

**THE**  
**Dauphin County Reporter**

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Bowser v. Crossville BNRV Sales, LLC

424

Bar Association Page

Inside Back Cover

**INTELLECTUAL PROPERTY LAW**

- \* Patents
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- \* Copyrights
- \* Unfair Competition
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#### **Estate Notices**

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##### **DECEDENTS ESTATES**

NOTICE IS HEREBY GIVEN that letters testamentary or of administration have been granted in the following estates. All persons indebted to the estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors or their attorneys named below.

##### **FIRST PUBLICATION**

ESTATE OF ROBERT G. SCHUBAUER, late of Susquehanna Township, Dauphin County, Pennsylvania (died July 17, 2011). Personal Representative: Eugene J. Schubauer, 1350 Buttonwood Drive, Dauphin, PA 17018. a19-s2

ESTATE OF JANET E. DEAVEN, late of Lower Paxton Township, Dauphin County, Pennsylvania (died July 14, 2011). Executor: Ronald E. Deaven, 129 Ferree Street, Harrisburg, PA 17109. Attorney: Jan L. Brown, Esq., Jan L. Brown & Associates, 845 Sir Thomas Court, Suite 12, Harrisburg, PA 17109. a19-s2

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ESTATE OF MARGARET P. FISSEL a/k/a POLLY FISSEL, late of Susquehanna Township, Dauphin County, Pennsylvania (died November 4, 2010). Administrator: Peter W. Bastian of Mississauga, Ontario, Canada, c/o Fiona K. Fadness, Esq., 301 South Hanover Street, Carlisle, PA 17013. Attorney: Fiona K. Fadness, Esq., 301 South Hanover Street, Carlisle, PA 17013. a19-s2

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ESTATE OF JOANN V. WERLINE, late of Middle Paxton Township, Dauphin County, Pennsylvania (died June 10, 2011). Personal Representative: Terri Brown, 600 Nyes Lane, Dauphin, PA 17018. Attorney: William L. Adler, Esq., 4949 Devonshire Road, Harrisburg, PA 17109. a19-s2

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ESTATE OF WINIFRED L. WALTERS, late of the Borough of Hummelstown, Dauphin County, Pennsylvania (died August 3, 2011). Co-Executrices: Carol Z. Knight, P.O. Box 432, Halifax, PA 17032; Kay E. Koppenhaver, 160 Maple Grove Terrace, Peach Tree City, GA 30269 and Annette Reichenbaugh, 5360 Asleigh Road, Fairfax, VA 22030. Attorney: Jean D. Seibert, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. a19-s2

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ESTATE OF JAMES F. OBROCK, late of Swatara Township, Dauphin County, Pennsylvania (died May 26, 2011). Personal Representative: John A. Obrock, 515 South 29th Street, Harrisburg, PA 17104. a19-s2

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**FIRST PUBLICATION**

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**Estate Notices**

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ESTATE OF EDWARD A. DENISEVICZ, late of Swatara Township, Dauphin County, Pennsylvania (died July 24, 2011). Executor: Edward C. Denisevicz, 34 Dayleview Road, Berwyn, PA 19312. Attorney: Jean D. Seibert, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101.

a19-s2

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ESTATE OF BERNICE J. WILT, late of the Borough of Millersburg, Dauphin County, Pennsylvania (died July 24, 2011). Executor: Bruce L. Ossman, 1072 Forrest Road, West Chester, PA 19382. Attorney: Holly M. Kerwin, Esq., Kerwin & Kerwin, LLP, 27 North Front Street, Harrisburg, PA 17101.

a19-s2

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ESTATE OF LUCILLE PARKS, late of Lower Paxton Township, Dauphin County, Pennsylvania (died July 14, 2011). Personal Representative: Theotis Winfred Braddy. Attorney: David W. Reager, Esq., Reager & Adler, PC, 2331 Market Street, Camp Hill, PA 17011. Telephone (717) 763-1383.

a19-s2

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ESTATE OF EDNA S. WIEGER, late of Lower Paxton Township, Dauphin County, Pennsylvania (died May 13, 2011). Successor Trustee: Helen L. Wieger, Trust Administration of the Edna S. Wieger Revocable Living Trust. Attorney: Christa M. Aplin, Esq., Jan L. Brown & Associates, 845 Sir Thomas Court, Suite 12, Harrisburg, PA 17109. Telephone (717) 541-5550.

a19-s2

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ESTATE OF LISA E. OGDEN a/k/a LISA ELAINE OGDEN, late of Harrisburg, Dauphin County, Pennsylvania. Executor: Ryan Ogden, 4182 Ridgeview Road, Harrisburg, PA 17112. Attorney: Heather D. Royer, Esq., Smigel, Anderson & Sacks, LLP, 4431 North Front Street, Third Floor, Harrisburg, PA 17110.

a19-s2

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ESTATE OF JOAN CLELAND, late of Highspire, Dauphin County, Pennsylvania (died July 23, 2011). Executrix: Christine M. Austin, 815 Colebrook Road, Middletown, PA 17057. Attorney: Kendra A. Mohr, Esq., Pannebaker & Mohr, P.C., 4000 Vine Street, Middletown, PA 17057. Telephone (717) 944-1333.

a19-s2

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ESTATE OF SARAH SEAGE, late of West Hanover Township, Dauphin County, Pennsylvania. Executor: Christopher C. Anderson, 106 South Clover Lane, Harrisburg, PA 17112. Attorney: Melanie Walz Scaringi, Esq., Scaringi & Scaringi, P.C., 2000 Linglestown Road, Suite 106, Harrisburg, PA 17110.

a19-s2

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ESTATE OF KENNETH E. KOPPENHAVER, late of Swatara Township, Dauphin County, Pennsylvania. Executrix: Kelly J. Koppenhaver, 142 15th Street, Unit E, New Cumberland, PA 17070. Attorneys: Butler Law Firm, 1007 Mumma Road, Suite 101, Lemoyne, PA 17043.

a19-s2

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ESTATE OF PHILIP J. SPAGNOLO, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executor: Anthony Bianchi, 404 Sharon Avenue, Mechanicsburg, PA 17055. Attorney: Bridget M. Whitley, Esq., Skarlatos & Zonarich LLP, 17 South Second Street, 6th Floor, Harrisburg, PA 17101.

a19-s2

**Bowser v. Crossville BNRV Sales, LLC****Contracts — Breach — Unfair Trade Practices and Consumer Protection Law — Uniform Commercial Code — Alternative Dispute Resolution — Arbitration Clause — Unconscionability.**

Plaintiffs filed a civil action alleging various failures on the Defendant's part in conjunction with the sale of and repairs to a new recreational vehicle (RV). The Court found the Plaintiffs' claims to be properly arbitrable, and sustained Defendant's Preliminary Objection asserting the existence of a binding arbitration clause in the sales contract.

1. When parties agree to arbitration in a clear and unmistakable manner, the courts will make every reasonable effort to favor such agreements. *Smith v. Cumberland Group, Ltd.*, 687 A.2d 1167, 1171 (Pa. Super. 1997).

2. Arbitration language providing for mandatory arbitration of "any controversy or claim arising out of or relating to this Agreement or breach thereof," is framed in the broadest conceivable language from which it must be concluded that the parties intended the scope of the submission to be unlimited. Where there is an unlimited arbitration clause, any dispute which may arise between the parties concerning the principal contract is to be settled pursuant to its terms. *Borough of Ambridge Water Auth. v. Columbia*, 328 A.2d 498, 501 (Pa. 1974).

3. In considering the scope of unlimited arbitration clauses, courts should interpret them to extend to any dispute arising from the contractual relationship. *Waddell v. Shriber*, 348 A.2d 96, 101 (Pa. 1975).

4. There is nothing *per se* wrong with a contract of adhesion; a contract of adhesion is only unconscionable if it unreasonably favors the drafter. *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 882 (Pa. Super. 2006). A contract is procedurally unconscionable when one party had no meaningful choice in the acceptance of the challenged provision. *Sally v. Option One Mortgage Corp.*, 925 A.2d 115, 119-20 (Pa. 2007).

Defendant's Preliminary Objection. C.P., Dau. Co., No. 2010 CV 7875 EQ. Objection sustained.

*Daryl J. Gerber*, for Plaintiffs

*Devon M. Jacob*, for Defendant

TURGEON, J., July 22, 2011. – Before the Court are the preliminary objections of Defendant Crossville BNRV Sales to the Complaint filed by Plaintiffs Michael Bowser and Brenda Morrison-Bowser. For the reasons set forth below, Defendant's objection asserting the existence of binding arbitration is sustained and the matter is dismissed to proceed to arbitration.

**BACKGROUND**

The allegations set forth in the pleadings are as follows: on September 18, 2009, Plaintiffs attended an RV and camping show at the Giant Center in Hershey PA. After meeting with a sales person from one of

## Bowser v. Crossville BNRV Sales, LLC

Defendant's stores in Tennessee, Plaintiffs agreed to purchase a new 2010 Coachman Brookstone 367, to be delivered to Defendant's Pennsylvania facility, known as Boat N RV Superstore, located in Hamburg PA.<sup>1</sup> Plaintiffs signed a document memorializing their verbal terms at that time. On October 20, 2010, Plaintiffs entered into a written, two-page Sales Agreement with Defendant at its Hamburg PA dealership specifying the terms of sale. The Sales Agreement indicated, among other things, that Plaintiffs' RV was covered by a factory warranty and that Plaintiffs had paid Defendant \$3,004 to purchase an extended warranty through a third party, Interstate National (d/b/a Interstate Star RV). The Sales Agreement also included language requiring submission of all disputes to binding arbitration, as follows:

**9. Applicable Law/Arbitration:** This agreement shall be governed by the laws of the State of New York and the Uniform Commercial Code as adopted in that state. *Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules, and judgment on the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof.*

(Defendant's Preliminary Objections, Exbt. A) (underscoring added).

Plaintiffs assert that prior agreeing to purchase the RV on September 18, 2009, Defendant agreed to add at no cost to Plaintiffs a front skirt for the RV and to drill an access port to support additional media. Plaintiffs were advised at that time they did not need to include these items in writing. Defendant's sales person also told them the RV would be ready by October 16 at the Hamburg store. On October 25, Plaintiffs inquired whether their RV was ready for pick up. They were told that all customizations were done and that they could pick it up the next day. Plaintiffs arrived October 26 with their old camper for trade-in and discovered the skirt was not attached and the access port not drilled.

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1. The pleadings indicates that Defendant operates four Boat N RV stores including in Hamburg PA, Rockwood TN, West Cossackie NY and Ridgeland SC. This court notes that the Hamburg Boat N RV Superstore is currently registered with the Pennsylvania Secretary of State as having its principal place of business in West Cossackie NY. Defendant avers in its Complaint that named Defendant "Crossville BNRV Sales" is a limited liability corporation with its principal address in Rockwood TN.

## Bowser v. Crossville BNRV Sales, LLC

Defendant's employees indicated no knowledge that inclusion of these items had been promised to Plaintiffs as part of their purchase. Defendant agreed to add the skirt and drill the hole if Plaintiffs paid for parts and labor. After Plaintiffs indicated they would not buy the RV without the promised items, Defendant offered to provide labor if Plaintiffs paid for parts. Plaintiffs agreed to this compromise. Defendant also offered at that time to winterize the RV for free.

Plaintiffs were next informed the RV was ready on November 13. Plaintiff Michael Bowser traveled to Hamburg, and after waiting a while for additional work to be completed, took possession of the RV and drove it to Plaintiffs' Harrisburg area home. Defendant's employees informed him at that time the camper had been winterized. Plaintiff Brenda Morrison-Bowser thereafter did a walk through and discovered a drill hole in the shower stall which Defendant appeared to have concealed with a vacuum hose. Plaintiffs notified Defendant which agreed to install a new shower. On November 14, Defendant's representative picked up the RV from the Harrisburg area and drove it to Hamburg.

Plaintiffs allege they continually communicated with Defendant over the next few months as to the status of the shower stall but that Defendant was generally not responsive. Finally, on January 19, 2010, Plaintiffs were told that a new shower would be installed shortly and that after the water lines were run, the camper would be re-winterized and returned to them. Plaintiffs drove to Hamburg on January 26 and discovered the shower stall had not been replaced but instead, the hole had been badly patched. They also noticed that the repair order created by Defendant, dated December 30, 2009, stated that "shower stall replaced." (Complaint, Exbt. F) Plaintiffs sought an explanation and were told by Defendant's employees that the factory warranty called for repair and not replacement.

Plaintiffs thereafter spoke with the manufacturer Coachman, with whom they had their factory warranty, and were told that all repairs for Coachman campers were to be done through a company called Ultra Glas and that Defendant should have contacted Coachman to approve and coordinate the shower repair through them instead of trying to repair the stall itself. Ms. Morrison-Bowser contacted Ultra Glas on January 29 and was told that Defendant never contacted it to perform the shower stall repair. Plaintiffs also discovered around February 1, 2010, that the water filtration system was broken. After consulting with an employee of Defendant, Defendant allegedly admitted the RV had not been winterized. Defendant agreed to pick up the RV and winterize it.

## Bowser v. Crossville BNRV Sales, LLC

On February 11, Ms. Morrison-Bowser had a conversation with Defendant's general manager during which he refused to answer whether his company had contacted Coachman to make repairs as required by the factory warranty. Ms. Morrison-Bowser also claimed that the general manager told her that the shower repair looked fine and that the camper had been winterized but that Plaintiffs must have tampered with it. On February 10, Ms. Morrison-Bowser participated in a conference call with the general manager, another employee of Defendant and a representative of Coachman's warranty division. According to Plaintiffs, the Coachman representative reiterated that it had not been contacted about Plaintiffs' RV and also informed Ms. Morrison-Bowser that it could not be responsible for any repairs for defects related to the failure to winterize.

Plaintiffs then looked into the extended warranty they had purchased from Defendant on October 20, 2009, to be administered by Interstate Star RV. On February 16, 2010, Plaintiffs were told by an Interstate Star RV representative that it had no record of Plaintiffs' warranty or of a payment from Defendant to purchase the warranty. A few days later, an Interstate Star RV representative called Plaintiffs and told them the extended warranty was now in place. Plaintiffs attempted to find out from both Interstate Star RV and from Defendant when the warranty had been purchased but neither would divulge that information. A few weeks later, Interstate Star RV informed Plaintiffs that the extended warranty commenced on February 17, 2010, when it received a \$3,004 payment from Defendant, but as a courtesy, it would back date the warranty to October 20, 2009.

Around February 20, 2010, Plaintiffs did a walk through of the RV at Defendant's site and noticed that a new shower head and hose had been installed, the water heater had been removed and either repaired or replaced, the shower stall had again been repaired but the repair job was a different color than the rest of the shower stall, the water filtration system had been replaced, and the trailer was presumably winterized. Plaintiffs were informed that they had 72 hours to remove the camper and that further repairs must be done by Defendant, despite the factory warranty requiring repairs through Coachman. On February 21, Plaintiffs removed the camper and took it to another Coachman dealer for an inspection. The inspector discovered that the hot water heater had been replaced with one of a different style and model instead, that the support system for the hot water heater had been defectively repaired and that the shower door leaked. Plaintiffs subsequently had the shower stall repaired to the proper color. Plaintiffs' total repair costs were \$317.32.

## Bowser v. Crossville BNRV Sales, LLC

Plaintiffs thereafter brought this current action by filing a three count Complaint. In Count I, “Breach of Contract,” Plaintiffs assert that Defendant failed to tender a brand new camper without defects which amounted to a breach of the parties’ written agreement. (Complaint ¶ 95)

In Count II, “Unfair Trade Practices and Consumer Protections Law,” Plaintiffs make a number of claims for violations of that Law. Plaintiffs first assert Defendant committed unfair and deceptive acts or practices in violation of Pennsylvania UTPCPL Section 201-2(vi), “by representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand” and of § 201-2 (vii) “by representing that goods are of a particular style or model, if they are of another.” 73 P.S. § 201-2(vi) and (vii). Specifically, Plaintiffs assert that Defendant committed these violations by representing that the water heater, sealant and wooden frame housing were new when they were replacements.

Plaintiffs next assert that Defendant committed unfair and deceptive acts or practices in violation of Section 201-2(xiv), “by failing to comply with the terms of a written warranty given to the buyer at or after a contract for the purchase of goods or services is made.” 73 P.S. § 201-2(xiv). Specifically, Plaintiffs assert Defendant failed to abide by the terms of the Coachman factory warranty by not having Coachman’s agent perform all of the repairs as required under that warranty.

Plaintiffs also assert that Defendant committed unfair and deceptive acts or practices in violation of UTPCPL Section 201-2(xvi) by “making repairs ... or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed in writing.” 73 P.S. § 201-2(xiv). Specifically, Plaintiffs aver that Defendant made repairs to the shower, hot water heater, sealant and wooden housing that were inferior and below the standard of a brand new camper.

Plaintiffs final UTPCPL claim is that Defendant committed unfair and deceptive acts or practices in violation of Section 201-2(xxi) “by engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or misunderstanding.” 73 P.S. § 201-2(xxi). Under this claim, Plaintiffs make overarching allegations concerning Defendant’s entire course of conduct including its failure to adhere initially to its promise to include a skirt and access port at no cost to Plaintiffs, indicating the camper was winterized on numerous occasions when it was not, concealing the hole in the shower wall, failing to replace the shower stall and instead badly repairing it while representing to Plaintiffs it had been replaced and failing to purchase Plaintiffs’ extended warranty from Interstate Star RV until after Plaintiffs inquired as to its status.



## Bowser v. Crossville BNRV Sales, LLC

In Count III, titled “Breach of the Uniform Commercial Code,” Plaintiffs generally, assert that Defendant committed the breach wherein Defendant failed to deliver to them the RV they purchased from Defendant in a timely manner or in the promised condition.

## LEGAL DISCUSSION

Defendant raises various preliminary objections to the Complaint including existence of alternate dispute resolution (arbitration). Since this Court finds that all of Plaintiff’s claims are subject to arbitration, we address only that issue. As noted above, the arbitration language in Paragraph 9 of the parties’ October 20, 2009 Sales Agreement states that “[a]ny controversy or claim arising out of or relating to this contract, or the breach there of, shall be settled by arbitration administered by the American Arbitration Association in accordance with its commercial arbitration rules....”<sup>2</sup>

The existence of an arbitration agreement, as a form of alternate dispute resolution, is properly raised by preliminary objection. Pa.R.C.P. 1028(a)(6). Preliminary objections, the end result of which would be dismissal of a cause of action, should be sustained only in cases that are clear and free from doubt. *Hazleton Area School District v. Bosak*, 671 A.2d 277, 281 (Pa. Commw. 1996). The test is whether it is clear from all facts pleaded that the pleader will be unable to prove facts legally sufficient to establish his or her right to relief. *Id.* “[W]hen parties agree to arbitration in a clear and unmistakable manner, the court will make every reasonable effort to favor such agreements.” *Smith v. Cumberland Group, Ltd.*, 687 A.2d 1167, 1171 (Pa. Super. 1997) (citation omitted). When one party to an agreement seeks to prevent another from proceeding to arbitration, judicial inquiry is limited to determining (1) whether a valid agreement to arbitrate exists between the parties and, if so, (2) whether the dispute involved is within the scope of the arbitration provision. *Id.* (citations omitted). “If a valid arbitration agreement exists between the parties and [the] claim is within the scope of the agreement, the controversy must be submitted to arbitration.” *Id.* (citation omitted). The threshold issue of whether a party has agreed to arbitrate is a jurisdictional question to be decided by a court. *Id.* (citations omitted). “Public policy favors arbitration to settle disputes, quickly, fairly, and economically.” *Smay v. E.R. Stuebner, Inc.*, 864 A.2d 1266, 1272 (Pa. Super. 2004).

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2. Also included on the Sales Agreement was a checked box, directly above where Plaintiffs signed the document, which stated that BUYER ACKNOWLEDGES THAT IF THIS BOX IS CHECKED, THIS AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE.

## Bowser v. Crossville BNRV Sales, LLC

There is no claim here that the arbitration clause included within the parties' sales contract is invalid (except to the extent addressed below). Thus, our principal inquiry is whether the claims made by Plaintiffs fall within the scope of the arbitration provision. "It is well-settled that the issue of whether a particular dispute falls within a contractual arbitration provision is a matter of law for the court to decide." *Shaddock v. Christopher J. Kaclik Inc.*, 713 A.2d 635, 637 (Pa. Super. 1998). "The scope of arbitration is determined by the intention of the parties as ascertained in accordance with the rules governing contracts generally." *Smay v. E.R. Stuebner, Inc.* at 1273 (citation omitted).

Our Supreme Court has held that arbitration language identical to that at issue here, providing for mandatory arbitration of "any controversy or claim arising out of or relating to this Agreement or the breach thereof," is "framed in the broadest conceivable language from which it must be concluded that the parties intended the scope of the submission to be unlimited." *Borough of Ambridge Water Auth. v. Columbia*, 328 A.2d 498, 501 (Pa. 1974) (citations omitted). "Where, as here, there is an unlimited arbitration clause, any dispute which may arise between the parties concerning the principal contract is to be settled pursuant to its terms." *Id.* (citations omitted). In considering the scope of unlimited arbitration clauses, courts should interpret them "to extend to any dispute arising from the contractual relationship." *Waddell v. Shriber*, 348 A.2d 96, 101 (Pa. 1975). *See also*, *Smay* at 1271 (arbitration provision covering any controversy or claim arising out of or related to the contract or the breach thereof was unrestricted and encompassed all disputes that related to the parties' contractual obligations) and *Smith v. Cumberland Group* at 1173 (provision requiring mandatory arbitration of all contractually related disputes is written in the broadest conceivable language evidencing that the parties intended an unlimited arbitration clause).

Plaintiffs' causes of action for of breach of contract, violation of the UTPCPL and breach of the UCC fall within the "unlimited" or "unrestricted" scope of the arbitration clause in this case. Plaintiffs' allegations all arise out of or relate to the contract for the sale of the RV, or for the breach thereof. Count I explicitly claims breach of the written Sales Agreement. Similarly, Count III, directly arises from the contract for the sale of the RV wherein Plaintiffs have based this claim upon the allegation that Defendant failed to deliver to Plaintiffs the RV they purchased in a timely manner or in the promised condition. Finally, the various consumer claims made by Plaintiffs in Count II are all related to and arise from the sale of the RV including (1) that Defendant misrepresented to Plaintiffs that certain items they purchased (water

## Bowser v. Crossville BNRV Sales, LLC

heater, sealant and wooden housing) were in their original form when they were not, (2) that Defendant failed to comply with the terms of the factory warranty provided to Plaintiffs at the time the contract was entered by failing to have Coachman's agent perform all of the repairs as required under that warranty, (3) that Defendant made repairs (to shower, hot water heater, sealant and wooden housing) that were below the standard of a new camper which they had contracted to purchase, and (4) that Defendant engaged in deceptive and fraudulent conduct creating a likelihood of confusion or misunderstanding by failing to deliver to it the contracted for camper with the agreed modifications (skirt, drill hole, winterization, repairs, etc.) and failing to buy from a third party the extended warranty Plaintiffs had purchased from Defendant at the time of sale.

Plaintiffs suggest that because the gist of their claims involve consumer fraud and not breach of contract, their action falls outside the ambit of the arbitration clause. Our courts have consistently rejected such arguments. *Shaddock v. Kaclik, supra*, 713 A.2d 635, 637 (Pa. 1998); *Pittsburgh Logistics Sys., Inc. v. Professional Transportation and Logistics, Inc.*, 803 A.2d 776 (Pa. 2002); *Dodds v. Pulte Home Corp.*, 909 A.2d 348, 350-51 (Pa. 2006); *Warwick Township Water and Sewer Authority v. Bougher & James, Inc.*, 851 A.2d 953, 958 (Pa. Super. 2004), *alloc. denied*, 879 A.2d 783 (Pa. 2005).

In *Dodds v. Pulte Home Corp.*, the Superior Court held that the homeowners' action against a builder must be decided in arbitration. The homeowners in *Dodds* had contracted with the builder to construct a new home and later brought an action for breach of contract as well as for fraud and violation of the UTPCPL claiming false representation. The parties' arbitration clause required for "[a]ny controversy, claim or dispute arising out of or relating to this Agreement or purchase of the Home." *Id.* at 350. The court rejected the homeowners argument that its inclusion of claims alleging fraud and violation of the UTPCPL removed the action from the arbitration language, holding that the gist of the actions were in contract. *Id.* at 350.

The *Dodds* Court relied principally upon our Supreme Court's decision in *Shaddock, supra*, where the court held that arbitration was appropriate to resolve a homeowner's claim against the builder, *inter alia*, for fraudulent misrepresentation, a claim sounding in tort. The plaintiffs in *Shaddock* had similarly sought to avoid arbitration by arguing their claims of fraudulent misrepresentation and violations of the UTPCPL were distinct from their contract claims and thus not subject to arbitration. The arbitration clause in *Shaddock*, like the one

## Bowser v. Crossville BNRV Sales, LLC

here, required that all claims “arising out of, or relating to, this Contract or the breach thereof shall be decided by arbitration.” *Id.* at 637. The court stated that “the parties’ agreement mandates that all disputes arising out of the contract or the breach thereof be submitted to compulsory arbitration, without regard to whether the claims sound in tort or contract.” *Id.* at 639. Because it found the underlying tort claims arose out of the building contract or the alleged breach thereof, they upheld the mandatory arbitration provision. *Id.* As noted above, all of the consumer fraud claims asserted by Plaintiffs clearly arise and are related to their contract for the purchase of the Coachman RV.

Plaintiffs argue in their brief that “where one’s conduct has gained him an undue advantage or resulted in prejudice to another, Pennsylvania courts will not bind the parties to an arbitration clause,” citing *Smay, supra*. This court’s reading of that case does not support this statement. The full quote, set forth in *Smay*, is as follows:

[A] waiver of a right to proceed to arbitration pursuant to the term of a contract providing for binding arbitration should not be lightly inferred and unless one’s conduct has gained him an undue advantage or resulted in prejudice to another he should not be held to have relinquished the right.

*Smay* at 1278 (quoting *Kwalick v. Bosacco*, 478 A.2d 50, 52 (Pa. Super. 1984)). There is no allegation in this case that Defendant, by its conduct, has somehow waived its right to seek to enforce the arbitration provision included in the parties’ Sales Agreement.

To the extent that Plaintiffs are asserting that the arbitration language in this case is unconscionable, that argument fails. Our supreme court examined the unconscionability issue in the context of an arbitration clause in *Salley v. Option One Mortgage Corp.*, 925 A.2d 115 (Pa. 2007). There, the court noted that under Pennsylvania law, a contract or term is unconscionable and thus unenforceable where there is both (1) a lack of meaningful choice in the acceptance of the challenged provision, i.e. it is procedurally unconscionable, and (2) the provision unreasonably favors the party asserting it, i.e. it is substantively unconscionable. *Id.* The party challenging the arbitration agreement has the burden of demonstrating that both exist. *Id.* at 119-20.

Procedural unconscionability refers to “the process by which an agreement is reached and the form of an agreement, including the use therein of fine print and convoluted or unclear language.” *Harris v. Green Tree Fin. Corp.*, 183 F.3d 173, 181 (3d Cir. 1999). This element

## Bowser v. Crossville BNRV Sales, LLC

is satisfied if the agreement constitutes a contract of adhesion which is one offered by a party with excessive bargaining power and presented to the other party on a take-it-or-leave-it basis. *Denlinger, Inc. v. Dendler*, 608 A.2d 1061, 1066-67 (Pa. Super. 1992). An adhesion contract is generally a standard form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer who has little choice about the terms. *Bayne v. Smith*, 965 A.2d 265, 267 (Pa. Super. 2009) (citation omitted). There is nothing *per se* wrong with a contract of adhesion; a contract of adhesion is only unconscionable if it unreasonably favors the drafter. *Thibodeau v. Comcast Corp.*, 912 A.2d 874, 882 (Pa. Super. 2006) (citation omitted). “A contract, however, is ‘not unconscionable merely because the parties to it are unequal in bargaining position.’” *Alexander v. Anthony Int’l, L.P.*, 341 F.3d 256, 265 (3rd Cir. 2003) (quoting Restatement (Second) of Contracts, § 208 cmt. d).

Plaintiffs have failed to prove that the arbitration provision was reached in a procedurally unconscionable manner. As noted above, a contract is procedurally unconscionable when one party had no meaningful choice in the acceptance of the challenged provision. *Salley* at 119-20. Plaintiffs have failed to offer any evidence, much less assert, that the Sales Agreement as a whole, or the arbitration provision in particular, was offered to them as non-negotiable or on a take-it-or-leave-it basis.<sup>3</sup> The terms of the Sales Agreement do not otherwise state that the terms are non-negotiable or non-modifiable; in fact, Paragraph 14 of the Sales Agreement permits modification by the parties so long as the modification is signed and in writing. (Defendant’s Preliminary Objections, Exbt. A)

The record also reveals that Plaintiffs were not in an unduly weak position. Instead, the record shows that during the course of their purchase, they initially negotiated with Defendant to add an RV skirt and access port at no cost to Plaintiffs for parts or labor, later modified to Plaintiffs paying for parts. *Compare, Ostroff v. Alterra Healthcare Corp.*, 433 F. Supp. 2d 538, 544 (E.D. Pa. 2006) (court found plaintiff was offered a contract of adhesion and thus procedurally unconscionable whereby on the day plaintiff moved her mother from one assisted-living facility into another, she was told by defendant facility she could not

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3. Plaintiffs also bear the burden under Pennsylvania procedure of developing their claims. See Pa. R.C.P. 1028(c)(2) (Note) (recognizing that a preliminary objection seeking dismissal of claims due to the existence of alternate dispute resolution under Rule 1028(a)(6) requires development of factual record and further providing the non-moving party opposing the dismissal with the opportunity to provide a record where this preliminary objection is raised).

## Bowser v. Crossville BNRV Sales, LLC

complete the move until she signed a lengthy residency agreement presented that day and told it would be pointless to have her attorney review it because the defendant would not accept any changes) and *Hopkins v. New Day Financial*, 643 F. Supp. 2d 704, 717-18 (E.D. Pa. 2009) (procedural unconscionability existed where plaintiff employees were presented with an arbitration agreement at or near the time of initial hiring, believed that they would be terminated if they refused to sign it, felt they could not ask questions, were not given a copy of the document at signing and were unable to consult with counsel).

Plaintiffs have also failed to offer proof that the contract containing the arbitration provision is substantively unconscionable. Substantive unconscionability has been shown, for example, where the arbitration provision authorizes one party to choose the arbitrator or arbitration panel at its sole discretion. *Roberts v. Time Plus Payroll Servs.*, 2008 U.S. Dist. LEXIS 9421 (E.D. Pa. Feb. 6, 2008). Substantive unconscionability has also been found in a case where every provision in the clause favored the drafter including that the consumer pay all costs of arbitration, the power to arbitrate was held unilaterally by the drafter, the consumer waived the right to pursue a class action and where arbitration would take place in Texas even though the consumer was from Pennsylvania. *Antkowiak v. TaxMasters*, 2011 U.S. Dist. LEXIS 27468 (E.D. Pa. 2011). Compare, *Salley supra* (reservation of certain remedies for a judicial forum, largely creditor remedies related to foreclosure, is not by itself unconscionable); *U.S. ex rel. Frank M. Sheesley Co. v. St. Paul Fire & Marine Ins. Co.*, 239 F.R.D. 404 (W.D. Pa. 2006) and *U.S. ex rel. Milestone Tarant, LLC v. Fed. Ins. Co.*, 672 F. Supp. 2d 92 (D.D.C. 2009) (both holding that language in the arbitration provision stating that arbitration will be held only upon the sole election of one party is not unconscionable). Plaintiffs have not indicated in what manner the arbitration language favors Defendant.

Finally, Plaintiffs argue that the choice of law language contained in Paragraph 9, which requires application of New York law to the Sales Agreement, is unreasonable because it will result in Plaintiffs inability to pursue consumer claims under Pennsylvania's consumer protection scheme (UTPCPL). To the extent that the Plaintiffs are arguing that the choice of law provision is unconscionable, that argument is without merit for the same reasons as set forth above; that is, the Plaintiffs have failed to prove that the Sales Agreement was entered between the parties in a procedurally unconscionable manner.

Bowser v. Crossville BNRV Sales, LLC

Accordingly, because Plaintiffs' claims are properly arbitrable, I enter the following:

ORDER

AND NOW, this 22nd day of July, 2011, Defendant's Preliminary Objection raising alternate dispute resolution is SUSTAINED and Plaintiff's Complaint is hereby dismissed.

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**FIRST PUBLICATION**

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**Estate Notices**

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ESTATE OF ERIC J. WIENER, late of Susquehanna Township, Dauphin County, Pennsylvania. Co-Executors: Adam Scott Wiener, 405 Belvedere Road, Harrisburg, PA 17109 and Ross Ira Wiener, 4295 Rhode Island Court, Harrisburg, PA 17112. Attorneys: Butler Law Firm, 1007 Mumma Road, Suite 101, Lemoyne, PA 17043.

a19-s2

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ESTATE OF CHARLOTTE B. TRAGO, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executrix: Charleah B. Prange, 114 Kestrel Court, Hummelstown, PA 17036. Attorneys: Good & Harris, LLP.

a19-s2

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ESTATE OF ROMAINE F. GERBERICH, late of Derry Township, Dauphin County, Pennsylvania (died July 26, 2011). Co-Executors: Richard E. Foreman, 403 North Hanover Street, Hershey, PA 17033 and Robert L. Shaffer, 350 Nyes Road, Hummelstown, PA 17036. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437.

a19-s2

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ESTATE OF LORREN BRUCE MYERS, late of the Borough of Highspire, Dauphin County, Pennsylvania (died May 31, 2011). Executor: Paul Myers, 1101 Terry Drive, Oberlin, PA 17113.

a19-s2

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**SECOND PUBLICATION**

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ESTATE OF CHARLES J. CICHY, late of Dauphin County, Pennsylvania (died April 30, 2011). Personal Representative: Margaret M. Cichy. Attorney: Michael Cherewka, Esq., 624 North Front Street, Wormleysburg, PA 17043. a12-a26

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ESTATE OF MICHAEL C. FRITZ, late of Lower Paxton Township, Dauphin County, Pennsylvania (died July 18, 2011). Administratrix: Delores M. Anstine, 3072 Lakefield Road, York, PA 17402. Attorney: Shelly J. Kunkel, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101.

a12-a26

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ESTATE OF THEODORE PENROSE LEONHARD, III a/k/a THEODORE P. LEONHARD, III, late of the Township of Lower Paxton, Dauphin County, Pennsylvania. Administratrix: Laura J. Thomas, 207 N. Lockwillow Avenue, Harrisburg, PA 17112. Attorney: Leonard Tintner, Esq., Boswell, Tintner & Piccola, 315 North Front Street, Harrisburg, PA 17101. a12-a26

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ESTATE OF VIOLET E. LEWIS, late of the Township of Williams, Dauphin County, Pennsylvania. Executrix: Jane A. Klinger, 137 Sweikert Street, Williamstown, PA 17098. Attorney: James P. Diehl, Esq., Williamson, Friedberg & Jones, LLC, 10 Westwood Road, P.O. Box 1190, Pottsville, PA 17901. a12-a26

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ESTATE OF MITTIE L. WALKER, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executrix: Margie Lawson, 1601 Forster Street, Harrisburg, PA 17103. Attorney: James J. Rowland, Jr., Esq., 812 North 17th Street, Harrisburg, PA 17103. a12-a26



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**SECOND PUBLICATION**

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**Estate Notices**

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ESTATE OF JACK SEILER, late of Halifax Township, Dauphin County, Pennsylvania (died June 7, 2011). Executrix: Shirley Kolva Seiler. Attorney: Elizabeth P. Mullaugh, Esq., McNees Wallace & Nurick LLC, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108-1166. Telephone (717) 237-5243. a12-a26

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ESTATE OF ESTHER R. KROUT a/k/a ESTHER KROUT, late of Harrisburg, Dauphin County, Pennsylvania (died May 29, 2011). Executor: William Myers, 338 Herman Avenue, Lemoyne, PA 17043. Attorney: Jerry R. Duffie, Esq., Johnson, Duffie, Stewart & Weidner, 301 Market Street, P.O. Box 109, Lemoyne, PA 17043. a12-a26

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ESTATE OF PAUL M. WHITMER, late of Lower Swatara Township, Dauphin County, Pennsylvania (died July 29, 2011). Co-Executrices: Joyce E. Barnhart, 801 Shady Lane, Enola, PA 17025 and Barbara Jane Stokes, 310 Raven Court, Mechanicsburg, PA 17050. Attorney: Jean D. Seibert, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. a12-a26

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ESTATE OF NORA E. SNYDER, late of Lykens Borough, Dauphin County, Pennsylvania (died June 21, 2011). Executrix: Linda K. Frederick, 1173 West Market Street, Williamstown, PA 17098. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023. a12-a26

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ESTATE OF MARTHA S. TITTIGER, late of Lower Swatara Township, Dauphin County, Pennsylvania. Administrator: The Tittiger Family Irrevocable Trust, Julie A. Lenard, Trustee, c/o Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043. Attorney: Craig A. Hatch, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043. a12-a26

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ESTATE OF EDWARD W. SOHN, late of the Borough of Middletown, Dauphin County, Pennsylvania (died November 15, 2009). Administrator: Harborton Place, LLC, c/o Rita Grove, 100 Pathfinder Drive, Middletown, PA 17057. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. a12-a26

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ESTATE OF MARIE T. BUGGY, late of the Borough of Williamstown, Dauphin County, Pennsylvania. Co-Executors: Barbara J. Belknap, 347 West Middle Turnpike, Manchester, CT 06040 and Michael J. Buggy, 133 Ronnie Lane, Halifax, PA 17032. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, PA 17023. a12-a26

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ESTATE OF BEULAH P. REDCAY, late of the Township of Conewago, Dauphin County, Pennsylvania. Co-Executors: Jamie Redcay and Richard Redcay, c/o Gingrich, Smith, Klingensmith & Dolan, 222 South Market Street, Suite 201, P.O. Box 267, Elizabethtown, PA 17022. Attorney: Kevin D. Dolan, Esq., Gingrich, Smith, Klingensmith & Dolan, 222 South Market Street, Suite 201, P.O. Box 267, Elizabethtown, PA 17022. a12-a26

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**SECOND PUBLICATION**

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**Estate Notices**

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ESTATE OF DOROTHY W. HARLACHER, late of Harrisburg City, Dauphin County, Pennsylvania. Co-Executrices: Suzanne Harlacher Szekeres, 1007 Stoney Creek Road, Dauphin, PA 17018-9685 and Patricia Harlacher Metherell, 125 Susquehanna Avenue, Enola, PA 17025. Attorney: Gregory S. Chelap, Esq., 17 South Second Street, 6th Floor, Harrisburg, PA 17101. a12-a26

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ESTATE OF MARGARET JEAN O'DONNELL, late of Lower Paxton Township, Dauphin County, Pennsylvania (died September 11, 2010). Executor: Thomas William O'Donnell. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. a12-a26

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**THIRD PUBLICATION**

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ESTATE OF RALPH LEROY SMELTZ, late of Elizabethville Borough, Dauphin County, Pennsylvania (died July 22, 2011). Co-Executors: Nancy Tornello and Vincent Tornello, 1627 Trailridge Road, Charlottesville, VA 22903. Attorney: Terrence J. Kerwin, Esq., Kerwin & Kerwin, LLP, 27 North Front Street, Harrisburg, PA 17101. a5-a19

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ESTATE OF LINDA TYSON MEYERS DAVENPORT, late of Gratz, Dauphin County, Pennsylvania (died July 18, 2011). Personal Representatives: Eric R. Meyers and Jeffrey C. Meyers, Sr., P.O. Box 169, Halifax, PA 17032. Attorney: Emily Long Hoffman, Esq., 255 Market Street, Millersburg, PA 17061. a5-a19

ESTATE OF WENDY J. QUEEN, late of Susquehanna Township, Dauphin County, Pennsylvania. Co-Executors: Kenneth O. Queen and Eloise R. Queen, 24 McGillstown Road, Annville, PA 17003. Attorney: Gerald J. Brinser. a5-a19

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ESTATE OF MARY E. JOHNSON, late of Middletown Borough, Dauphin County, Pennsylvania. Personal Representative: Mariann A. Collins, 1023 Tiverton Road, Mechanicsburg, PA 17050. Attorney: Bridget M. Whitley, Esq., 17 South Second Street, Harrisburg, PA 17101. a5-a19

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ESTATE OF DORIS M. SMITH, late of Washington Township, Dauphin County, Pennsylvania (died July 12, 2011). Personal Representative: Raymond C. Smith, 108 East Bonnie Avenue, Elizabethville, PA 17023. Attorney: Terrence J. Kerwin, Esq., Kerwin & Kerwin, LLP, 27 North Front Street, Harrisburg, PA 17101. a5-a19

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ESTATE OF JACOB SOLOMON a/k/a JACK SOLOMON, late of Lower Paxton Township, Dauphin County, Pennsylvania (died June 28, 2011). Personal Representative / Attorney: Michael L. Solomon, Esq., Cohen Seglias Pallas Greenhall & Furman, P.C., 240 North Third Street, 7th Floor, Harrisburg, PA 17101. a5-a19

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ESTATE OF WILLIAM C. TROUTMAN, late of Dauphin County, Pennsylvania (died March 7, 2011). Executrix: Patricia A. Patton. Attorney: Patricia Carey Zucker, Esq., Daley Zucker Meilton Miner & Gingrich, LLC, 635 North 12th Street, Suite 101, Lemoyne, PA 17043. a5-a19

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THIRD PUBLICATION

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Estate Notices

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ESTATE OF JOHN TODD FOX, late of Harrisburg, Dauphin County, Pennsylvania (died April 13, 2011). Personal Representative: Dana M. Fox, 491 Hamilton Drive, Middletown, PA 17057. a5-a19

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ESTATE OF PATTY J. GRIFFIN a/k/a PATTY GRIFFIN, late of the Borough of Middletown, Dauphin County, Pennsylvania (died June 17, 2011). Executrix: Cheryl Melnichak, 537 Bosler Avenue, Lemoyne, PA 17043. Attorney: Jeffrey M. Mottern, Esq., 28 East Main Street, P.O. Box 87, Hummelstown, PA 17036. a5-a19

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ESTATE OF CAMILLE D. WALTERS, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executor: John R. Zonarich, 17 South Second Street, 6th Floor, Harrisburg, PA 17101. Attorney: Bridget M. Whitley, Esq., Skarlatos & Zonarich LLP, 17 South Second Street, 6th Floor, Harrisburg, PA 17101. a5-a19

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ESTATE OF GLADYS C. GAMBER a/k/a GLADYS CLEO GAMBER, late of the City of Harrisburg, Dauphin County, Pennsylvania (died June 3, 2011). Executrix: Kathy Ann Price, 1415 Aspen Drive, Harrisburg, PA 17109. Attorney: Jeffrey M. Mottern, Esq., 28 East Main Street, P.O. Box 87, Hummelstown, PA 17036. a5-a19

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania on 07/20/11 under the Domestic Business Corporation Law, for **New Print Creation, Inc.**, and the name and county of the commercial registered office provider is: c/o Corporation Service Company, Dauphin County. a19

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NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania on 07/18/11 under the Domestic Business Corporation Law, for **1425 Victor, Inc.**, and the name and county of the commercial registered office provider is: c/o Corporation Service Company, Dauphin County. a19

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NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on August 5, 2011, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988.

The name of the proposed nonprofit corporation is: **Orchard Glen Homeowners Association, Inc.**

The purpose for which it will be organized is: To be a unit owners' association which provides for the management, maintenance and care of the residential community project located in Upper Allen and Lower Allen Townships, Cumberland County, Pennsylvania, known as Orchard Glen, A Planned Community.

McNEES WALLACE & NURICK LLC  
100 Pine Street  
a19 Harrisburg, PA 17101

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that a business corporation known as **TCS Leasing, Inc.** has been incorporated under the provisions of The Pennsylvania Business Corporation Law of 1988.

ANDREW M. PAXTON, Esq.  
a19 CGA Law Firm

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NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania on 07/29/11 under the Domestic Business Corporation Law, for **Carnright Design, Inc.**, and the name and county of the commercial registered office provider is: c/o Corporation Service Company, Dauphin County. a19

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NOTICE IS HEREBY GIVEN that an Application for Certificate of Authority was filed with the PA Dept. of State on 07/26/11 by **National Older Worker Career Center, Inc.**, a foreign nonprofit corporation formed under the laws of the District of Columbia with its principal office located at 3811 N. Fairfax Drive, Arlington, VA 22203, to do business in PA under the provisions of the Nonprofit Corporation Law.

The registered office in PA shall be deemed for venue and official publication purposes to be located in Dauphin County. a19

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NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania on 08/01/11 under the Domestic Business Corporation Law, for **Roofs R Us Contracting, Inc.**, and the name and county of the commercial registered office provider is: c/o Corporation Service Company, Dauphin County. a19

NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on August 5, 2011, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988.

The name of the proposed nonprofit corporation is **Orchard Glen Master Association.**

The purpose for which it will be organized is: To be a master association for the planned residential development which provides for the management, maintenance and care of the planned residential development project located in Upper Allen and Lower Allen Townships, Cumberland County, Pennsylvania, known as Orchard Glen, A Planned Residential Development.

McNEES WALLACE & NURICK LLC  
100 Pine Street  
a19 Harrisburg, PA 17101

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NOTICE IS HEREBY GIVEN that Nonprofit Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on August 9, 2011, for the purpose of obtaining a Certificate of Incorporation under the provisions of the Nonprofit Corporation Law of 1988.

The name of the proposed nonprofit corporation is: **Dorset Square Homeowners Association.**

The purpose for which it will be organized is: To be a unit owners' association which provides for the management, maintenance and care of the residential community project located in Upper Allen Township, Cumberland County, Pennsylvania, known as Dorset Square, A Townhome Planned Community.

McNEES WALLACE & NURICK LLC  
100 Pine Street  
a19 Harrisburg, PA 17101

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that a Certificate of Organization of Domestic Limited Liability Company was filed on June 15, 2011, with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Organization of a proposed domestic limited liability company to be organized under the 1988 Pennsylvania Business Corporation Law of the Commonwealth of Pennsylvania.

The name of the company is: **7800 Enterprises, LLC.**

The registered office is at 7800 Allentown Boulevard, Harrisburg, Dauphin County, Pennsylvania 17112.

The purpose of the company is: To conduct a licensed restaurant business and all other lawful business in the Commonwealth of Pennsylvania and elsewhere for which corporations may be incorporated under the Pennsylvania Business Corporation Law.

STEVE C. NICHOLAS, Esq.  
Nicholas Law Offices, P.C.  
2215 Forest Hills Drive, Suite 37  
Harrisburg, PA 17112-1099  
(717) 540-7746

a19

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NOTICE IS HEREBY GIVEN that **Wolfram Research, Inc.**, a foreign business corporation incorporated under the laws of the State of Delaware, with its principal office located at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808, has applied for a Certificate of Authority in Pennsylvania under the PA Bus. Corp. Law of 1988. The commercial registered office provider in PA is: c/o Corporation Service Company, and shall be deemed for venue and official publication purposes to be located in Dauphin County.

a19

NOTICE IS HEREBY GIVEN that **Operation Lifesaver of Pennsylvania Inc.**, hereby gives notice that articles of incorporation will be filed with the Department of State of the Commonwealth of Pennsylvania, under the provisions of the Nonprofit Corporation Law of 1988. The purpose for which the corporation is to be organized is to promote highway-railroad grade crossing safety and trespass prevention in the state of Pennsylvania. a19

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NOTICE IS HEREBY GIVEN that **FCI Automotive USA, Inc.**, a foreign business corporation incorporated under the laws of the State of Delaware, with its principal office located at 2711 Centerville Road, Suite 400, Wilmington, DE 19808, has applied for a Certificate of Authority in Pennsylvania under the PA Business Corporation Law of 1988. The commercial registered office provider in PA is: c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a19

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on August 9, 2011, by **Kremers Urban Pharmaceuticals Inc.**, a foreign corporation formed under the laws of the State of Indiana where its principal office is located at 1101 C Ave. West, Seymour, IN 47274, 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 CT Corporation System, Dauphin County, Pennsylvania. a19

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FIRST PUBLICATION

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Corporate Notices

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NOTICE IS HEREBY GIVEN that **Weldsonix Inc.**, a foreign business corporation incorporated under the laws of the State of Texas, with its principal office located at 8401 W. Monroe Road, Houston, TX 77061, has applied for a Certificate of Authority in Pennsylvania under the PA Business Corporation Law of 1988. The commercial registered office provider in PA is: c/o Corporation Service Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a19

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on August 1, 2011, by **CATERPILLAR LOGISTICS INC.**, a foreign corporation formed under the laws of the State of Delaware where its principal office is located at 1209 Orange Street, Wilmington, DE 19801, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania is located at c/o CT Corporation System, Dauphin County, Pennsylvania. a19

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 22, 2011, by **Nordion (US) Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 447 March Rd., Ottawa, Ontario, Canada K2K 1X8, 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 CT Corporation System, Dauphin County, Pennsylvania. a19

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on June 22, 2011, by **Nello Inc.**, a foreign corporation formed under the laws of the State of Indiana, where its principal office is located at 211 W. Washington St., Suite 2000, South Bend, IN 46601, 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 National Registered Agents, Inc., Dauphin County, Pennsylvania. a19

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NOTICE IS HEREBY GIVEN that, pursuant to the provisions of Section 4129 of the Business Corporation Law of 1988, **Gemini Acquisitions Inc.**, a corporation of the State of Delaware, with principal office located at 1001 Hingham St., Suite 300, Rockland, MA 02370, and having a Commercial Registered office Provider and county of venue as follows: CT Corporation System, Dauphin County, which on March 19, 2010, was granted a Certificate of Authority, to transact business in the Commonwealth, intends to file an Application for Termination of Authority with the Department of State. a19

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NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on August 12, 2011, by **Zampell Advanced Refractory Technologies, Inc.**, a foreign corporation formed under the laws of the Commonwealth of Massachusetts, where its principal office is located at 17 Malcolm Hoyt Drive, Newburyport, MA 01950, 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 CT Corporation System, Dauphin County, Pennsylvania. a19

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**FIRST PUBLICATION**

**Fictitious Notices**

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NOTICE IS HEREBY GIVEN that applications for registration of fictitious names for **NUCA of Pennsylvania** and **NUCA Pennsylvania**, conducting business in Dauphin County, PA with its principal office located at Strawberry Arcade, 223A Walnut Street, Harrisburg, Pennsylvania 17101, were filed with the Department of State of the Commonwealth of Pennsylvania at Harrisburg, Pennsylvania on the 27th day of July 2011, pursuant to the provisions of the Pennsylvania Business Corporation Law of 1988.

The name and address of the entity that is party to the registration is: Pennsylvania Utility Contractors Association, Strawberry Arcade, 223A Walnut Street, Harrisburg, Pennsylvania 17101. a19

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**FIRST PUBLICATION**

**Miscellaneous Notices**

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

**No. 2011 CV 6650 NC**

**PETITION FOR  
CHANGE OF NAME**

**NOTICE**

NOTICE IS HEREBY GIVEN that on July 7th, 2011, the Petition of **Tia Rachael Gototweski Yuslum** was filed in the above named court, requesting a decree to change her name from **Tia Rachael Gototweski Yuslum** to **Tia Rachael Gototweski**.

The Court has fixed September 19, 2011 in Courtroom No. 9, at 9:00 a.m., Dauphin County Courthouse, Front and Market

Streets, Harrisburg, PA as the time and place for the hearing on said Petition, when and where all persons interested may appear and show cause if any they have, why the prayer of the said Petition should not be granted. a19

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

**No. 2010-CV-11921 MF**

**NOTICE OF SHERIFF'S SALE**

**CITIMORTGAGE, INC., Plaintiff**

**vs.**

**CHRISTOPHER S. MYERS and  
LORI C. MYERS, Defendants**

**NOTICE**

**TO: CHRISTOPHER S. MYERS**

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

BEING PREMISES: 1460 STONE GLEN ROAD, DAUPHIN, PA 17018-9399.

BEING in MIDDLE PAXTON Township, County of DAUPHIN, Commonwealth of Pennsylvania.

TAX Parcel No. 43-025-026-000-0000.

IMPROVEMENTS consist of residential property.

SOLD as the property of CHRISTOPHER S. MYERS & LORI C. MYERS.

YOU ARE HEREBY NOTIFIED that your house (real estate) at 1460 STONE GLEN ROAD, DAUPHIN, PA 17018-9399 is scheduled to be sold at the Sheriff's Sale on SEPTEMBER 1, 2011 at 10:00 A.M., at the DAUPHIN County Courthouse to enforce the Court Judgment of \$218,677.12 obtained by, CITIMORTGAGE, INC., (the mortgagee), against the above premises.

PHELAN HALLINAN  
& SCHMIEG, LLP

a19

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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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

**CIVIL ACTION – LAW**

**No. 2011 CV 3802 MF**

**NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE**

**M&T BANK, Plaintiff**

vs.

**ANTONIO DELGADO  
a/k/a ANTONIO DELGATO, Defendant**

**TO: ANTONIO DELGADO a/k/a  
ANTONIO DELGATO**

**PREMISES SUBJECT  
TO FORECLOSURE:  
38 BALM STREET  
HARRISBURG, PENNSYLVANIA 17103**

**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 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.

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a19

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

**CIVIL ACTION – LAW**

**No. 2011-CV-7204-QT**

**NOTICE OF ACTION IN  
QUIET TITLE**

**RONALD E. FISHER, Plaintiff**

vs.

**JOHN PENN, THOMAS PENN and  
RICHARD PENN, their successors in  
Title, JOHN A. HARTZELL, his heirs,  
personal representatives, successors  
of or any unknown persons having or  
claiming an apparent interest in said  
premises herein described, Defendants**

**PUBLIC NOTICE**

**TO: JOHN PENN, THOMAS PENN,  
RICHARD PENN,  
THEIR SUCCESSORS IN TITLE,  
JOHN A. HARTZELL, his heirs,  
personal representatives, successors  
of or any unknown persons.**

**(To All Defendants)**



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**FIRST PUBLICATION**

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**Miscellaneous Notices**

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NOTICE IS HEREBY GIVEN that on July 26, 2011 a Complaint in Quiet Title has been filed in the Court of Common Pleas of Dauphin County, with the following caption:

YOU ARE HEREBY NOTIFIED that the Plaintiff has requested that the Court enter an Order declaring that the Plaintiff have title to certain property described in the Complaint free and clear of any claims or interest by anyone and enjoining Defendants from impeaching denying or in any way attaching Plaintiff's title to said premises.

These premises are located in Lower Swatara Township, Dauphin County, Pennsylvania and is forty-five foot (45') wide unopened street known as Dauphin Street, which John A. Hartzell is the last owner of record, and also being a part of the premises referenced in a Deed dated November 25, 1905 in the Dauphin County Recorder of Deeds Office in Deed Book I, Volume 12, Page 472.

The Complaint further recites that the Plaintiff and his predecessors in title have been in actual, continuous, exclusive, visible, notorious, distinct and hostile possession for over twenty-one (21) years of the said tract of land under the claim of fee simple title.

IF YOU WISH TO DEFEND against the claims set forth in the Complaint, you must enter a written appearance personally, or by any attorney and file your defenses or objections in writing with the Court within thirty (30) days of the date of publication of this Notice. You are warned that if you fail to do so, this case may be entered against you by the Court with and further notice for the relief requested by the Plaintiffs. You may lose money or property rights or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

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a19

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

**CIVIL ACTION – LAW**

**CIVIL DIVISION**

**No. 2011-CV-3921-MF**

**NOTICE OF ACTION IN  
MORTGAGE FORECLOSURE**

**CITICORP TRUST BANK, FSB,  
Plaintiff**

**vs.**

**WILLIAM E. SMITH, SR.  
a/k/a WILLIAM E. SMITH and  
MATTIE B. SMITH, Defendants**

**NOTICE**

**TO: MATTIE B. SMITH**

YOU ARE HEREBY NOTIFIED that on APRIL 15, 2011, Plaintiff, CITICORP TRUST BANK, FSB, 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. 2011-CV-3921-MF. Wherein Plaintiff seeks to foreclose on the mortgage secured on your property located at 1610 SWATARA STREET, HARRISBURG, PA 17104 whereupon your property would be sold by the Sheriff of DAUPHIN County.

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FIRST PUBLICATION

Miscellaneous Notices

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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.

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a19

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SECOND PUBLICATION

Miscellaneous Notices

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**NOTICE OF AUDIT**

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

NOTICE IS HEREBY GIVEN that the following accounts have been filed by the respective accountants in the Office of the Register of Wills or with the Clerk of the Orphans' Court Division of the Common Pleas of Dauphin County, as the case may be, and that the same shall be duly presented to the said Orphans' Court Division at the Office of the Court Administrator for Audit, Confirmation and Distribution of the said ascertained balances to and among those legally entitled there to *on Tuesday, September 20, 2011*. Pursuant to Dauphin County Orphans' Court Rule 6.10.1, objections to an account must be filed in writing with the Register or Clerk *no later than the close of business on Tuesday, September 13, 2011*.

1. STABLER, DONALD B., Deceased, Second and Partial Account of Manufacturers and Traders Trust Company, Cyril C. Dunmire, Jr., and Sherrill T. Moyer, Trustees (Interim Foundation Under Item VII (b) (6) of Donald B. Stabler Will).

Dated: August 5, 2011

/s/ SANDRA C. SNYDER  
Register of Wills and  
Clerk of the  
Orphans' Court Division

a12-a19

## CUMULATIVE TABLE OF CASES

Adams, Commonwealth v. . . . .	296
Atlantic Credit & Finance Inc. v. Wylie . . . . .	163
Borough of Middletown v. Teamsters Local Union 776 . . . . .	390
Bowser v. Crossville BNRV Sales, LLC . . . . .	424
Britton, Commonwealth v. . . . .	344
Cameron Real Estate, LP, et al., Pennsy Supply, Inc. v. . . . .	99
Carns, Enders v. . . . .	355
Carroll, Commonwealth v. . . . .	102
Centric Bank, Schmitt v. . . . .	1
Commonwealth v. Adams . . . . .	296
Commonwealth v. Britton . . . . .	344
Commonwealth v. Carroll . . . . .	102
Commonwealth v. Fernsler . . . . .	64
Commonwealth v. Gross . . . . .	334
Commonwealth v. Hosby . . . . .	32
Commonwealth v. Jones . . . . .	194
Commonwealth v. McCreary . . . . .	314
Commonwealth v. Montelione . . . . .	10
Commonwealth v. Perretta-Rosepink	
Commonwealth v. Veon . . . . .	262
Commonwealth v. Wingus . . . . .	82
Commonwealth v. Veon	
Commonwealth v. Perretta-Rosepink . . . . .	262
Commonwealth (PennDOT), Wagner v. . . . .	300
Consoli v. Elias . . . . .	281
Cox, Wilson, et al. v. . . . .	57
Crossville BNRV Sales, LLC, Bowser v. . . . .	424

## Cumulative Table of Cases

Daniels, et al., v. Norfolk Southern Corporation, et al., Wallett's Flooring Services, Inc. v. . . . .	94
DeHart, Fletcher v. . . . .	134
Dock v. Harrisburg Hospital, et al. . . . .	106
East Hanover Township Board of Supervisors	
v. RVG Land, LLC, Mundy, et al. v. . . . .	116
Elias, Consoli v. . . . .	281
Enders v. Carns . . . . .	355
Estrada v. Olt, et al. . . . .	42
Estright v. Harrisburg Hospital, et al. . . . .	153
Fenstermacher, Mihelich v. . . . .	158
Fenstermacher, Mihelich v. . . . .	368
Fernsler, Commonwealth v. . . . .	64
Fletcher v. DeHart . . . . .	134
Gebhardt v. Woods . . . . .	385
Gross, Commonwealth v. . . . .	334
Harrisburg Hospital, et al., Dock v. . . . .	106
Harrisburg Hospital, et al., Estright v. . . . .	153
Hartman, et al. v. Hershey Medical Center, et al. . . . .	243
Herd Chiropractic v. State Farm . . . . .	180
Hershey Medical Center, et al., Hartman, et al. v. . . . .	243
Hershey Medical Center, et al., Lopresti v. . . . .	48
Hosby, Commonwealth v. . . . .	32
In re: Appeal of City of Harrisburg . . . . .	200
In re: Condemnation of Sheesley Estate . . . . .	223
In re: Estate of Benjamin F. Herr . . . . .	171
Investigative Consultant Services, Inc., et al., Tagouma v. . . . .	121

## Cumulative Table of Cases

Jones, Commonwealth v. . . . .	194
K.S.R. v. Reinhardt . . . . .	323
Kelly v. Kelly . . . . .	110
Kelly, Kelly v. . . . .	110
Kelly Systems, Inc. v. Koda . . . . .	21
Keystone Service Systems, Inc., Pennswood Apartments L.P. v. . . . .	27
Koda, Kelly Systems, Inc. v. . . . .	21
Lopresti v. Hershey Medical Center, et al. . . . .	48
McAfee v. Quantum Imaging and Therapeutic Associates, Inc. . . . .	70
McCreary, Commonwealth v. . . . .	314
McGarrie v. Short . . . . .	90
McNany, Walter v. . . . .	147
Mihelich v. Fenstermacher . . . . .	158
Mihelich v. Fenstermacher . . . . .	368
Montelione, Commonwealth v. . . . .	10
Mundy, et al. v. East Hanover Township Board of Supervisors v. RVG Land, LLC . . . . .	116
Norfolk Southern Corporation, et al. v. Wallett's Flooring Services, Inc. v. Daniels, et al. . . . .	94
Olt, et al., Estrada v. . . . .	42
Papadopoulos v. Schmidt, Ronca & Kramer, P.C. . . . .	205
PennDOT, Smith v. . . . .	376
Pennswood Apartments L.P. v. Keystone Service Systems, Inc. . . . .	27
Pennsy Supply, Inc. v. Cameron Real Estate, LP, et al. . . . .	99

## Cumulative Table of Cases

Perretta-Rosepink, Commonwealth v.	
Commonwealth v. Veon . . . . .	262
Peters v. Zoning Hearing Board of Londonderry Township . . . . .	166
Pierce, VQC Designs, LLC v. . . . .	413
Quantum Imaging and Therapeutic Associates, Inc.,	
McAfee v. . . . .	70
Reinhardt, K.S.R. v. . . . .	323
RVG Land, LLC, Mundy, et al. v. East Hanover Township	
Board of Supervisors v. . . . .	116
Schmitt v. Centric Bank . . . . .	1
Schmidt, Ronca & Kramer, P.C., Papadoplos v. . . . .	205
Short, McGarrie v. . . . .	90
Smith v. PennDOT . . . . .	376
State Farm, Herd Chiropractic v. . . . .	180
State Farm, Tomasetti v. . . . .	186
Tagouma v. Investigative Consultant	
Services, Inc., et al. . . . .	121
Teamsters Local Union 776, Borough of Middletown v. . . . .	390
Tomasetti v. State Farm . . . . .	186
Veon, Commonwealth v.	
Commonwealth v. Perretta-Rosepink . . . . .	262
VQC Designs, LLC v. Pierce . . . . .	413
Wagner v. Commonwealth (PennDOT) . . . . .	300
Wallett's Flooring Services, Inc. v. Daniels, et al.,	
v. Norfolk Southern Corporation, et al. . . . .	94
Walter v. McNany . . . . .	147

Cumulative Table of Cases

Warner, Wege v. . . . . 219

Wege v. Warner . . . . . 219

Weiss, Zalonis v. . . . . 387

Wilson, et al. v. Cox . . . . . 57

Wingus, Commonwealth v. . . . . 82

Woods, Gebhardt v. . . . . 385

Wylie, Atlantic Credit & Finance Inc. v. . . . . 163

Zalonis v. Weiss . . . . . 387

Zoning Hearing Board of Londonderry Township, Peters v. . . . . 166

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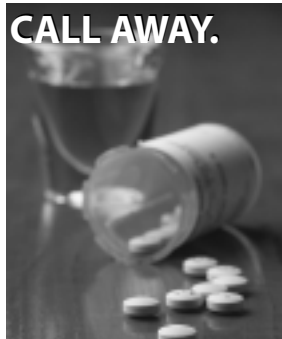
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The Bench and Bar will contribute to the accuracy in matters of detail of the permanent edition of the Dauphin County Reporter by sending to the editor promptly, notice of all errors appearing in this advance sheet. Inasmuch as corrections are made 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*

AUGUST 2011

SEPTEMBER 2011

Judge Bruce F. BRATTON

Judge Scott Arthur EVANS

*Opinions Not Yet Reported*

**BAR ASSOCIATION PAGE – Continued**

**MISCELLANEOUS SECTION**

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