second Street, Lykens, PA 17048. Attorney: Joseph D. Kerwin, Esq., 4245 Route 209, Elizabethtown, PA 17023. j2-j16

ESTATE OF SARA M. KOBRIN, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executor: Harry J. Kobrin. Attorney: George H. Eager, Esq., Eager, Spinello, Quinn & Stengel, 1347 Fruitville Pike, Lancaster, PA 17601. j2-j16

ESTATE OF EARL J. SPANGLER, late of Derry Township, Dauphin County, Pennsylvania (died October 27, 2008). Executor: The Hershey Trust Company. Attorney: George W. Porter, Esq., 909 East Chocolate Avenue, Hershey, PA 17033. j2-j16

SECOND PUBLICATION

ESTATE OF JOHN J. PAGE, SR., late of Dauphin County, Pennsylvania (died October 6, 2008). Executrix: Jodi M. Ortiz, 5871 Larue Street, Harrisburg, PA 17112. Attorney: Mark K. Emery, Esq., 410 North Second Street, Harrisburg, PA 17101. Telephone (717) 238-9883. d26-j9

ESTATE OF IRVIN W. PETERS, late of the Township of Swatara, Dauphin County, Pennsylvania (died October 15, 2008). Co-Administrators: Dale M. Peters, 601 Cascade Road, Mechanicsburg, PA 17055 and Debra L. Peters, 7 Rutherford Road, Harrisburg, PA 17109. Attorney: Shelly J. Kunkel, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. d26-j9

ESTATE OF CATHARINE W. HOUTZ, late of Hershey, Dauphin County, Pennsylvania (died October 17, 2008). Executrix: Carol R. Fahnestock, Fulton Financial Advisors, One Penn Square, Lancaster, PA 17602. Attorney: Susan E. Lederer, Esq., 5011 Locust Lane, Harrisburg, PA 17109. d26-j9

SECOND PUBLICATION

Estate Notices

ESTATE OF MACK L. KLEPPER, late of Susquehanna Township, Dauphin County, Pennsylvania. Executor: Fred E. Neely, 4530 Shermans Valley Road, Loysville, PA 17047. Attorney: William R. Bunt, Esq., 109 South Carlisle Street, P.O. Box 336, New Bloomfield, PA 17068. d26-j9

ESTATE OF JESSICA L. ZANDERS-MARROQUIN, late of the Township of Swatara, Dauphin County, Pennsylvania (died July 22, 2005). Co-Administratrices: Gina Reddinger, 462 Sunday Drive, Harrisburg, PA 17111 and Darlene Johnson, 20 North Harrisburg Street, Apt. 3, Steelton, PA 17113. Attorney: Joshua Beisker, Esq., Rhoads & Sinon LLP, One S. Market Square, P.O. Box 1146, Harrisburg, PA 17108-1146. d26-j9

ESTATE OF WILLIAM R. MINNICK, late of Lower Paxton Township, Dauphin County, Pennsylvania. Co-Executors: William D. Minnick, 6022 Linglestown Road, Harrisburg, PA 17112 and Alice C. Whitley, 133 Brookberry Circle, Chapel Hill, NC 27517. Attorney: Bridget M. Whitley, Esq., Skarlatos & Zonarich LLP, 17 South Second Street, 6th Floor, Harrisburg, PA 17101. d26-j9

ESTATE OF HELEN K. HAMILL, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executrix: Darlene D. Kreamer. Attorney: Roger B. Irwin, Esq., Irwin & McKnight, 60 West Pomfret Street, Carlisle, PA 17013. d26-j9

ESTATE OF JOYCE E. FLENNIKEN, late of West Hanover Township, Dauphin County, Pennsylvania. Executor: Brett A. Henry, 1 Rising Sun Drive, Duncannon, PA 17020-7030. Attorney: Steve C. Nicholas, Esq., 2215 Forest Hills Drive, Suite 37, Harrisburg, PA 17112-1099. d26-j9

ESTATE OF JEANNE L. MAGARO, late of Swatara Township, Dauphin County, Pennsylvania. Executrix: Patricia A. Hazell, 3814 Dawn Mar Street, Harrisburg, PA 17111. Attorney: Charles J. DeHart, III, Esq., Caldwell & Kearns, 3631 North Front Street, Harrisburg, PA 17110. d26-j9

ESTATE OF MILDRED J. MILLER, late of Swatara Township, Dauphin County, Pennsylvania (died November 26, 2008). Executor: David L. Miller, 131 Oak Hill Drive, Middletown, PA 17057. Attorney: Jeffrey M. Mottern, Esq., 28 East Main Street, P.O. Box 87, Hummelstown, PA 17036. d26-j9

ESTATE OF TERRY E. MEGARGEL, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 11, 2008). Personal Representative: Kimberly A. Megargel, 5580 Mercury Road, Harrisburg, PA 17109. Attorney: Marianne E. Rudebusch, Esq., 4711 Locust Lane, Harrisburg, PA 17109. d26-j9

THIRD PUBLICATION

ESTATE OF CLARENCE E. BIVENS, late of West Hanover Township, Dauphin County, Pennsylvania (died April 29, 2008). Executrix: Patricia L. Bivens. Attorney: Diane S. Baker, Esq., P.O. Box 6443, Harrisburg, PA 17112-0443. d19-j2

ESTATE OF MICHAEL L. PHILLIPS, late of Middletown, Dauphin County, Pennsylvania (died September 22, 2008). Administrator: Beverly J. Schaeffer, 249 Wilson Street, Middletown, PA 17057. Attorney: James B. Pannebaker, Esq., Pannebaker & Mohr, P.C., 4000 Vine Street, Middletown, PA 17057. Telephone (717) 944-1333. d19-j2

**McAfee v. Quantum Imaging and
Therapeutic Associates, Inc.**

Torts — Negligence — Medical Malpractice — Vicarious Liability — Agency.

Plaintiff alleged that the death of his wife was caused by two radiological technicians who were acting as agents of the Defendant when they were attempting to move her from her hospital bed into a wheelchair. In the process, her leg fell to the floor, shattering the bone in her heel, which led to amputation, severe infection, and ultimately, her death.

1. A person may be the servant of two masters, not joint employers, at one time as to one act, provided that the service to one does not involve abandonment of the service to the other. Rest. Agency, §226. Such is the case where an employee is transferred to carry on work which is of mutual interest to both of two employers and to effect their common purpose (Citations omitted). *Tonic v. Wagner*, 329 A.2d 497, 500 (Pa. 1974). Where issues of direction and control of the employee are likely to be at issue and where different inferences can fairly be drawn from the evidence, the ultimate question of agency may be for a jury. Pa.L.Ency. Agency §4 (1986).

2. Fundamental to the concept of informed consent is that the medical procedure involved is invasive in nature. 40 P.S. §1303.504.

3. An employer may be liable for negligent retaining, training or supervision of its employees for their acts performed within the scope of their employment. See Restatement, Agency §213; *Heller v. Patriot Homes, Inc.*, 713 A.2d 105 (Pa. Super. 1998).

4. Corporate negligence is a doctrine under which the hospital is liable if it fails to uphold the proper standard of care owed the patient, which is to ensure the patient's safety and well-being while at the hospital. This theory of liability creates a non-delegable duty which the hospital owes directly to a patient. *Thompson v. Nason Hospital*, 591 A.2d 703, 706-07 (Pa. 1991).

5. The necessary inquiry which must be made in considering corporate liability turns on whether the entity in question has been given the exclusive responsibility for establishing policy and procedure as relates to a particular practice area within the hospital setting. When the corporate practice group assumes total management, control and supervision over a particular medical specialty within the hospital, the corporate group stands in the shoes of the hospital itself.

Preliminary Objections. C.P., Dau. Co., No. 2006 CV 3618 MM.
Granted in part.

Robin D. Bleacher, for Plaintiff

Michael D. Pipa and Karen E. Minehan, for Defendant

KLEINFELTER, J., December 17, 2008. – Presently before the court are the preliminary objections of defendant Quantum Imaging and Therapeutic Associates, Inc. (hereinafter “Quantum”) to the complaint of Ted K. McAfee, individually, and as the executor of the estate of

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Dorothy McAfee, deceased (hereinafter “McAfee”). The objections, filed against all nine counts in the complaint, are in the nature of demurrer.

Procedurally, McAfee initiated this action by writ of summons on August 16, 2006, naming Pinnacle Health System, Pinnacle Health Hospitals d/b/a Pinnacle Health at Harrisburg Hospital (hereinafter “Pinnacle”), and Quantum as defendants. A complaint against only Pinnacle was filed on November 3, 2006.¹ A complaint solely against Quantum was filed on October 1, 2007.

FACTUAL SUMMARY

Decedent Dorothy McAfee was admitted to Harrisburg Hospital on August 18, 2004 on an outpatient basis for debridement of necrotic tissue on her left foot. Her right leg had been amputated at the knee some time prior to the August 18 admission. On August 20, 2004, two days after the debridement procedure, and in order to fight infection, a peripherally inserted control catheter line (“PICC Line”) was ordered to administer antibiotics. As an x-ray was required to insert the PICC line, two radiology technicians were sent to McAfee’s room with a wheel chair to assist in her transport to the radiology department. As one of the technicians held the wheel chair, the other attempted to lift McAfee “chest to chest,” from her bed. While so engaged, McAfee’s leg fell to the floor shattering the bone in her heel. The resultant injury required amputation which was followed by severe infection. The subsequent administration of antibiotics adversely affected McAfee’s kidneys which, in turn, resulted in kidney failure and death.

The complaint charges that the death was the product of the negligence of the two radiology technicians. Although discovery has revealed that the technicians were employees of Pinnacle, plaintiff avers that they were under the control and supervision of Quantum at the point where they were assigned to transfer McAfee from her room to the radiology department.

LEGAL DISCUSSION

COUNTS I, III, IV AND V – VICARIOUS LIABILITY

Quantum has grouped its objections as to Counts I, III, IV and V into a single argument which demurs to the alleged vicarious liability of Quantum for the acts of the two radiology technicians who were

1. Judgment of non pros was entered against this complaint on January 3, 2007. A petition to strike and open filed on January 5, 2007, was denied by order of court entered March 2, 2007.

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admittedly employees of Pinnacle. McAfee responds that its complaint avers that the “technicians were acting as actual agents, ostensible agents, joint agent, servants and/or employees of Defendant.”

Quantum’s brief denies the claims of agency and refers us to its Radiology Services Agreement with Pinnacle which was attached to McAfee’s complaint.

We first reiterate the well-known standard in addressing a demurrer, a claim that the averments fail to state a cause of action. In resolving preliminary objections in the nature of a demurrer, all material facts set forth in the complaint and reasonable inferences therefrom must be accepted as true. No testimony or other evidence outside of the complaint may be considered. Essentially the inquiry is whether the pleading would permit recovery if the averments are ultimately proven. *Cardenas v. Schober*, 783 A.2d 317 (Pa. Super. 2001).

From our review of the Quantum–Pinnacle Radiology Services Agreement we are unable to conclude – as a matter of law – that no agency relationship existed between Quantum and the two technicians involved with the transport of McAfee on August 20, 2004. To the extent that Quantum’s Preliminary Objections and briefs deny an agency relationship, such denials are a “speaking demurrer” and should be set out in a responsive pleading.

In any event, an agency relationship is not necessarily restricted to one’s employment status.

A person may be the servant of two masters, not joint employers, at one time as to one act, provided that the service to one does not involve abandonment of the service to the other. Rest. Agency, §226. Such is the case where an employee is transferred to carry on work which is of mutual interest to both of two employers and to effect their common purpose (*Citations omitted*).

Tonsic v. Wagner, 329 A.2d 497, 500 (Pa. 1974) (holding that a person may be at the same time the agent both of an operating surgeon and of a hospital even though the person was an employee only of the hospital).

Where issues of direction and control of the employee are likely to be at issue and where different inferences can fairly be drawn from the evidence, the ultimate question of agency may be for a jury. Pa.L.Ency. Agency §4 (1986). At this juncture we cannot hold as a matter of law that plaintiffs have no cause of action premised on vicarious liability. At

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the very least we must require Quantum to file an answer to Counts I and III (Negligence). Counts IV and V, which allege vicarious liability for battery, are discussed *infra*.

COUNT II – BREACH OF CONTRACT

Quantum next objects to Count II of the complaint which alleges a breach of contract. In the first place, it is argued that no “contract” existed between the parties and, secondly, that the gist of this action is premised on negligence, a claim sounding in tort.

The complaint alleges that McAfee entered into an express contract with Quantum’s employee, Jay Goodman, M.D. when she signed an authorization for him to place a PICC line. “An implied term of that contract was that Defendant and its agents would act with due care”(Complaint, pgh. 33).

Whether a “contract” existed in this case is largely an academic question. In recent years courts have been increasingly sympathetic to a desire by defendants to narrow or limit a cause of action to one of contract or tort where the underlying claim arises from the same set of facts. *eToll, Inc. v. Elias/Savion Adver, Inc.*, 811 A.2d 10, 14 (Pa. Super. 2002).

Generally, the doctrine is designed to maintain the conceptual distinction between breach of contract claims and tort claims. [*Bash v. Bell Tel. Co.*, 601 A.2d 825, 829 (Pa. Super. 1992)]. As a practical matter, the doctrine precludes plaintiffs from recasting ordinary breach of contract claims into tort claims. *Id.* The Bash Court explained the difference between contract claims and tort claims as follows:

although they derive from a common origin, distinct differences between civil actions for tort and contract breach have developed at common law. Tort actions lie for breaches of duties imposed by law as a matter of social policy, while contract actions lie only for breaches of duties imposed by mutual consensus agreements between particular individuals. . . . To permit a promisee to sue his promisor in tort for breaches of contract inter se would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of actions.

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601 A.2d at 829, citing, *Iron Mountain Sec. Storage Corp. v. American Specialty Foods, Inc.*, 457 F. Supp. 1158, 1165 (E.D. Pa. 1978).

Id.

The language in Pgh. 33 of McAfee’s complaint claims that Quantum failed to “meet the standard of care expected of an ordinary and reasonable person under the circumstances.” This is, if you will, plain “tort-speak.” In principle and in claim for relief it is identical to the negligence claim found in Counts I and III of the complaint. We will dismiss Count II on the basis that it does not represent the gist of the action.

COUNT IV, V, VI – PROFESSIONAL BATTERY

We turn next to Quantum’s objections to Counts IV (Professional Battery – Vicarious Liability), V (Common Law – Battery – Vicarious Liability), and VI (Professional Battery – Informed Consent). As to Counts IV and V, Quantum argues that there is no recognized cause of action for battery outside the sphere of lack of informed consent. At oral argument on the Preliminary Objections, plaintiff’s counsel agreed that plaintiff had not alleged facts to support a lack of informed consent – a consent that went to the medical procedure and not to the manner of transport. It was also conceded that the technicians did not act intentionally in causing injury to McAfee.

As for Count VI, alleging lack of informed consent, the complaint acknowledges that McAfee executed a consent form as relates to placement of the PICC line. Nevertheless, McAfee contends that she did not agree or consent to the manner of transport.

To the extent that the transport of McAfee was a separate and distinct procedure from that of placement of the PICC line, the doctrine of informed consent is still not applicable under those facts. Fundamental to the concept of informed consent is that the medical procedure involved is invasive in nature. The Medical Care Availability and Reduction of Error Act sets forth the medical procedures requiring informed consent:

- (1) Performing surgery, including the related administration of anesthesia.
- (2) Administering radiation or chemotherapy.
- (3) Administering a blood transfusion.

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- (4) Inserting a surgical device or appliance.
- (5) Administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner.

40 P.S. §1303.504

As the acts of the radiology technicians in transporting McAfee do not fall within any of the enumerated categories, there can be no cause of action for lack of informed consent.²

COUNT VII

“COMMON LAW NEGLIGENCE – PRIMARY LIABILITY”

Quantum next objects to Count VII captioned “Common Law Negligence – Primary Liability.” As contrasted with Count III (“Common Law Negligence – Vicarious Liability”), this count charges Quantum with failing to properly hire, train and supervise the technicians involved in the transport of McAfee from her room to the radiology department.

Quantum’s Preliminary Objection to this count takes several directions. First, through a “speaking demurrer,” it claims that it owed McAfee “no duty to retain, train, or supervise the Pinnacle employees who transported Decedent.” This averment must be presented in a responsive pleading, *i.e.* – an answer with new matter.

Second, Quantum states that “no claim exists for negligent retaining, training and supervision based upon actions taken within the scope of employment.” (P.O. 19). In support of its position, Quantum cites several Pennsylvania cases, *e.g.*, *Dempsey v. Walso Bureau, Inc.*, 246 A.2d 418 (Pa. 1968), and the Restatement (Second) of Torts §317.

It is true that Section 317 of the Restatement creates the possibility of liability for acts outside the scope of employment – something the law of agency would normally eschew. Pennsylvania follows the Restatement and will impose liability where there is proof that an employer knew or, in the exercise of ordinary care, should have known, of his employees dangerous propensities. *Dempsey, supra*. Recognition of the prospect of liability for actions taken outside the scope of employment in limited circumstances should not be construed for a moment as foreclosing a claim of negligent hiring, training, or supervision for acts performed

2. Paragraph 51 of Count VI also charges a failure in the requisite standard of care. We find this to be surplusage since it duplicates claims of negligence in other counts.

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within the scope of employment. On the contrary, it follows, *a fortiori*, that an employer may be liable for negligent retaining, training or supervision of its employees for their acts performed within the scope of their employment. See Restatement, Agency, §213; *Heller v. Patriot Homes, Inc.*, 713 A.2d 105 (Pa. Super. 1998). Accordingly, Quantum's second argument in support of a demurrer to Count VII is without merit.

Although not raised in their preliminary objection under Count VII, Quantum's brief raises a third ground for a demurrer to this count. Here Quantum asserts that the claims against it are for corporate negligence and are barred by the holdings in *Thompson v. Nason Hospital*, 591 A.2d 703 (Pa. 1991) and *Sutherland v. Monongahela Valley Hosp.*, 856 A.2d 55 (Pa. Super. 2004).

In *Thompson*, our supreme court, for the first time, adopted a theory of corporate liability with respect to a hospital.

Hospitals in the past enjoyed absolute immunity from tort liability. (*Citation omitted*). The basis of that immunity was the perception that hospitals functioned as charitable organizations. (*Citation omitted*). However, hospitals have evolved into highly sophisticated corporations operating primarily on a fee-for-service basis. The corporate hospital of today has assumed the role of a comprehensive health center with responsibility for arranging and coordinating the total health care of its patients. As a result of this metamorphosis, hospital immunity was eliminated. (*Citation omitted*).

Corporate negligence is a doctrine under which the hospital is liable if it fails to uphold the proper standard of care owed the patient, which is to ensure the patient's safety and well-being while at the hospital. This theory of liability creates a nondelegable duty which the hospital owes directly to a patient. Therefore, an injured party does not have to rely on and establish the negligence of a third party.

The hospital's duties have been classified into four general areas: (1) a duty to use reasonable care in the

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maintenance of safe and adequate facilities and equipment (*Citation omitted*); (2) a duty to select and retain only competent physicians (*Citation omitted*); (3) a duty to oversee all persons who practice medicine within its walls as to patient care (*Citation omitted*); and (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients – (*Citation omitted*).

Thompson, at 706-07.

Thompson thus adopted “as a theory of hospital liability the doctrine of corporate negligence or corporate liability under which the hospital is liable if it fails to uphold the proper standard of care owed its patient. In addition, we fully embrace the aforementioned four categories of the hospital’s duties.” *Id.*, 708.

The final question in *Thompson* was whether the hospital also had a “duty to monitor and review medical services provided within its facilities.” The court concluded that it did.³

In our reading of *Thompson*, we see nothing that would bar McAfee’s claim against a corporate provider of services as a matter of law.

We next turn our attention to the *Sutherland* case. There plaintiff sued a hospital, two doctors and the medical practice group, a P.C., with which one of the doctors was affiliated. The trial judge determined that the practice group should not be on the verdict slip. The jury rendered its verdict solely against one of the doctors and the court then molded the verdict to include the doctor’s practice group. On appeal, the doctor claimed error in not allowing the jury to consider the individual negligence of the practice group (premised on the failure of its employees in relaying messages to the doctor). In support of this position, the doctor cited *Thompson*, and urged that corporate liability for hospitals be extended beyond hospitals to physician’s offices. Superior Court observed, however:

We note that the policy considerations underlying the Pennsylvania Supreme Court’s creation of the theory of corporate liability for hospitals are not present in the situation of a physician’s office. In *Thompson*, the Supreme Court recognized that “the corporate hospital of today has assumed the role of a comprehensive health center

3. The “medical service” at question in *Thompson* was a consultation.

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with responsibility for arranging and coordinating the total health care of its patients.” *Id.* at 706. The same cannot be said for a physician’s practice group. Accordingly, we decline Dr. Alioto’s invitation to extend the negligence principles contemplated by *Thompson* to the case *sub judice*.

Sutherland, supra, 856 A.2d at 61-62.

Thus, the present state of the law seems to be that while the corporate hospital may be held directly liable for its negligence, a corporate “practice group” may not. But what if the practice group – unlike that in *Sutherland* – sets up shop in a hospital and performs a service under contract which would normally be performed by the hospital itself?

In the Radiology Services Agreement between Pinnacle Health Hospitals and Quantum we find the following recitals:

WHEREAS, PHH is the owner and operator of a general acute care hospital in which there exists a Department of Radiology, and it desires to continue the provision of inpatient and outpatient radiology services to neonatal, pediatric and adult patients in need of the same; and

WHEREAS, Quantum is a corporation engaged in the provision of radiology services to hospitals through licensed physicians with special skills and training in radiology; and

WHEREAS, PHH desires that Quantum be the exclusive provider of inpatient and outpatient radiology services in its Department of Radiology in order to permit (1) the effective planning and most cost efficient delivery of radiology services with the highest quality of patient care; (2) the planning and purchase of capital equipment for the delivery of radiology services; (3) the planning of digital radiography services; (4) the provision of education services; (4) [sic] the promotion of effective teamwork in the delivery of radiology services at multiple sites; (5) the effective scheduling of services; (6) the assurance of continual access to the services of radiologists; (7) the more effective administration of services in the Department of Radiology; and (8) the optimal use of manpower and equipment.

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These recitals make it quite clear that Quantum is not merely a visiting provider of services in the hospital – as was the surgeon in *Sutherland* – but is rather an integral part of the hospital itself. As the “exclusive” provider of radiology services, it is the *de facto* Department of Radiology. We believe that this total integration of radiology services into the hospital setting places Quantum in the same position as the hospital itself.

We acknowledge a recent decision by the U.S. District Court which would seem to be contrary. In *Drumm v. Schell*, 2008 WL 1944152 (M.D. Pa.), the issue was whether corporate liability could be applied to a corporate group of physicians who were under contract to operate the hospital’s Emergency Department – not only as to physician staffing, but administrative management as well. Moreover, the corporate group was given authority to designate the Medical Director of the hospital’s Emergency Department. In short, the contracting group became the *de facto* hospital emergency department.

In granting summary judgment for the practice group, the learned judge, James F. McClure, Jr., considered the *Thompson* and *Sutherland* cases:

[P]laintiff cites no cases holding a corporation such as EPSI, which is undoubtedly not a hospital, liable under the direct theory of negligence set out in *Thompson*. Furthermore, we note that the reasoning from *Sutherland* appears to suggest that EPSI, like a physician’s office, should not be held liable, as it has not “assumed the role of a comprehensive health center with responsibility for arranging and coordinating the total health care of its patients.” *Sutherland*, 856 A.2d at 62 (quoting *Thompson*, 591 A.2d at 706).

Id. at 4.

Quantum has also directed our attention to a Lancaster County decision, *Davis v. Gish, et al.*, 2 D&C 5th 154 (Lanc. 2007) which sustained a demurrer in favor of a corporate group noting that plaintiff had not set forth any factual allegations to suggest that the corporate group was performing the same or similar functions as a hospital in arranging, managing, or coordinating the total care of patients (citing *Thompson*). Since the case was decided on a demurrer, it is difficult to ascertain the details of the contractual relationship which the group had with the hospital.

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We believe that the analysis in *Drumm* and *Davis* incorrectly places emphasis on the nature of the corporate entity rather than on the scope of services performed by that entity.

It is easy to conclude, as *Drumm* does, that the contracting corporate group “is undoubtedly not a hospital.” It is also clear that the corporate groups in *Drumm*, *Davis* and instantly do not meet the definition of a “comprehensive health center.” We find, however, that the necessary inquiry which must be made in considering corporate liability turns on whether the entity in question has been given the exclusive responsibility for establishing policy and procedure as relates to a particular practice area within the hospital setting. Were this not the case, a hospital could contract away all of the four duties owed by them to a patient as enumerated in *Thompson* with the result that an aggrieved patient would be placed in the same position as a plaintiff pre-*Thompson*.

Our holding today is totally consistent with *Sutherland*. Where a corporate practice group providing doctors has no contractual oversight or control over a practice area within the hospital campus, it may not be held liable on a theory of corporate liability.⁴ On the other hand, when the corporate group assumes total management, control and supervision over a particular medical specialty within the hospital, the corporate group stands in the shoes of the hospital itself.

Returning to the present case, we are not able at this juncture to fully appreciate the extent of Quantum’s status at Pinnacle as a provider of radiology services. Here McAfee should be allowed to establish, if possible, that Quantum’s status as sole provider of radiology services at Pinnacle was so complete as to elevate them to the same level as the hospital itself. Should such prove to be the case, the service provider becomes indistinguishable from the hospital itself and the *Thompson* corporate liability holding would be found applicable to them.

COUNT VIII – *RES IPSA LOQUITUR*

Quantum objects to McAfee’s Count VIII which is captioned “Res Ipsa Loquitur.” While the complaint correctly states the principle which underlies this term, Quantum correctly argues that *res ipsa loquitur* is not in itself a “cause” of action but rather a principle of evidence available to “prove” a cause of action. *See, e.g., Toogood v. Owen J. Rogal,*

4. *Accord, Lykes v. Yates, et al.*, 2006 W.L. 4113271 (Cumb., 2006) (claim of corporate liability not viable against a group). As Judge Bayley correctly observed “[P]olicy considerations underlying the Pennsylvania Supreme Court’s creation of the theory of corporate liability for hospitals are not present in the situation of a physician’s office.”

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D.D.S., P.C., 824 A.2d 1140 (Pa. 2003) (in medical malpractice action, doctrine of *res ipsa loquitur* may have application where reliance upon common lay knowledge allows the conclusion that the event would not have occurred without negligence). Whether this principle has applicability in the instant case remains to be seen. However, since it is not a cause of action, *per se*, it must be stricken as a count in the complaint.

COUNT IX – COMMON LAW DUTY
TO RETAIN, TRAIN, SUPERVISE

Count IX claims that Quantum had a “duty at common law to hire, train, and retain only competent persons.” Quantum’s Preliminary Objections do not raise a specific objection to Count IX. Their brief, however, discusses County IX under argument heading G and refers to Count IV of the complaint. We must assume that the reference is really to Count IX.

Quantum first objects by asserting another “speaking demurrer.” The objection claims that, in fact, Quantum owed no duty to train since the technicians were employees of Pinnacle (referring to the Pinnacle/Quantum contract). As noted earlier, these averments should be advanced in an Answer or New Matter.

Quantum also objects on the basis that no claim for negligent retaining, training, or supervision can be made for actions taken within the scope of employment. Clearly, Quantum argues, the actions of the technicians in transporting McAfee were within the scope of their employment.

We have previously discussed this point of law under our discussion of a similar claim made by McAfee under Count VII and find that the objection is without merit.

For the reasons above stated, we enter the following:

ORDER

AND NOW, December 17, 2008,

IT IS HEREBY ORDERED as follows:

1. The preliminary objections with regard to Counts I, III, VII, IX are denied.
2. The preliminary objections with regard to Counts II, IV, V, VI, VIII are granted.

THIRD PUBLICATION

Estate Notices

ESTATE OF MICHAEL A. WOLFGANG, late of the Borough of Middletown, Dauphin County, Pennsylvania (died November 28, 2008). Executrix: Nancy L. Wolfgang, 337 Oak Hill Drive, Middletown, PA 17057. Attorney: Jean D. Seibert, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. d19-j2

ESTATE OF ERIC L. SMITH, late of the City of Harrisburg, Dauphin County, Pennsylvania. Attorney: Jan M. Wiley, Esq., The Wiley Group, 130 W. Church Street, Suite 101, Dillsburg, PA 17019. d19-j2

ESTATE OF JOSEPH SAMUEL LOTZ, late of Dauphin County, Pennsylvania (died October 2, 2008). Personal Representative: Dyan L. Yingst, 801 Pheasant Road, Harrisburg, PA 17112-1330. d19-j2

ESTATE OF JAMES CHARLES KERR, late of Denton County, Texas. Executrix: Jill Sherene Kerr Steffen, 243 Stable Road, Carrboro, NC 27510. Attorney: David H. Stone, Esq., Stone LaFaver & Shekletski, P.O. Box E, New Cumberland, PA 17070. d19-j2

ESTATE OF J. DORIS WILLENBECHER, late of Middletown, Dauphin County, Pennsylvania (died November 18, 2008). Executrix: Ellen Marie Willenbecher, 535 North Spring Street, Middletown, PA 17057. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. d19-j2

ESTATE OF MAE R. SULLO, late of Derry Township, Dauphin County, Pennsylvania. Executrix: Nancy M. Morris. Attorney: John M. Zimmerman, Esq., Brinser, Wagner & Zimmerman, 466 Jonestown Road, Jonestown, PA 17038. d19-j2

ESTATE OF THELMA M. NELSON, late of Dauphin County, Pennsylvania (died November 1, 2008). Executrix: Judy M. Knaub, 2350 Seneca Drive, York, PA 17408-4323. Attorney: Robert A. Quigley, Esq., Quigley Law Office, P.C., 1553 Bridge Street, New Cumberland, PA 17070. d19-j2

ESTATE OF BEATRICE SEILER, late of the Township of Rush, Dauphin County, Pennsylvania (died November 28, 2008). Co-Executors: George Hand, 10663 Clarks Valley Road, Tower City, PA 17980; Shelley A. Hand, 10663 Clarks Valley Road, Tower City, PA 17980 and Joseph D. Kerwin, Esq., 10663 Clarks Valley Road, Tower City, PA 17980. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, 4245 Route 209, Elizabethtown, PA 17023. d19-j2

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that an Application was made to the Dept. of State of the Commonwealth of Pennsylvania (PA) at Harrisburg, PA, on 12/15/08 by **Bristol 1031 DST**, a foreign trust formed under the laws of the State of Delaware with its principal office located at 2901 Butterfield Road, Oak Brook, IL 60523 for a Certificate of Authority to do business in PA under the provisions of the PA Business Law of 1988. The registered office in PA shall be deemed for venue and official publication purposes to be located in Dauphin County. j2

NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **Brooks-Maberry, Inc.** on December 23, 2008. The address of its principal office under the laws of its jurisdiction is 501 Locust Street, Sweetwater, TX 79558. The commercial registered office provider for this Corporation is National Registered Agents, Inc., in the county of Dauphin. The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124. j2

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **NBA SERVICES CORP.** The address of its principal office under the laws of its jurisdiction is 874 Walker Road, Suite C, Dover, DE 19904. The Commercial Registered Office address is United Corporate Services, Inc. in the County of Dauphin. The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124(b). j2

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State for **PSI MANAGEMENT INC.**, a corporation organized under the Pennsylvania Business Corporation Law of 1988. j2

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State for **NAIL ART INC.**, a corporation organized under the Pennsylvania Business Corporation Law of 1988. j2

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on December 16, 2008, by **Octapharma Plasma, Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 736 Park North Boulevard, Suite 100, Clarkston, GA 30021, 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 is located at c/o Corporation Service Company, Dauphin County, Pennsylvania. j2

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on December 19, 2008, by **ELITE STAFFING GLOBAL, INC.**, a foreign corporation formed under the laws of the State of Illinois, where its principal office is located at 1400 W. Hubbard Street, 2nd Floor, Chicago, IL 60622, 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 is located at c/o Corporation Service Company, Dauphin County, Pennsylvania. j2

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on December 5, 2008, by **GREENWICH CAPITAL MARKETS, INC.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 600 Steamboat Road, Greenwich, CT 06830, 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 is located at c/o Corporation Service Company, Dauphin County, Pennsylvania. j2

NOTICE IS HEREBY GIVEN that **Oxford House, Inc.**, a foreign business corporation incorporated under the laws of the State of Delaware, where its principal office is located at 1010 Wayne Avenue, Suite 300, Silver Springs, MD 20910, has applied for a Certificate of Authority in Pennsylvania using fictitious name Oxford House World Services, where its registered agent is located at National Registered Agents, Inc. The registered office of the corporation shall be deemed for venue and official publication purposes to be located in Dauphin County, Pennsylvania. j2

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on December 22, 2008 for the purpose of obtaining a charter of a Nonprofit Corporation organized under the Nonprofit Corporation Law of 1988 of the Commonwealth of Pennsylvania. The name of the corporation is: **REGENERATING OUR OFFSPRING THROUGH STORIES (ROOTS), INC.** The purpose or purposes for which it was organized is: using the art of storytelling to promote literacy and to reach the various types of learners. j2

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on November 18, 2008, by **Benchmark Gas Systems, Inc.**, a foreign corporation formed under the laws of the State of Oklahoma, where its principal office is located at 555 17th Street, Suite 880, Denver, CO 80202, 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. j2

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on December 18, 2008, by **LS Acquisition Co.**, a foreign corporation formed under the laws of the State of Missouri, where its principal office is located at 10990 Quivira, Suite 250, Overland Park, KS 66210, 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. j2

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on December 15, 2008, by **Within3, Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 2401 Superior Viaduct, Suite 300, Cleveland, OH 44113, 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. j2

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **Eastern Medical Supplies, Inc.**, a corporation of the State of Maryland, with principal office located at 100 E. RiverCenter Boulevard, Suite 1600, Covington, KY 41011, and having a Commercial Registered office Provider and county of venue as follows: c/o Corporation Service Company, Dauphin County, which on June 30, 1997, 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. j2

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **NCS Healthcare of Washington, Inc.**, a corporation of the State of Ohio, with principal office located at 100 E. RiverCenter Boulevard, Suite 1600, Covington, KY 41011, and having a Commercial Registered office Provider and county of venue as follows: c/o Corporation Service Company, Dauphin County, which on October 7, 1998, 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. j2

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **Health Concepts and Services, Inc.**, a corporation of the State of Maryland, with principal office located at 100 E. RiverCenter Boulevard, Suite 1600, Covington, KY 41011, and having a Commercial Registered office Provider and county of venue as follows: c/o Corporation Service Company, Dauphin County, which on September 7, 1990, 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. j2

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **Euro Bio-Pharm Clinical Services, Inc.**, a corporation of the State of Delaware, with principal office located at 100 E. RiverCenter Boulevard, Suite 1600, Covington, KY 41011, and having a Commercial Registered office Provider and county of venue as follows: c/o Corporation Service Company, Dauphin County, which on July 26, 1994, 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. j2

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **Anderson Medical Services, Inc.**, a corporation of the State of Delaware, with principal office located at 100 E. RiverCenter Boulevard, Suite 1600, Covington, KY 41011, and having a Commercial Registered office Provider and county of venue as follows: c/o Corporation Service Company, Dauphin County, which on April 12, 1996, 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. j2

NOTICE IS HEREBY GIVEN that Articles of Incorporation for **SPIDERTEK SOLUTIONS INC.**, were filed with and accepted by the Department of State for the Commonwealth of Pennsylvania on November 4, 2008 in accordance with the provisions of Pennsylvania Business Corporation Law of 1988. j2

NOTICE IS HEREBY GIVEN that **New & Almost New Mattresses Inc.**, a foreign business corporation incorporated under the laws of the State of New York, intends to withdraw from doing business in this Commonwealth. The address, including street and number, if any, of its principal office under the laws of its jurisdiction is 175 Central Avenue South, Bethpage, NY 11714.

Its last registered office in this Commonwealth is c/o Corporation Service Company and is deemed for venue and official publication purposes to be located in Dauphin County. j2

NOTICE IS HEREBY GIVEN that **American Benefit Resource/Rx, Inc.**, a Delaware Corporation intends to file an Application for Termination of Authority and the registered office is located at c/o Corporation Service Company, Dauphin County, Pennsylvania. j2

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **PURALUBE HOLDINGS, INC.**, a corporation of the State of Delaware, with principal office located at 1000 Westlakes Drive, Suite 300, Berwyn, PA 19312, and having a Commercial Registered office Provider and county of venue as follows: c/o Corporation Service Company, Dauphin County, which on May 2, 1994, 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. j2

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that **Senior Care Plans/Rx America Agency, Inc.**, a Delaware Corporation intends to file an Application for Termination of Authority and the registered office is located at c/o Corporation Service Company, Dauphin County, Pennsylvania. j2

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **PharmaSource Healthcare, Inc.**, a corporation of the State of Georgia, with principal office located at 100 E. RiverCenter Boulevard, Suite 1600, Covington, KY 41011, and having a Commercial Registered office Provider and county of venue as follows: c/o Corporation Service Company, Dauphin County, which on November 5, 1997, 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. j2

FIRST PUBLICATION

Fictitious Notices

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, 54 Pa.C.S. §301, et seq., and its amendments and supplements, of filing with the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on the 23rd day of September, 2008, an application for conducting business under the assumed or fictitious name of **Bingaman's Auto Sales** with its principal place of business located at 119 Main Street, Lykens, Pennsylvania, Dauphin County, Pennsylvania 17048.

The names and addresses of all persons owning or interested in said business are: Keith A. Bingaman - 449 Main Street, Lykens, PA 17048; and Kyle A. Bingaman - 451 Main Street, Lykens, PA 17048

JOSEPH D. KERWIN, Esq.
Kerwin & Kerwin
4245 State Route 209
Elizabethville, PA 17023
(717) 362-3215

j2

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, 54 Pa.C.S. §301, et seq., and its amendments and supplements, of filing with the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on the 23rd day of September, 2008, an application for conducting business under the assumed or fictitious name of **Bingaman's Auto Center** with its principal place of business located at 119 Main Street, Lykens, Pennsylvania, Dauphin County, Pennsylvania, 17048.

The names and addresses of all persons owning or interested in said business are: Keith A. Bingaman - 449 Main Street, Lykens, PA 17048; and Kyle A. Bingaman - 451 Main Street, Lykens, PA 17048.

JOSEPH D. KERWIN, Esq.
Kerwin & Kerwin
4245 State Route 209
Elizabethville, PA 17023
(717) 362-3215

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FIRST PUBLICATION

Miscellaneous Notices

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

No. 2007 CV 8214 MF

**WELLS FARGO BANK, N.A.
IN TRUST FOR THE BENEFIT
OF THE CERTIFICATEHOLDERS
OF ASSET BACKED SECURITIES
CORPORATION HOME EQUITY
LOAN TRUST, SERIES OOMC
2005-HE6, Plaintiff**

vs.

**CHANSIER A. WILLIAMS and
MAI T. NGUYEN, Defendants**

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

**TO: Chansier A. Williams
259 Worcester Avenue
Harrisburg, Pennsylvania 17111

Mai T. Nguyen
259 Worcester Avenue
Harrisburg, Pennsylvania 17111**

TAKE NOTICE

YOU ARE HEREBY NOTIFIED that the Sheriff's Sale of Real Property (real estate) will be held:

DATE: February 26, 2009

TIME: 10:00 a.m.

LOCATION: Sheriff's Office
Dauphin County Administration Building
Commissioner's Hearing Room
4th Floor - Market Square
Harrisburg, Pennsylvania 17101

THE PROPERTY TO BE SOLD is delineated in detail in a legal description mainly 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. (SEE FOLLOWING DESCRIPTION)

THE LOCATION of your property to be sold is: 259 Worcester Avenue, Harrisburg, Pennsylvania 17111.

THE JUDGMENT under or pursuant to which your property is being sold is docketed in the within Commonwealth and County to: Number 2007 CV 8214 MF.

THE NAME OF THE OWNER OR REPUTED OWNER of this property is: Chansier A. Williams and Mai T. Nguyen.

A SCHEDULE 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 of this County 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 the within County at the Courthouse address specified herein.

**THIS 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 away. 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 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

FIRST PUBLICATION

Miscellaneous Notices

**THE LEGAL RIGHTS
YOU MAY HAVE ARE:**

1. You may file a petition with the Court of Common Pleas of the within 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 the within 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 the within 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 - Civil Division, of the within County Courthouse, before a presentation to the Court.

SHERIFF'S OFFICE

TERRENCE J. McCABE, Esq.
MARC S. WEISBERG, Esq.
EDWARD D. CONWAY, Esq.
MARGARET GAIRO, Esq.
McCabe, Weisberg and Conway, P.C.
123 South Broad Street, Suite 2080
Philadelphia, PA 19109
(215) 790-1010

j2

**ACQUISITION OF
ABSOLUTE TITLE IN FEE SIMPLE
MANSBERGER ELEMENTARY SCHOOL
PROPERTY**

MIDDLETOWN AREA SCHOOL DISTRICT, along with its predecessors, having used and held the property known as the George M. Mansberger Elementary School for a public purpose for a period of not less than ten years, declares its intent to acquire an absolute title in fee simple to the property, pursuant to the provisions of 53 P.S. §1171 et seq. The property is described as:

ALL THAT CERTAIN piece or parcel of land located in the Borough of Middletown, Dauphin County, Pennsylvania more particularly bounded and described as follows, to wit:

BEGINNING at a point at the southwest corner of South Wood Street and Ann Street; thence along the southern line of Ann Street, westwardly a distance of two hundred twenty-five (225) feet, more or less, to the eastern line of Fisher Avenue; thence along the eastern line of said Fisher Avenue, southwardly a distance of two hundred ten (210) feet, more or less to the northern line of Witherspoon Street; thence along the northern line of said Witherspoon Street, eastwardly a distance of two hundred twenty-five (225) feet, more or less, to the western line of South Wood Street; thence along the western line of said South Wood Street, a distance of two hundred ten (210) feet, more or less to the southern line of Ann Street, aforesaid, the place of BEGINNING.

TOGETHER with the school building to be constructed thereon in accordance with provisions hereof, to be known as the First Ward Elementary School, including all future additions thereto and alterations and improvements thereof, from time to time, constructed, made or acquired by the Grantor herein, and together with all fixtures, furnishings, equipment and related facilities hereafter, from time to time, owned by the Grantor herein, and located on said land or in said school building and used or useful in connection with use and operation thereof.

The property described above was acquired originally for municipal purposes on September 10, 1984 from the Middletown Area Joint School Authority. Absolute title in fee simple shall forever extinguish any restrictive covenant that may encumber a portion of the property as a result of the deed from Martin Kendig and Sarah, his wife,

FIRST PUBLICATION

Miscellaneous Notices

to George Yentzer, Henry Hawk and Francis Murray, Trustees of the Portsmouth School, dated August 9, 1836, and recorded October 19, 1836, in the Office of the Recorder of Deeds of the County of Dauphin, Pennsylvania, in Deed Book I, Volume 2, at page 218.

Additional information regarding this property may be obtained by contacting the Middletown Area School District.

MIDDLETOWN AREA
SCHOOL DISTRICT

David Franklin
Business Manager

j2

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

CIVIL ACTION – LAW

ACTION TO QUIET TITLE

No. 2008 CV 17400 Q.T.

WCI PARTNERS, L.P., Plaintiff

vs.

**ALTERNATIVE LENDING
MORTGAGE CORPORATION and
JOEL DAVIS, his heirs, successors
and assigns, Defendant**

**TO: ALTERNATIVE LENDING
MORTGAGE CORPORATION,
Defendant**

NOTICE IS HEREBY GIVEN that on the 16th day of December, 2008, the above named Plaintiff filed a Complaint to Quiet Title as above noted against you seeking a Court Order decreeing that Plaintiff is owner of the premises below described in fee simple, free and clear of any and all right, title, interest, claim or demand which you may have in and to said premises. Plaintiff claims to be the owner of said premises by virtue of a tax sale. Plaintiff further seeks to clear and remove any and all clouds of title for the premises which are described as follows:

ALL THAT CERTAIN lot, parcel, piece of ground situate in the City of Harrisburg, Dauphin County, Pennsylvania, bounded and described according to a survey made by Gerrit J. Bentz, R.S., dated November 8, 1974, as follows, to wit:

BEGINNING at a point of the East side of Penn Street (Thirty-five (35) feet wide), said point being measured along the said side of Penn Street Thirty-one (31) feet North of the northeast corner of Delaware Avenue and Penn Street; thence extending from said point of beginning and along the said side of Penn Street, North One (1) degree Twenty (20) minutes West, the distance of Fifteen (15) feet to a point at the dividing line between houses 1927 and 1929; thence through the center of a partition wall between houses Nos. 1927 and 1929, North Eighty-eight (88) degrees Forty (40) minutes east, the distance of Sixty-eight (68) feet to a post on the West side of an alley (Three (3) feet wide); thence along said alley South One (1) degree Twenty (20) minutes East, the distance of Fifteen (15) feet to a post at the dividing line between house Nos. 1925 and 1927; thence through the center line of a partition wall between houses Nos. 1925 and 1927, South Eighty-eight (88) degrees Forty (40) minutes West, the distance of Sixty-eight (68) feet to a point. THE PLACE OF BEGINNING.

BEING known as 1927 Penn Street.

YOU ARE FURTHER NOTIFIED that the Court of Common Pleas of Dauphin County, Pennsylvania, has ordered that service of the Complaint be made upon Alternative Lending Corporation, Defendant, by an Order dated December 18, 2008, which requires that this notice be published one time in the Dauphin County Reporter and also in one newspaper of general circulation in Dauphin County, Pennsylvania.

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.

FIRST PUBLICATION

Miscellaneous Notices

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

SUSAN H. CONFAIR, Esq.
2331 Market Street
Camp Hill, PA 17011
(717) 763-1383

j2

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

CIVIL ACTION – LAW

No. 2008 CV 03492 MF

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**

SENIOR HOMEOWNERS, Plaintiff

vs.

**UNKNOWN HEIRS., SUCCESSOR,
ASSIGNS AND ALL PERSONS,
FIRMS OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR
INTEREST FROM OR UNDER
VIDA M. YODER, DECEASED
MORTGAGOR AND REAL OWNER,
Defendants**

**TO: Unknown heirs, successors, assigns
and all persons, firms or associations
claiming right, title or interest
from or under Vida M. Yoder,
Deceased Original Mortgagor and
Real Owner.**

**PREMISES SUBJECT
TO FORECLOSURE
917 S. 17th STREET
HARRISBURG, PA 17104**

NOTICE

YOU ARE HEREBY NOTIFIED that if you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing to 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 THIS 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.

LAWYER REFERRAL SERVICE
NORTH PENN LEGAL SERVICES, INC.
410 Bicentennial Building
15 Public Square
Wilkes-Barre, PA 18701
(570) 825-8567

MARY L. HARBERT-BELL, Esq.
Milstead & Associates, LLC
Woodland Falls Corporate Park
220 Lake Drive East, Suite 301
Cherry Hill, NJ 08002
(856) 482-1400

j2

FIRST PUBLICATION

Miscellaneous Notices

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

CIVIL ACTION – LAW

CIVIL DIVISION

No. 2008-CV-13541-MF

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**

**US BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR ASSET-BACKED
PASS-THROUGH CERTIFICATES
SERIES 2006-WFHE3, Plaintiff**

vs.

**ESTATE OF BRIAN JOSEPH GARVEY
ANNA GARVEY, ADMINISTRATRIX
And HEIR OF THE ESTATE
OF BRIAN GARVEY**

**a/k/a BRIAN JOSEPH GARVEY
UNKNOWN HEIRS, SUCCESSORS,
ASSIGNS AND ALL PERSONS,
FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE, OR
INTEREST FROM OR UNDER
BRIAN GARVEY**

**a/k/a BRIAN JOSEPH GARVEY,
DECEASED, Defendants**

NOTICE

**TO: Unknown Heirs, Successors,
Assigns And All Persons,
Firms, Or Associations Claiming
Right, Title, Or Interest From
Or Under Brian Garvey
a/k/a Brian Joseph Garvey, Deceased**

YOU ARE HEREBY NOTIFIED that on OCTOBER 16, 2008, Plaintiff, US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR ASSET-BACKED PASS-THROUGH CERTIFICATES SERIES 2006-WFHE3, 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. 2008-CV-13541-MF. Wherein Plaintiff seeks to foreclose on the

mortgage secured on your property located at 27 SOUTH 16th STREET, HARRISBURG, PA 17104-1372 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 twenty (20) days from the date of this publication or a Judgment will be entered against you.

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.

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BAR ASSOCIATION PAGE
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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

Motion Judge of the Month

JANUARY 2009
FEBRUARY 2009

Judge Jeannine TURGEON
Judge Richard A. LEWIS

Opinions Not Yet Reported

BAR ASSOCIATION PAGE – Continued

MISCELLANEOUS SECTION

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

AO-24-2008

No. 0004-19 MD 2008

IN RE: MOTION JUDGE ASSIGNMENTS

CALENDAR YEAR 2009

ADMINISTRATIVE ORDER

AND NOW, this 3rd day of December, 2008, IT IS HEREBY ORDERED that the Motions Judge Assignments for calendar year 2009 are as follows:

JANUARY Judge Jeannine TURGEON
FEBRUARY Judge Richard A. LEWIS
MARCH Judge Lawrence F. CLARK, JR.
APRIL Judge Scott Arthur EVANS
MAY Judge Joseph H. KLEINFELTER
JUNE Judge Todd A. HOOVER
JULY Judge Bruce F. BRATTON
AUGUST Judge Lawrence F. CLARK, JR.
SEPTEMBER Judge John F. CHERRY
OCTOBER Judge Scott Arthur EVANS
NOVEMBER Judge Todd A. HOOVER
DECEMBER Judge Bruce F. BRATTON

BY THE COURT:

j2-j9

/s/ Richard A. Lewis, *President Judge*

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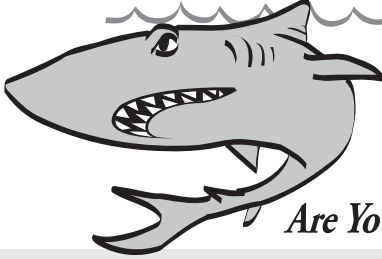
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Chuck Hinson, President and Title Abstractor