

ADVANCE SHEET

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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 RICHARD H. HOFFMAN, late of Lykens Borough, Dauphin County, Pennsylvania. Executor: Richard H. Hoffman, 3205 Brynwood Drive, Whitehall, PA 18052. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, 4245 Route 209, Elizabethtown, PA 17023.

d29-j12

ESTATE OF GRACE I. RABENSTINE, late of Derry Township, Dauphin County, Pennsylvania. Co-Executor: David Rhodes, P.O. Box 982, Camp Hill, PA 17001 and Co-Executor/Attorney James T. Yingst, 40 York Street, Hanover, PA 17331. d29-j12

ESTATE OF JEANNE M. WOODWORTH, late of the Borough of Middletown, Dauphin County, Pennsylvania (died November 22, 2006). Executor: Richard H. Woodworth, 246 Ann Street, Middletown, PA 17057. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. d29-j12

ESTATE OF DAVID SORIN, late of Lower Paxton Township, Dauphin County, Pennsylvania. Administrator: Robert Siegel. Attorney: Leonard Tintner, Esq., Boswell, Tintner, Piccola & Alford, 315 North Front Street, Post Office Box 741, Harrisburg, PA 17108. d29-j12

ESTATE OF ELAINE M. SULLIVAN, late of Lower Paxton Township, Dauphin County, Pennsylvania. Co-Administratrix: Makathy S. Donley. Co-Administrator/Attorney: Neil S. Sullivan, Esq., Placey & Wright, 3631 North Front Street, Harrisburg, PA 17110. d29-j12

ESTATE OF ROBERT A. BULL, late of Berwick, Pennsylvania (died August 12, 2006). Attorneys: Law Offices, Bull, Bull & Knecht, LLP, 106 Market Street, Berwick, PA 18603.

d29-j12

SECOND PUBLICATION

ESTATE OF CATHERINE E. BELL, late of Millersburg Borough, Dauphin County, Pennsylvania (died November 30, 2006). Executrix: Frances M. Manning, 416 Center Street, Millersburg, PA 17061. Attorney: Terrence J. Kerwin, Esq., Kerwin & Kerwin, 27 North Front Street, Harrisburg, PA 17101. d22-j5

SECOND PUBLICATION

Estate Notices

ESTATE OF SHIRLEY L. SMITH, late of Dauphin County, Pennsylvania. Executor: Randall L. Smith, 2291 Forest Hills Drive, Harrisburg, PA 17112. Attorney: Howard B. Krug, Esq., Purcell, Krug & Haller, 1719 North Front Street, Harrisburg, PA 17102. d22-j5

ESTATE OF ERNEST A. DEFRANK, SR., late of Swatara Township, Dauphin County, Pennsylvania (died November 11, 2006). Executrix: Linda M. DeFrank. Attorney: Quintina M. Laudermilch, Esq., Daley, Zucker & Gingrich, LLP, 1029 Scenery Drive, Harrisburg, PA 17109-5322. d22-j5

ESTATE OF DANIEL S. TOMASO, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executor: Daniel Rae Tomaso. Attorney: Marjorie J. Scharpf, Esq., Flamm Boroff & Bacine, P.C., 794 Penllyn-Blue Bell Pike, Blue Bell, PA 19422-1669. d22-j5

ESTATE OF SARAH E. BONAWITZ BITTERMAN, late of West Hanover Township, Dauphin County, Pennsylvania (died December 4, 2006). Co- Executors: David G. Reckner a/k/a Dave Reckner and Nevin Reckner. Attorney: Nora F. Blair, Esq., 5440 Jonestown Road, P.O. Box 6216, Harrisburg, PA 17112. d22-j5

ESTATE OF FLOYD E. STINE, late of the Berrysburg Borough, Dauphin County, Pennsylvania. Executor: Peter M. Stine, 523 Chestnut Street, Millersburg, PA 17061. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, 4245 Route 209, Elizabethtown, PA 17023. d22-j5

ESTATE OF HARRY W. FEASTER, late of the Borough of Williamstown, Dauphin County, Pennsylvania (died October 12, 2006). Executrix: Barbara A. Feaster-Leer, 1326 Scenery Drive, Mechanicsburg, PA 17050. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, 4245 Route 209, Elizabethtown, PA 17023. d22-j5

ESTATE OF HELEN A. LONGO, late of Dauphin County, Pennsylvania (died November 15, 2006). Executor: Barry M. Longo, 1632 Lori Lane Circle, Harrisburg, PA 17110. Attorney: Steven J. Schiffman, Esq., Serratelli, Schiffman, Brown & Calhoon, 2080 Linglestown Road, Suite 201, Harrisburg, PA 17110. d22-j5

THIRD PUBLICATION

ESTATE OF ROBERT M. COULTER, late of Lower Paxton Township, Dauphin County, Pennsylvania (died November 9, 2006). Executor: Joseph A. Gravino, Jr., 18 N. 27th Street, Harrisburg, PA 17103. Attorney: James B. Pannebaker, Esq., Pannebaker & Mohr, P.C., 4000 Vine Street, Middletown, PA 17057. Phone (717) 944-1333. d15-d29

ESTATE OF DARLENE A. RICHARDSON, late of Lower Paxton Township, Dauphin County, Pennsylvania (died September 25, 2006). Executrix: Ruth Ann Orris. Attorney: Jennifer L. Lehman, Esq., P.O. Box 6130, Harrisburg, PA 17112-0130. d15-d29

ESTATE OF EUGENE L. FORTINO, late of Steelton Borough, Dauphin County, Pennsylvania (died November 13, 2006). Co-Executors: John E. Fortino, 19 N. 32nd Street, Harrisburg, PA 17111 and Jean E. Harig, 510 N. 2nd Street, Steelton, PA 17113. Attorney: Francis A. Zulli, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. d15-d29

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IT IS FURTHER ORDERED, that due to the substantial harm that has already been caused to the School District by the Defendants' willful actions, they (Defendants) are further **DENIED** any *supersedeas*, particularly under Rule 1736(b) of the Pennsylvania Rules of Appellate Procedure, which might otherwise accrue to them. Likewise, we further **DENY** the Defendants the right to automatically appeal these Rulings pursuant to Pa.R.A.P. 1736(a).

However, the Defendants shall be permitted to appeal these Rulings, provided they post a cash Bond in the full amount of **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**, paid into Court through the Prothonotary of Dauphin County, which Bond shall be liable for debit for the payment of any future costs incurred by the School District, including reasonable attorneys' fees, costs and expenses associated with any such further litigation in this matter.

ISSUED AT HARRISBURG, the 9th day of October, 2006.

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Torts — Negligence — Medical malpractice — Jury instructions — Error of judgment — Increased risk of harm — Irrelevant considerations.

Plaintiffs' infant son was born with significant neurological impairments, which rendered him brain damaged, functionally paralyzed and blind. They sought recovery from the attending obstetrician and others based upon allegedly negligent obstetrical care during labor of the mother and delivery of the child. After a jury returned a verdict of no negligence as to any of the Defendants, the Plaintiffs filed a Post Trial Motion in the Nature of a Motion for a New Trial.

1. The decision to grant or deny a motion for a new trial is within the discretion of the trial court, and will not be disturbed absent palpable abuse of discretion or error of law. *See, Andrews v. Jackson*, 800 A.2d 959, 961 (Pa. Super. 2002), *app. denied*, 572 Pa. 694, 813 A.2d 835 (Pa. 2002) and *Nelson v. Hines*, 539 Pa. 516, 653 A.2d 634 (Pa. 1995).

2. Failure to object to and identify the nature of allegedly confusing language in a jury instruction, and to provide any necessary correction, constitutes waiver.

3. The trial court has broad discretion in phrasing jury instructions and may choose its own wording as long as the law is clearly and accurately presented to the jury for consideration. *Commonwealth v. Rivera*, 565 Pa. 289, 773 A.2d 131 (2001) *cert. denied*, *Rivera v. Pennsylvania*, 535 U.S. 955, 122 S.Ct. 1360, 152 L.Ed. 2d 355 (U.S. March 25, 2002).

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Further, the Superior Court will not reverse merely because a court restated a point of law several times. *White by Stevens v. SEPTA*, 359 Pa. Super. 123, 129, 518 A.2d 810, 813 (1986) *allocatur denied*, 515 Pa. 609, 529 A.2d 1082.

4. If a physician employs the required judgment and care in arriving at his diagnosis, the mere fact that he erred in his diagnosis will not render him liable even though his treatment is not proper for the condition that actually exists. *Smith v. Yohe*, 412 Pa. 94, 99, 194 A.2d 167, 171 (1963).

5. When a jury finds no negligence and therefore does not reach the issue of causation, no error can be attributed to the denial of an instruction on increased risk of harm.

6. The trial court is not required to instruct utilizing the language of Standard Suggested Jury Instruction 11.09 (Civ), "Irrelevant Considerations" where it fully and accurately instructed the jury to focus on relevant matters only, to set aside sympathy, to look only to the facts and law, to keep an open mind and to be fair to the parties on both sides of the case.

Motion for a New Trial. C.P., Dau. Co., No. 2004 CV 635 CV.
Motion denied.

Neil J. Rovner, for Plaintiffs

Peter J. Curry, for Defendants Margaret Hawn, M.D., and
McCall, Banogan, Hawn & Associates, P.C.

Michael M. Badowski, for Defendant Pinnacle Health Hospitals

HOOVER, J., September 29, 2006 – This matter comes before the court on the Motion for a New Trial of Plaintiffs, Montana Snyder, a Minor, by January Snyder, and Frederick Snyder, his parents and natural guardians, individually and in their own right, (hereinafter, "Plaintiffs"). For the reasons set forth herein, Plaintiff's Post Trial Motions are **DENIED**.

I. FACTUAL BACKGROUND

This medical malpractice action arises out of the obstetrical care during the labor of the mother, January Snyder and delivery of the minor child, Montana Snyder on October 22, 2002. Mrs. Snyder was 23 years old at the time, and pregnant with her first child, having had a normal prenatal course. Mrs. Snyder presented at Harrisburg Hospital in early labor at approximately 6:30 a.m. on October 21, 2002, at 41 weeks gestation. Mrs. Snyder had a spontaneous rupture of the membranes at 9:55 or 10:00 a.m., with clear fluid. Fetal heart rate monitoring was conducted.

Defendant Margaret Hawn, M.D., (hereinafter, "Dr. Hawn"), assumed obstetrical care of Mrs. Snyder in the hospital at approximately 12:30

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p.m., and saw her at approximately 2 hour intervals for the remainder of the day until midnight, at which the frequency of her contact with the patient increased. Mrs. Snyder's labor progressed, and at 4:15 p.m. on October 21st, she received an epidural for pain relief. At 8:00 or 8:15 p.m., Mrs. Snyder was in the latent, or first phase, of labor. To stimulate contractions, Dr. Hawn ordered administration of the hormone Pitocin at a low dose, to be increased every half hour until Mrs. Snyder was in a 2 to 3 minute labor pattern. The labor progressed, with more frequent contractions, and dilation of the cervix. Dr. Hawn ordered administration of an antibiotic, as Mrs. Snyder had a slightly elevated temperature. Dr. Hawn checked Mrs. Snyder again at 10:00 p.m., at which time Mrs. Snyder was experiencing contractions at approximately every 2 to 4 minutes. At 11:50 p.m., Mrs. Snyder was fully dilated, and was encouraged to begin pushing with breathing exercises. At slightly past midnight, the fetal monitor strip showed variable decelerations which Dr. Hawn described as mild to moderate. Dr. Hawn testified that variable decelerations of the baby's heart rate may be a sign that the umbilical cord, a source of the baby's oxygen, is being compressed during the contractions of the uterus. Dr. Hawn decreased administration of the Pitocin to space out the contractions and decrease the intensity of the contractions. At 1:11 a.m., Dr. Hawn reviewed the fetal monitor strips and interpreted them as reflecting that the variable decelerations had resolved and that the baby had a normal heart rate. At 1:48, Dr. Hawn again reviewed the fetal monitor strips and interpreted them as reflecting a normal heart rate and resolution of the variable decelerations. At approximately 2:15 a.m., Dr. Hawn and the obstetrical nurse positioned Mrs. Snyder for delivery of the baby. Upon delivery of the baby, Dr. Hawn sensed that he was limp, and requested that a pediatrician from the neonatal intensive care unit be summoned. During that time, the obstetrical nursing staff performed resuscitation on Montana while Dr. Hawn attended to Mrs. Snyder.

The neonatal intensive care unit then assumed care of Montana. He was later transferred to Hershey Medical Center. Montana suffers from significant neurological impairments which render him brain damaged, functionally paralyzed and blind. He will require substantial permanent medical care.

The expert witnesses presented on behalf of the Plaintiffs and Defendants dispute interpretation of the fetal monitor strips from approximately 11 p.m. on October 21 to 2:30 a.m. on October 22, 2002. Plaintiffs asserted that Dr. Hawn failed to properly interpret the fetal monitor strips and should have stopped administration of Pitocin,

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performed fetal scalp stimulation, placed an internal monitor on the baby, and delivered the baby earlier. Defendants asserted in response that Dr. Hawn's judgments were proper as to administration of Pitocin, review and interpretation of fetal monitoring strips, and the decision as to when the baby should be delivered.

II. RELEVANT PROCEDURAL HISTORY

This case was tried before a jury beginning on Monday, January 23, 2006 and ending on Monday, January 30, 2006. On January 30, 2006, the jury returned the verdict of no negligence as to any of the Defendants.

Plaintiffs filed a Post Trial Motion in the Nature of a Motion for a New Trial on January 31, 2006. The court ordered that the transcript of proceedings be completed. The Defendants each filed a Reply to Plaintiff's Post Trial Motion. The court ordered briefs and argument. Following the filing of briefs, the court heard oral argument on August 8, 2006.

III. DISCUSSION

NO BASIS EXISTS FOR THE GRANT OF NEW TRIAL

Based upon review of the charge of the court, controlling Pennsylvania law and the evidence presented at trial, the court properly instructed the jury. We therefore deny the Plaintiff's Motion for a New Trial.

The decision to grant or deny a motion for a new trial is within the discretion of the trial court, and will not be disturbed absent palpable abuse of discretion or error of law. *See, Andrews v. Jackson*, 800 A.2d 959, 961 (Pa. Super. 2002), *app. denied*, 572 Pa. 694, 813 A.2d 835 (Pa. 2002) and *Neison v. Hines*, 539 Pa. 516, 653 A.2d 634 (Pa. 1995). Further, "an abuse of discretion is not merely an error of judgment; it occurs when, in reaching a conclusion, either the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will, as shown by the evidence of record." *Blich v. Jacks*, 864 A.2d 1214, 1216 (Pa. Super. 2004).

The court properly instructed the jury as to the applicable law and therefore no error occurred.

A. THE COURT PROPERLY INSTRUCTED THE JURY AS THE STANDARDS OF LAW GOVERNING NEGLIGENCE, INCLUDING REFERENCE TO "ERROR OF JUDGEMENT".

Court properly charged on the concept of negligence, including instruction on "error of judgment".

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Court charged as to the general rules governing negligence, and in addition, as to “error of judgment”. The court instructed:

I want to point out to you a special — not a special rule but a rule that applies to negligence. And it’s a rule that we refer to as the error of judgment. The mere fact that someone makes an error in judgment is not necessarily negligence in a case. The mere fact that there was an error in judgment is not necessarily negligence in the case.

If the physician or the nurse in the exercise of their use of diagnostic skills, the appropriate medical equipment, application of appropriate medical conditions or services or tools, if they exercise all those to the standard of care; and they’re presented with a situation that using those appropriate skills, diagnostic tools, evaluation tools and they come to a decision to make that was an error, that isn’t necessarily negligence in the case, because they used all the appropriate tools, the diagnostic, the evaluation, all that was done appropriately. And they chose a course of action that may be an error in judgment, that in and of itself is not negligence in the case. I want to point that out to you.

If they made just a bad judgment, the wrong judgment, that can be negligence, even if they used all the appropriate skills and diagnostic tools and monitors and all those things. If they made an error of judgment, that’s not necessarily negligence. If they used those same things and they made the wrong judgment or a bad judgment or something that fell below the standard of care, then that means that they were negligent in the case.

It’s the error of judgment that says if you don’t find negligence simply because — they used all those right things and brought it together and they just made bad choices and made a choice, if that choice was within the standard of care that’s not negligence.

But if they used all the tools and the same thing and they made the wrong judgment that fell below the standard of care, that is negligence then.

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In addition to that, if you find that — this is still — this is a second component of an error in judgment. I gave you that first example. The second error of judgment may be if the healthcare providers failed to use those diagnostic tools, all those diagnostic tools and what they should have used and they failed to do that, then when they make their choice and their decision as to what course to follow, if they haven't used the appropriate diagnostic tools and evaluation, then that can be negligence because they failed to use the appropriate diagnostic tools.

I want to point out to you, those appropriate diagnostic tools in this case, there was testimony about the scalp monitor that could have been placed, it is only — failing to use that has to fall below the standard of care in order for that not doing it to be negligent. So the mere fact that someone didn't use that monitor at the time, you have to look and say, based on what was presented to the doctors and the nurses at the time, was it appropriate for them to use that or not. You just don't say, well they didn't use that and could have and, therefore, it's negligence.

(Notes of Testimony, Court's Charge to the Jury, 659-666) (hereinafter, "N.T.").

In their Brief in Support of Motion for a New Trial, Plaintiffs argue that the court's charge was circular and confusing. (Plaintiff's Brief in Support of Motion for a New Trial, p. 7). Plaintiffs waived such argument by declining to identify before jury deliberations any inaccuracies other than the alleged improper instruction as to giving the error of judgment instruction. (N.T. 685). Plaintiffs made no objection that the charge was confusing or that the language utilized was incorrect, although the court provided counsel ample opportunity to do so. Counsel referenced *Smith v. Yohe*, as a correct statement of law, which language, in fact, the court utilized. (N.T. 686). Plaintiffs failed to otherwise identify for the court the nature of the allegedly confusing language and any necessary correction, and therefore such argument is waived.

Even were Plaintiffs' argument as to the clarity of the charge not deemed waived, that argument lacks merit. Our Superior Court has frequently reiterated the well established standard of review applicable to

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claims of an erroneous charge to the jury, namely, that “the trial court has broad discretion in phrasing jury instructions and may choose its own wording as long as the law is clearly and accurately presented to the jury for its consideration.” *Commonwealth v. Rivera*, 565 Pa. 289, 773 A.2d 131 (2001) *cert. denied*, *Rivera v. Pennsylvania*, 535 U.S. 955, 2002 U.S. LEXIS 1968, 122 S.Ct. 1360, 152 L.Ed. 2d 355 (U.S. March 25, 2002). *See also*, *Havasky v. Resnick*, 415 Pa. Super. 480, 609 A.2d 1326 (1992) *citing*, *Vaughn v. Philadelphia Transp. Co.*, 417 Pa. 464, 468, 209 A.2d 279, 282 (1965); *Graham v. Sky Haven Coal, Inc.*, 386 Pa. Super. 598, 609, 563 A.2d 891, 896 (1989) (“The primary duty of the trial judge is to clarify the issues and apprise the jury of the legal principles needed to decide the case.”) Further, “[the Superior Court] will not reverse merely because a court restated a point of law several times.” *White by Stevens v. SEPTA*, 359 Pa. Super. 123, 129, 518 A.2d 810, 813 (1986), *allocatur denied*, 515 PA. 609, 529 A.2d 1082).

The court’s charge properly instructed as to error of judgment where evidence existed for the jury’s consideration of that issue. The Pennsylvania Supreme Court in *Smith v. Yohe*, 412 Pa. 94, 99, 194 A.2d 167, 171 (1963) set forth the rule of law that, “if a physician employs the required judgment and care in arriving at his diagnosis, the mere fact that he erred in his diagnosis will not render him liable even though his treatment is not proper for the condition that actually exists.” (*internal citations omitted*). Our appellate courts have approved of the instruction more recently in *King v. Stefanelli*, 862 A.2d 666 (Pa. Super. 2004) and *Blich v. Jacks*, 864 A.2d 1214 (PA 2004). In those cases, the Superior Court found that the trial court properly charged on error of judgment where the evidence presented factual issues as to whether a physician exercised the requisite skill, knowledge and care required, and made a medical judgment, but an unfortunate result nevertheless occurred. In *King*, the testimony that the surgeon made a “judgment call” in the method used to explore abdominal bleeding supported an instruction on error of judgment. *King v. Stefanelli*, 862 A.2d 666, 673 (Pa. Super. 2004). In *Blich*, the Superior Court deemed the instruction proper where the physician made judgments as to whether or not to hospitalize a patient, and the method of contacting the patient after receiving laboratory test results. *Blich v. Jacks*, 864 A.2d 1214, 1219-1220 (PA 2004). However, the instruction would be improper where the testimony as to breach of the standard of care is uncontroverted. *See, Vallone v. Creech*, 820 A.2d 760 (Pa. Super. 2003).

The evidence at trial of the instant case supported instruction on error of judgment. The testimony of Dr. Hawn and the defense expert

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witnesses presented the position that Dr. Hawn utilized the requisite knowledge and skill required by the applicable standard of care and made an appropriate medical judgment, based upon those actions. Dr. Hawn testified that she reviewed the fetal monitoring strips after midnight, and determined that the amount of Pitocin being administered should be lowered, but not stopped. She further testified that based upon her interpretation of the fetal monitoring strips, in her judgment, it was unnecessary to perform scalp stimulation. (N.T. 469-70). Dr. Hawn took measures known as intrauterine resuscitation, after which she felt comfortable with the fetal heart rate. After taking those steps, Dr. Hawn did not feel that immediate delivery of the baby was necessary.

The defense expert, Dr. Boehme testified that Dr. Hawn used appropriate judgment in her decisions regarding administration of Pitocin, scalp stimulation, internal monitoring and delivery of the baby. (N.T. 402-4109). Dr. Boehme testified that based upon standards accepted by the American College of OBGYN and literature in the field, the steps taken by an obstetrician based upon the pattern on the fetal monitoring strips, except in the clearest of cases, is a matter which allows for the exercise of clinical judgment. As to each of Plaintiff's claims regarding the management of the labor and delivery, Dr. Boehme testified that Dr. Hawn acted within the standard of care, and made appropriate clinical judgments. (N.T. 394-97; 406-09). Dr. Boehme testified that Dr. Hawn complied with the standard of care expected of a prudent physician presented with the fetal monitoring strip which was before her. (N.T. 378). The issue of the exercise of judgment existed in the case. Accordingly, the court properly charged as to the issue of error of judgment.

Further, the language of the charge given as to error of judgment was proper. The instruction closely follows the language of *Smith v. Yohe*, 412 Pa. 94, 194 A.2d 167 (1963) and approved by the Superior Court in *King v. Stefanelli*, 862 A.2d 666 (Pa. Super. 2004). Therefore, Plaintiffs are not entitled to a new trial based upon the charge of error of judgment.

We are also unpersuaded by Plaintiff's argument that the court's instruction was erroneous based upon comments which accompany Pennsylvania Standard Civil Jury Instruction 11.01. The Comment offers reasons why the Suggested Instruction does not include language regarding professional judgment. However, having determined that the instruction was appropriate under the law and facts, we were not bound to follow the Comments to the Suggested Instructions. "The Pennsylvania Standard Suggested Jury Instructions have never been adopted or endorsed by [the Supreme Court of Pennsylvania]".

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Commonwealth v. Rizzuto, 566 Pa. 40, 71, 777 A.2d 1069, 1087 (2001). The Superior Court in *Schaaf v. Kaufman*, 850 A.2d 655 (Pa. Super. 2004) reminded that, the standard jury instructions, “[a]fter all are, only suggested instructions.” at 664. We find the rationale contained in the Comment inapplicable to the instant case.

B. THE COURT PROPERLY DECLINED TO CHARGE THE JURY AS TO THE CAUSATION STANDARD OF “INCREASED RISK OF HARM”.

Plaintiffs are not entitled to a new trial based upon the court’s decision not to charge the jury on the causation standard of “increased risk of harm”. We find instruction as to increased risk of harm inapplicable in that Plaintiff’s expert opined unequivocally that the Defendants’ alleged negligence caused the harm to the child.

As to the issue of causation, the court charged on factual cause, that is, that Plaintiffs must prove that the negligence was an actual and real factor in bringing about the harm, not an insignificant connection to the harm, and that the harm would not have occurred but for the negligent conduct. (N.T. 667). In addition, the court charged that Plaintiff did not bear the burden of proving that the alleged negligence was the sole cause of the harm, but that they could find that factual cause where there existed concurring causes. (N.T. 667-679).

At the conclusion of the charge, Plaintiff’s counsel asserted that the court erred in not charging on increased risk of harm.¹ Counsel argued that the failure to give the increased risk if harm instruction, together with the “but for” causation instruction created a higher burden of causation for the Plaintiffs to meet. (N.T. 684).

We disagree that instruction on increased risk of harm was applicable or warranted in this case, based upon the Plaintiffs’ expert’s opinion on causation. The concept of increased risk of harm has been described as a “relaxed” degree of certainty of proof required of plaintiffs in proving causation in certain types of cases. The court in *Hamil v. Bashline*, affirmed as Pennsylvania law Section 323 of the Restatement (Second) of Torts (1965) which provides the causation standard of increased risk of harm:

Negligent Performance of Undertaking to Render Services . . .

1. At sidebar, Plaintiff’s counsel asserted argument in support of the request for a charge based upon cross examination of the defense expert, Dr. Quade. In their Brief in Support of Motion for New Trial, Plaintiffs present that argument only as to Plaintiff’s expert, Stephanie Mann, MD. We will address Plaintiff’s argument as briefed.

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One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care in his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking.

The Pennsylvania Supreme Court has reviewed and reaffirmed the Restatement rule and *Hamil v. Bashline* and it progeny to clarify the degree of proof required to prove causation in a medical malpractice claim. In *Mitzelfelt v. Kamrin*, 526 Pa. 54, 584 A.2d 888 (1990), the Court addressed the standard applicable to those cases in which, "irrespective of the quality of the medical treatment, a certain percentage of patients will suffer harm, even in the absence of negligence." *Mitzelfelt*, 526 Pa. at 62, 584 A.2d at 892. It is in those cases, for example, involving failure to timely detect breast cancer, that the instruction on increased risk of harm is warranted.

In *Mitzelfelt*, the plaintiff's expert testified that twenty percent of patients who undergo the type of surgery performed in that case will do badly, irrespective of the care provided. In determining whether the increased risk of harm standard of causation should apply, the Supreme Court applied *Hamil v. Bashline*, and employed a two part test: first, determination of whether the expert witness for the Plaintiff could testify to a reasonable degree of medical certainty that the acts or omissions complained of could cause the type of harm suffered; second, application of the "relaxed" standard to determine whether the acts complained of caused the actual harm suffered. *Mitzelfelt*, 526 Pa. at 67, 584 A.2d at 894. Based upon the testimony presented by Plaintiff's expert therein, viewed in a light most favorable to *Mitzelfelt* as the verdict winner, the Court concluded that "the most any physician could say was that he believed, to a reasonable degree of medical certainty that the negligence complained of 'could' have caused the harm." *Id.* Accordingly, the Court concluded that the trial court properly instructed on increased risk of harm.

Further, in *Montgomery v. South Philadelphia Medical Group*, 441 Pa. Super. 146, 665 A.2d 1385 (1995), a case involving alleged delay in the diagnosis and treatment of breast cancer, the Superior Court applied the relaxed increased risk of harm standard of causation. The Superior Court explained:

Snyder v. Hawn, et al.

Such cases by their very nature elude the degree of certainty one would prefer and upon which the law normally insists before a person may be liable. Nevertheless, in order that an actor is not completely insulated because of his uncertainties as to the consequences of his negligent conduct, Section 323 (a) [of the Restatement (Second) of Torts] tacitly acknowledges this difficulty and permits the issue to go to the jury upon a less than normal threshold of proof.

Montgomery v. South Philadelphia Medical Group, 441 Pa. Super. 146, 156, 665 A.2d 1385, 1390-1391 (1995), citing, *Hamil v. Bashline*, 481 Pa. 256, 271, 392 A.2d 1280, 1287-1288 (1978).

In the case at bar, Plaintiff's expert, Dr. Mann, opined that the harm to the child was caused by the actions or inactions of the Defendants. Dr. Mann expressed no equivocation as to her ability, or the ability of any expert to determine causation, which would require application of the relaxed standard of causation. Plaintiffs asserted throughout that case that Montana was a healthy baby *in utero*, whose condition deteriorated to that of a brain damaged child at delivery, because of alleged failures of the Defendants to properly manage the mother's labor. Dr. Mann testified unequivocally that, although she could not point to the precise time at which the lack of oxygen to the brain occurred, the "fetal heart tracings certainly suggested what was going on." (Mann Deposition Transcript, p. 36). Dr. Mann clarified, upon question of defense counsel, that it was her opinion that Dr. Hawn's management of the labor caused, not increased the risk of, the harm:

- Q. ... Do you recall that? In reading that, my — I thought you were saying — correct me if I'm wrong that even if prompt action were taken, the child may still have had these problems?
- A. No. That's — that's not what I meant there. What's meant there is that if the response on the part of Dr. Hawn had been appropriate and more prompt while she was looking at the fetal heart tracing, that perhaps the situation would not have gotten to the point it had, and then we would not — Montana would not have had the problems that he had.

(Deposition Transcript of Stephanie Mann, M.D., p. 58-59).

This testimony dispels the argument that the evidence warranted the increased risk of harm standard. Any equivocation by Dr. Mann relat-

Snyder v. Hawn, et al.

not to her causation opinion, but only to whether, once the alleged negligence occurred, some further response by Dr. Hawn would have prevented or reduced the resulting complications.

Further, the court's charge as a whole properly and sufficiently instructed as to the law of causation. We neither instructed nor suggested that, in order to be found liable, the Defendants' conduct must have been the only cause of the harm. We instructed that Plaintiffs were not required to prove that Defendants' alleged negligence was the sole cause of the harm, and further instructed that Defendants were not insulated from liability in the event that some concurrent cause of harm existed. *See, Jones v. Montefiore Hosp.*, 494 PA. 410, 431 A.2d 920 (1981) (Supreme Court reversed judgment in favor of health care providers where trial court erroneously charged that proximate cause must be a direct and continuous cause uninterrupted by any intervening cause.) This court's charge was consistent with the correct statement of law that, "[a] plaintiff need not exclude every possible explanation and the fact that some other cause concurs with the negligence of the defendant in producing an injury does not relieve the defendant from liability unless he can show that such other cause would have produced the injury independent of his negligence." *Majors v. Brodhead Hotel*, 416 Pa. 265, 273, 205 A.2d 873, 878 (1965).

Finally, we reject Plaintiff's argument that error on increased risk of harm prejudiced Plaintiffs in that such alleged error was inextricably intertwined with the allegedly improper negligence charge. As discussed, *supra*, the charge on error of judgment was proper under the law and based upon the evidence; the court addressed the negligence concept in separate discussion, and apprised the jury as to how a finding on negligence would determine whether or not to proceed to the issue of causation. The jury found no negligence and therefore did not reach the issue of causation. Accordingly, no error occurred, nor can any harm be attributed to the denial of an instruction on increased risk of harm.

C. THE COURT PROPERLY DECLINED TO INSTRUCT THE JURY USING THE LANGUAGE OF SSJI 11.09, "IRRELEVANT CONSIDERATIONS".

The court did not err in declining to instruct utilizing the language of Standard Suggested Jury Instruction 11.09 (Civ), "Irrelevant Considerations" where it fully and accurately instructed that the jury focus on relevant matters only.

Snyder v. Hawn, et al.

We need not repeat in this discussion the well-established standard that the trial court has wide latitude in choosing the language of the jury instructions. This court found no need to instruct on “Irrelevant Considerations” where it instructed the jury to set aside sympathy toward the child or the doctors and nurses, to look only to the facts and law, to keep an open mind and to be fair to parties on both sides of the case. (N.T. 31-32). The court instructed the jury:

Let me point out to you that this is a very serious case, very tragic case, and you took an oath to well and truly try the case. If you reach a verdict based on your facts and your inferences and your conclusions, regardless of what the verdict is, it is the right verdict. And if you let other things sort of participate and have an impact on your decision, whatever it may be, then you haven't been true to your oath.

And you took that oath, and I know that means something to you. It means something to the parties here because this is — this isn't personal on anyone's behalf. It is not personal against the doctors, sympathy for the Plaintiffs, it is that all of you took an oath to well and truly try this case. Whatever your verdict is, if you reach it based on that, you leave here knowing you discharged your duty and your oath. And that's all we can ask of you.

You are the — the fact finder here is the most important role in this courtroom. When you do it that way, you can leave here, even though it may be uncomfortable, even though you may have sympathy, whatever it may be, you know you've discharged your oath and that's all we can ask you to do.

And if you let anything else be part of that deliberation, then you should question yourself if you leave. I don't want to sound cold. I don't want to sound harsh or cruel. But that's your oath, and please abide by that. And whatever the verdict is, neither side can complain if you do it based on those two things.

(N.T. 679-681)

It was unnecessary for the court to identify a particular matter to be disregarded. As discussed *supra*, the court is not required to give

Snyder v. Hawn, et al.

Standard Suggested Jury Instructions, nor other specific language, where the issue is otherwise adequately covered. *See, Vallone v. Creech*, 820 A.2d 760, 764 (Pa. Super. 2003) and *Schaaf v. Kaufman*, 850 A.2d 655 (Pa. Super. 2004) (Trial court did not err in omitting that portion of the “Irrelevant Considerations” Standard Instruction which referred to the physician’s reputation, medical practice or license.)

Accordingly, the court did not err in declining to utilize language of the Standard Suggested Jury Instruction on Irrelevant Considerations.

IV. CONCLUSION

For all of the foregoing reasons we enter the following:

ORDER

AND NOW, this 29th day of September, 2006, Plaintiff’s Motion for a New Trial is DENIED.

—————○—————

THIRD PUBLICATION

Estate Notices

ESTATE OF LEONA S. ESPENSHADE, late of Lower Swatara Township, Dauphin County, Pennsylvania (died November 26, 2006). Executor: Larry M. Espenshade, 195 Dogwood Drive, Hershey, PA 17033. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. d15-d29

ESTATE OF LILLIAN KATZ NICOLL, late of the Township of Susquehanna, Dauphin County, Pennsylvania. Co-Executors: Eileen Katz Rosenblatt, 425 Barbarossa, Coral Gables, FL 33146 and Max J. Katz, 315 East 65th Street, New York, NY 10021. Attorney: James H. Turner, Esq., Turner and O'Connell, 4415 North Front Street, Harrisburg, PA 17110. d15-d29

ESTATE OF DENNIS M. SHADE, late of the City of Harrisburg, Dauphin County, Pennsylvania (died October 15, 2006). Co-Administrators: Raymond H. Shade and Doris C. Shade. Attorney: John B. Enders, Esq., Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501. d15-d29

ESTATE OF MARY E. BARNHART, late of Dauphin County, Pennsylvania. Administrator: Hershey Trust Company, 100 Mansion Road East, P.O. Box 445, Hershey, PA 17033-0445. Phone (717) 520-1132. d15-d29

ESTATE OF IRENE A. MANURA, late of Londonderry Township, Dauphin County, Pennsylvania (died October 28, 2006). Executrix: Elona L. Snyder, 512 Invicta Drive, Pittsburgh, PA 15235-2213. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. d15-d29

ESTATE OF VIRGINIA A. STRAWDERMAN, late of Derry Township, Dauphin County, Pennsylvania. Executor: Robert S. Strawderman, 804 E. Maple Street, Palmyra, PA 17078. Attorney: Keith D. Wagner, Esq. d15-d29

ESTATE OF MARY G. NAGLE, late of Susquehanna Township, Dauphin County, Pennsylvania (died November 28, 2006). Executrix: Clifford Neidig. Attorney: George W. Porter, Esq., 909 East Chocolate Avenue, Hershey, PA 17033. d15-d29

ESTATE OF JOSEPHINE S. WALTON, late of the Borough of Hummelstown, Dauphin County, Pennsylvania (died October 16, 2006). Co-Executrices: Dorothy J. Lentz, 531 Allison Drive, Apt. #2, Hummelstown, PA 17036 and Judith Hinkle, 241 Adelia Street, Middletown, PA 17057. Attorney: Jean D. Seibert, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101. d15-d29

FIRST PUBLICATION

Corporate Notices

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 December 20, 2006, 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 **Grand Meadows Homeowners Association, Inc.**

The purpose for which it will be organized is: To be a unit owners' association that provides for the management, maintenance and care of the residential project located in Hampden Township, Cumberland County, Pennsylvania, known as Grand Meadows, A Planned Community.

McNEES WALLACE & NURICK LLC
100 Pine Street
Harrisburg, PA 17101
d29

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN of the filing of Articles of Incorporation as follows:

1. The name of the corporation is: **CTBS, LLC**.
2. The location of the registered office of the corporation is 946 Kings Way East, Hummelstown, PA 17036.
3. The Articles of Incorporation were filed under the provisions of the Business Corporation Law of 1988.
4. The corporation shall have unlimited power to engage in and do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law.
5. The Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania and approved by said Department on the 12th day of December, 2006. d29

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Corporation Bureau of the Department of State of the Commonwealth of Pennsylvania:

- (1) The name of the corporation is **WebpageFX, Inc.**
- (2) The corporation has been organized under Title 15 of the Pennsylvania Consolidated Statutes §§1101-4162 (the Business Corporation Law, as amended).

ROBERT C. MAY, Esq.
The Law Firm of May & May, P.C.
4330 Carlisle Pike
Camp Hill, PA 17011
d29 (717) 612-0102

NOTICE IS HEREBY GIVEN that **BUSINESS CREDIT CORP.** Qualified to do business on 11/28/2006 in the Commonwealth of Pennsylvania under the Provisions of Pennsylvania Business Corporation Law 15 Pa.C.S. d29

NOTICE IS HEREBY GIVEN that a Certificate of Organization has been filed with the Department of State of the Commonwealth of Pennsylvania in Harrisburg, Pennsylvania, for **W. C. Farms, LLC**. The Certificate of Organization was filed on November 13, 2006. Said Limited Liability Company intends to be organized under the provisions of the Business Corporation Law of the Commonwealth of Pennsylvania of 1988. The initial registered office of the company is 2805 Old Post Road, Suite 200, Harrisburg, PA 17110.

JAMES R. CLIPPINGER, Esq.
Caldwell & Kearns
3631 North Front Street
Harrisburg, PA 17110

d29

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania on December 20, 2006, with respect to a proposed non-profit corporation, **South Hanover Youth Football Association**, which has been incorporated under the nonprofit Corporation Law of 1988. A brief summary of the purposes for which said corporation is organized is: The purpose for which it will be organized is to provide and promote lessons of teamwork and sportsmanship to the youth in South Hanover Township through football and cheerleading programs.

d29

EDWIN A.D. SCHWARTZ

NOTICE IS HEREBY GIVEN that a business corporation known as **REAM AUTO GROUP, INC.**, has been incorporated under the provisions of the Pennsylvania Business Corporation Law of 1988.

d29

BARLEY SNYDER LLC

FIRST PUBLICATION

Miscellaneous Notices

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

CIVIL ACTION – LAW

No. 2006-CV-5087-QT

**NOTICE OF ACTION
TO QUIET TITLE**

**ALAN LANE INVESTMENTS, Plaintiff
vs.**

**NICK M. REITZI, KNOWN HEIR
OF NICKLOS M. REITZI
a/k/a NICK M. REITZI
a/k/a NICHOLAS M. REITZI
a/k/a NICHOLAS MATTHEW REITZI,
DECEASED, UNKNOWN HEIRS
OF NICKLOS M. REITZI
a/k/a NICK M. REITZI
a/k/a NICHOLAS M. REITZI
a/k/a NICHOLAS MATTHEW REITZI,
DECEASED, and WACHOVIA BANK,
NATIONAL ASSOCIATION
f/k/a FIRST UNION NATIONAL BANK,
Defendants**

**TO: NICK M. REITZI, KNOWN HEIR OF
NICKLOS M. REITZI a/k/a NICK M.
REITZI a/k/a NICHOLAS M. REITZI
a/k/a NICHOLAS MATTHEW
REITZI, DECEASED, UNKNOWN
HEIRS OF NICKLOS M. REITZI
a/k/a NICK M. REITZI a/k/a
NICHOLAS M. REITZI a/k/a
NICHOLAS MATTHEW REITZI,
DECEASED, PATRICIA M. REITZI-
STEWART and EUGENE J. REITZI**

YOU ARE HEREBY NOTIFIED that on November 2, 2006, Plaintiff, Alan Lane Investments, filed a Complaint to Quiet Title endorsed with a Notice to Defend against the above Defendants in the Court of Common Pleas of Dauphin County, Pennsylvania, docketed to No. 2006-CV-5087-QT, wherein Plaintiff desires to establish his title and right to possession of the property located at 104 Vine Street, Borough of Highspire, Dauphin County, PA, Tax Parcel No. 30-004-049, which Plaintiff obtained by Tax Claim Bureau Deed dated June 30, 2006. The subject real estate is bounded and described as follows:

ALL THAT CERTAIN tract of land situated in the Borough of Highspire, Dauphin County, Pennsylvania, bounded and described as follows, to wit:

BEGINNING at a point on the northern side of Moyer Alley a distance of one hundred eighty-six and forty hundredths (186.40) feet from the intersection of Moyer Alley and Vine Street; thence in a northerly direction a distance of one hundred thirty-seven (137) feet to a point on Vine Street; thence along Vine Street in a southerly direction a distance of sixty-seven (67) feet to a point on the boundary line between the property herein conveyed and premises of George M. Barnes and Clara Barnes, Grants herein; thence along said boundary line to a point on the northern side of Moyer Alley; thence on the northern side of Moyer Alley a distance of thirty-five (35) feet to a point the place of BEGINNING.

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 within twenty (20) days. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the Plaintiff. You may lose money or property or other rights important to you.

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

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

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

LaTOYA C. WINFIELD, Esq.
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17102
(717) 234-4178

FIRST PUBLICATION

Miscellaneous Notices

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

No. 2004-FC-2391-Y03

**CUSTODY
PETITION FOR MODIFICATION**

**AMANDA ANN WINKLER
f/k/a AMANDA ANN JAMES, Plaintiff**

vs.

**DANIELLE LESLEY JAMES, and
WILLIAM WALLACE SCHLEGEL,
Defendants**

TO: WILLIAM WALLACE SCHLEGEL

YOU ARE HEREBY NOTIFIED that on October 17, 2006, Petitioner, Amanda Ann Winkler, filed a Petition for Modification for custody of Ayla Schlegel in the York County Court of Common Pleas (Docket No. No. 2004-FC-2391-Y03) naming you as the Respondent.

The Court has entered an order scheduling a Conciliation Conference for January 12, 2007 at 9:00 A.M. in Hearing Room #5 on the 4th floor of the York County Judicial Center, 45 North George Street, York, York County, Pennsylvania.

YOU HAVE BEEN SUED IN COURT. If you wish to defend, you must take action within twenty (20) days after this petition and notice are served by entering a written appearance personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You have the right to be represented by an attorney who may attend the Conciliation Conference with you. If for some reason an attorney has not been secured by the time of the Conciliation Conference, you shall personally appear at the time scheduled for the Conciliation Conference without an attorney. You are warned that if you fail to appear as provided by the order, an order for custody, partial custody or visitation may be entered against you and/or the Court may issue a warrant for your arrest. 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 or know a lawyer, then you should go to or telephone the following office:

LAWYER REFERRAL SERVICE OF
YORK COUNTY
137 East Market Street
York, PA 17401
Telephone No. (717) 854-8755

d29

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

CIVIL DIVISION

No. 2006-CV-1165 MF

**LASALLE BANK NATIONAL
ASSOCIATION, AS TRUSTEE FOR
CERTIFICATE HOLDERS OF BEAR
STEARNS ASSET BACKED SECURITIES
I, LLC, ASSET BACKED
CERTIFICATES, SERIES 2005-HE2,
Plaintiff**

vs.

**WILFREDO SALAS and MANDY SALAS,
Defendants**

NOTICE OF SHERIFF'S SALE of Real Estate on March 1, 2007 at 10:00 A.M. in the Dauphin County Administration Building, 4th Floor, Commissioner's Hearing Room, Second and Market Streets, Harrisburg, PA 17101.

LaSalle Bank National Association, as Trustee for Certificate Holders of Bear Stearns Asset Backed Securities I, LLC, Asset Backed Certificates, Series 2005,-HE2, in the amount of \$147,997.98.

Schedule of Distribution will be filed by the Sheriff on the date specified by the Sheriff no later than thirty (30) days from sale date. Distributions will be made in accordance with the schedule unless exceptions are filed within ten (10) days of the filing of the Schedule.

KRISTINE M. ANTHOU, Esq.
Grenen & Birsic, P.C.
One Gateway Center, 9 West
Pittsburgh, PA 15222
(412) 281-7650

d29

THIRD PUBLICATION

Miscellaneous Notices

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

No. 2006-MU-484

MUNICIPAL LIEN

**TOWNSHIP OF UPPER PAXTON
BOARD OF SUPERVISORS,
DAUPHIN COUNTY, Claimant**
vs.

LINDA SCHAFFER, Owner

NOTICE

**TO: Linda Schaffer, owner
of real property at
212 Center Street
Millersburg, PA 17061**

NOTICE IS HEREBY GIVEN that Linda Schaffer, owner of real property at 212 Center Street, Millersburg, PA 17061, a Writ of Scire Facias has been filed against you in the above Court claiming certain sums, fees, and costs for services rendered. File your affidavit of defense, if any you have, in the above named Court within fifteen (15) days after service of the Writ upon you or judgment may be entered against you and your property sold. d15-d29

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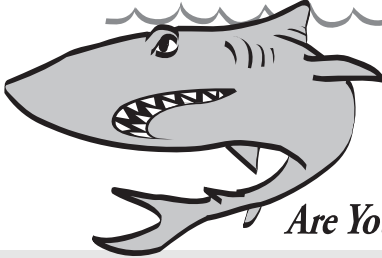
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BAR ASSOCIATION PAGE
Dauphin County Bar Association
213 North Front Street • Harrisburg, PA 17101-1493
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The Board of Directors of the Bar Association meets on the third Thursday of the month at the 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

DECEMBER 2006	Judge Bruce F. BRATTON
JANUARY 2007	Judge Jeannine TURGEON

Opinions Not Yet Reported

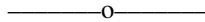
- November 15, 2006 – Evans, J., **Prowell v. Pennsylvania Financial Responsibility Assigned Claims Plan** (No. 1036 CV 2001)
- November 21, 2006 – Turgeon, J., **Jacob v. Shultz-Jacob** (No. 603 DR 2006; PACSES 859108160)

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November 30, 2006 – Kleinfelter, J., **Citifinancial Services, Inc. v. Loper** (No. 2006 CV 2074)

December 5, 2006 – Evans, J., **Wachovia Bank, N.A. v. Gemini Equipment Company** (No. 2574 S1998)



SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE

Notice of Proposed Recommendation No. 221

Proposed New Rule 4003.8

Governing Pre-Complaint Discovery

The Civil Procedural Rules Committee is proposing the promulgation of new Rule of Civil Procedure 4003.8 governing pre-complaint discovery.

The recommendation is published in full in the *Pennsylvania Bulletin*, the advance reports of *West's Atlantic* and *Pennsylvania Reporters*, the *Pennsylvania Law Weekly*, the *Philadelphia Legal Intelligencer* and the *Pittsburgh Legal Journal*. The recommendation is also published electronically as part of the Home Page of the Administrative Office of Pennsylvania Courts at "<http://www.aopc.org>".

The proposed recommendation has not been submitted to the Supreme Court of Pennsylvania for review but rather is being submitted to the bench and bar for comments and suggestions prior to its submission to the Supreme Court. All communications should be sent not later than **February 16, 2007** to:

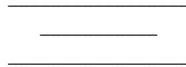
Harold K. Don, Jr.,
Counsel
Civil Procedural Rules Committee
5035 Ritter Road, Suite 700
Mechanicsburg, Pennsylvania 17055

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BAR ASSOCIATION PAGE – Continued

MISCELLANEOUS SECTION

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**SUPREME COURT OF PENNSYLVANIA
CIVIL PROCEDURAL RULES COMMITTEE**

Notice of Proposed Recommendation No. 220

**Amendment of Rule 400.1 Governing Service of Original Process
to Include the Fifth Judicial District (Allegheny County)**

The Civil Procedural Rules Committee is proposing that Rule of Civil Procedure 400.1 governing service of original process be amended to include the Fifth Judicial District (Allegheny County).

The recommendation is published in full in the *Pennsylvania Bulletin*, the advance reports of *West's Atlantic* and *Pennsylvania Reporters*, the *Pennsylvania Law Weekly*, the *Philadelphia Legal Intelligencer* and the *Pittsburgh Legal Journal*. The recommendation is also published electronically as part of the Home Page of the Administrative Office of Pennsylvania Courts at "<http://www.aopc.org>".

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**Harold K. Don, Jr.,
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Mechanicsburg, Pennsylvania 17055**

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MISCELLANEOUS SECTION

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