

ADVANCE SHEET

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CONTAINING THE DECISIONS RENDERED IN THE
12th JUDICIAL DISTRICT**

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INTELLECTUAL PROPERTY LAW

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41 Years in Harrisburg

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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 estates 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 RUTH W. TILLETT a/k/a RUTH MARY TILLETT, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executrix: Laura T. Whitcomb, 4328 Winthrop Drive, Harrisburg, PA 17112. Attorney: Shaun E. O'Toole, Esq., 220 Pine Street, Harrisburg, PA 17101. a3-a17

ESTATE OF CLIFFORD H. OMMERT, late of Middletown, Dauphin County, Pennsylvania (died July 17, 2012). Executor: David C. Miller, Jr. Attorney: David C. Miller, Jr., Esq., 1100 Spring Garden Drive, Suite A, Middletown, PA 17057. Telephone (717) 939-9806; email: DavidCMillerJr@verizon.net. a3-a17

ESTATE OF MARY ALICE BONAWITZ, late of Millersburg Borough, Dauphin County, Pennsylvania (died July 15, 2012). Executrix: Melissa A. Reynolds, 219 Luther Place, Harrisburg, PA 17111. Attorney: Gregory M. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethville, PA 17023. a3-a17

ESTATE OF HAROLD E. GODDARD, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executrix: Elaine C. Hitz, c/o Heather D. Royer, Esq., Smigel, Anderson & Sacks, LLP, 4431 North Front Street, 3rd Floor, Harrisburg, PA 17110. Attorney: Heather D. Royer, Esq., Smigel, Anderson & Sacks, LLP, 4431 North Front Street, 3rd Floor, Harrisburg, PA 17110.

a3-a17

ESTATE OF JOHN TERANCE ALLIO, late of the Borough of Dauphin, Dauphin County, Pennsylvania (died December 10, 2009). Administrator: Christopher B. Allio. Attorney: Robert L. Knupp, Esq., Knupp Law Offices, LLC, 407 North Front Street, P.O. Box 630, Harrisburg, PA 17108. Telephone (717) 238-7151. a3-a17

ESTATE OF JACOB A. MITCHELL, late of Swatara Township, Dauphin County, Pennsylvania (died June 11, 2012). Executrix: Eileen Arnold, 614 Allenview Drive, Mechanicsburg, PA 17055. Attorney: Dennis J. Shatto, Esq., Cleckner and Fearn, P.O. Box 11847, Harrisburg, PA 17108-1847. a3-a17

THE DAUPHIN COUNTY REPORTS

CONTAINING THE CASES DECIDED BY

Judges of the Twelfth Judicial District of Pennsylvania

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Wagner v. Wagner

Domestic Relations — Child Support — *Alimony Pendente Lite* — High Income Case
— Unavailable Income — Imputed Income — Retained Earnings — Perquisites
— Deviation — Allocation — Attorney's Fees.

Plaintiff-obligee sought child support and *alimony pendente lite* (APL) from Defendant-obligor, a highly successful entrepreneur and investor. The parties disputed calculations of obligor's monthly net income available for support over a three-year period.

1. Under the Support Guidelines promulgated by the Pennsylvania Supreme Court, support is based primarily upon the parties' monthly net incomes or earning capacities. *23 Pa. C.S.A. § 4322(a); Pa.R.C.P. 1910.16-2*. Monthly net income is derived from the parties' monthly gross income or earning capacity, less certain limited authorized deductions. *Pa.R.C.P. 1910.16-2(c)*.

2. In determining the financial responsibilities of the parties to a dissolving marriage, the court looks to the actual disposable income of the parties. *Labar v. Labar*, 731 A.2d 1252, 1255 (Pa. 1999). Where a support obligor owns his or her own business, the calculation of income for child support purposes must reflect the actual available financial resources of the payor spouse. *Fitzgerald v. Kempf*, 805 A.2d 529, 532 (Pa. Super. 2002).

3. A decision to invest in an entity or pay any of the attendant investment costs, even if arising from a contractual obligation entered prior to separation, does not render the payments excludable under the net income definition set forth in the Domestic Relations Code, Support Guidelines, or case law. *Lehman v. Lehman*, 636 A.2d 1172 (Pa. Super. 1994). Nevertheless, where an investor can prove that a capital contribution or reinvestment is "necessary to maintain or preserve" the entity, such payments may be deducted to compute net income. *Fennell v. Fennell*, 753 A.2d 866, 869 (Pa. Super. 2000) (italics supplied) citing *McAuliffe v. McAuliffe*, 613 A.2d 20, 23 (Pa. Super. 1992).

4. Employer-provided perquisites such as automobiles, fuel expenses and automobile insurance for personal use must be included as income to the recipient under support law since they are reflective of the true nature and extent of a party's financial resources. *Mascaro v. Mascaro*, 803 A.2d 1186, 1194 (Pa. 2002) (citation omitted).

5. A wealthy parent with assets and ability to provide has a legal duty to give his children advantages in reasonable accord with his financial status. *Branch v. Jackson*, 629 A.2d 170, 171 (Pa. Super. 1993). Parents have an absolute duty to support their children in a fashion consistent with their own station in life. *Coffey v. Coffey*, 575 A.2d 587, 589 (Pa. Super. 1990).

6. Under the Support Guidelines, the amounts calculated are presumed to be the correct amounts of support. *Pa.R.C.P. 1910.16-1(d)*. This presumption can be rebutted where the fact finder determines that the award "would be unjust or inappropriate." *Id.* The presumption that the Guideline support amount is correct is a strong one. *Ball v. Minnick*, 648 A.2d 1192, 1196 (Pa. 1994).

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7. Obligee's request seeking a deviation upward is unwarranted where the calculated amount of support covers all her claimed expenses and those of the child prior to her emancipation. *Rich v. Rich*, 967 A.2d 400 (Pa. Super 2009). The law does not require that both homes be an equal environment or merely adequate, but appropriate upon consideration of all relevant circumstances. The fact that obligor has assets significantly greater than obligee's does not, standing alone, warrant further adjustment to the award; the purpose of support is not to balance the equities or to address issues better left for equitable distribution.

8. An order for both spousal/APL and child support may be unallocated or allocated. *Pa.R.C.P. 1910.16-4(f)(1)*. In making the allocation decision where the parties are in higher income brackets, to address the reality that income tax considerations are likely to be more significant, the guidelines specifically provide that the trier of fact "should utilize the guidelines which result in the greatest benefit to the obligee." *Pa.R.C.P. 1910.16-4(f) (2)*.

9. Where an obligee prevails in a proceeding to obtain support, the court may assess against the obligor reasonable attorney fees and costs as well as necessary travel expenses incurred by the obligee. *23 Pa.C.S.A. §4351(a)*. It is within the court's discretion to award counsel fees upon a consideration of the totality of the relevant circumstances. *Bowser v. Blom*, 807 A.2d 830, 835 (Pa. 2002).

Petition for Child Support and *Alimony Pendente Lite*. C.P., Dau. Co., No. 1587 DR 2008, PACSES No. 133110237

John C. Howett, Jr., for the Plaintiff/Obligee

John J. Connelly, Jr., for the Defendant/Obligor

TURGEON, J., July 1, 2012. – Plaintiff-obligee Silvia Wagner seeks child support and *alimony pendente lite* from Defendant-obligor Scott Wagner in this economically complex matter. The seminal issue presented is the determination of obligor's income for the purpose of calculating his support obligations. Obligor is a businessman whose primary vocation is the management of Penn Waste, Inc., of which he is a majority owner. In addition, he is an investor with a net worth of approximately twenty million dollars who holds interests in dozens of entities.

PROCEDURAL BACKGROUND

Obligee and obligor, currently 53 and 56 years old, respectively, were married in August 1991 and separated almost seventeen years later, on May 19, 2008. They have one daughter together, Cristina (DOB 12/3/1992) who became emancipated May 26, 2011. Following the separation, Cristina lived primarily with her mother and Sebastian, mother's son from a previous marriage whom obligor had adopted. Obligor also has an adult daughter, Katherine, from a previous marriage. Prior to their separation, the parties lived primarily in York, Pennsylvania where they

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had built a new home in 2003. Following their separation, obligee continued to live in the marital home with Cristina until sometime in August 2009, when they moved to Florida. In October 2009, obligor moved back into the marital home where he continues to reside.

On August 1, 2008, obligor filed a divorce complaint in this court as well as a petition seeking custody of Cristina. On August 7, 2008, obligee filed a petition raising supplemental divorce claims including a request for *alimony pendent lite* (APL). That same day, obligee also filed a complaint with the Dauphin County Domestic Relations Office seeking child support and APL. An agreed interim support order was entered October 8, 2008, under which obligor agreed to pay obligee directly \$1,200 per week as well as all marital residence costs and numerous additional expenses submitted to him by obligee. Thereafter, the parties presented evidence over the course of ten day-long hearings, held between July 8, 2009 and August 18, 2011, primarily concerning obligor's income and expenses for the years 2008, 2009 and 2010.¹ Both parties presented extensive financial expert testimony.²

On May 4, 2010, I issued an Interim Order following the conclusion of the initial four hearings³ addressing obligor's 2008 income and the parties' expenses necessary to calculate support under *Melzer v. Witsberger*⁴ and the new Support Guidelines effective May 12, 2010. It provided that obligor pay monthly \$8,443 child support and \$26,988 APL, effective August 7, 2008 through May 11, 2010. This support obligation was calculated under the *Melzer* formula, as then required. Effective May 12, 2010, it provided obligor pay monthly \$7,308 child support and \$27,329 APL, calculated under the newly enacted Support Guidelines applicable to "high income" cases. Both support calculations were based upon my finding that obligor's 2008 monthly net income was \$100,252. The Interim Order was entered subject to modification after consideration of additional evidence received during future hearings.

1. The parties agree that for support obligations accruing in 2011 and 2012, the court will utilize their 2010 income figures.

2. Obligor's experts were Greg Crumling, CPA/ABV/CVA and Keith Eldredge, CPA with the public accounting firm ParenteBeard, LLC (formerly Beard Miller). Obligee's expert was Bruce Brown, CPA/ABV/CFF/CVA, with Brown, Schultz, Sheridan & Fritz.

3. Day-long hearings were held on July 8, July 10, October 28, and December 7, 2009. Hearings on supplemental matters were held on August 2 and September 28, 2010.

4. 505 Pa. 462,480 A.2d 991 (1984).

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The parties presented additional evidence in the support action, concerning obligor's 2009 income, on December 1 and 2, 2010, followed by oral argument on March 4, 2011. On June 13, 2011, I issued a second interim order, recognizing that the parties' daughter had become emancipated. That order directed that, commencing May 26, 2011, obligor pay APL only of \$39,362 per month plus \$5,000 per month on arrears. This calculation utilized obligor's 2008 income and was also subject to modification based upon updated income evidence at future hearings. It is notable that just prior to my issuance of the second interim order, I issued a ruling in the divorce action holding that pursuant to the parties' pre-nuptial agreement, Penn Waste, Inc., obligor's largest income producing asset, was excluded as a marital asset and thus not subject to equitable distribution. (No. 2008 CV 9601 DV, April 25, 2011)

Additional day-long hearings on obligor's 2010 income were held on August 15 and 18, 2011. Following all hearings, the parties attended mediation October 3 and 4, 2011 in contemplation of a global settlement of all issues including equitable distribution in the divorce action. However, the mediation failed at the very first session and in the following months the parties submitted briefs on all outstanding issues.

FACTUAL BACKGROUND

Obligor has made a remarkable ascension in the business and investment world. In his early twenties, he began his entrepreneurial career by purchasing rental properties and opening a ski shop business with a partner. After he sold his share of the ski shop, he focused on his rental properties and acquired additional real estate, which properties were one hundred percent financed. By 1980, obligor had acquired approximately thirty-five buildings in York. He also received his bail bonding license in 1979 and was involved in that line of work until his license expired in 1986.

In the early 1980's, obligor owned three laundromats and intrigued by the pricing of dumpsters he used at those sites, studied the waste hauling business. In 1985, he and two partners created the York Waste Disposal Company. This company started out with just two used, rented trucks, but quickly grew. In 1987, obligor and his partner bought out the other partner. York Waste Disposal continued to expand, acquiring numerous other waste disposal companies throughout the York, Lancaster and Harrisburg areas. It also expanded its operation to recycling by 1989, when it obtained the first recycling contract in Lancaster County. During this time, obligor sold all of his rental

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properties with the exception of a York apartment building. By 1997, York Waste Disposal had approximately two hundred pieces of equipment on the road every day, with truck terminals in York, Mechanicsburg and Lancaster. By 1997, its revenues were approximately \$40 million.

In 1997, obligor and his partner sold York Waste Disposal under a stock purchase agreement with Republic Industries. They traded their York Waste Disposal shares for Republic Industries shares, with all debt to be assumed by Republic Industries. Both partners received stock valued at \$21.5 million. Republic Industries agreed to employ obligor to run the company. Within two weeks of the sale, however, Republic Industries informed obligor it was hiring a president to run the company and that he would be reassigned a new position. As a result, obligor was employed with Republic Industries for only two years. At the time York Waste Disposal was sold in 1997, obligor made other investments, continued his involvement with the apartment building in York (which was ultimately sold), though he fully intended to return to the waste business.

In 2000, obligor sold the balance of his Republic Industries' stock, initially valued at \$21.5 million, for just \$3 million. That same year, he became a majority stockholder in his new business, Penn Waste, Inc., purchasing four trucks and approximately 120 containers. He funded this purchase by borrowing money from his brokerage account. Penn Waste is a Subchapter S Corporation, of which obligor is an 80% owner. Penn Waste was recently rated by the *Central Penn Business Journal* as one of the top closely held corporations in Central Pennsylvania. Its gross revenue was \$34 million in 2007, \$42 million in 2008, and \$41.6 million in 2009.

Obligor's operation of Penn Waste is his primary business enterprise and it is the source of all his wage-based income for the years at issue, netting him approximately one-half million in both 2008 and 2009 and over \$1.2 million in 2010. He has additionally received significant Penn Waste shareholder distributions ranging from \$1.5 million to \$2.3 million for the three years at issue.

In addition to Penn Waste, two other entities provide the bulk of his remaining income: KBS Inc. and the Wagner Family Limited Partnership (WFLP). KBS is a Subchapter S corporation engaged in contract specialty hauling throughout the United States. Obligor purchased this business in 2005 and runs its day-to-day affairs. Though KBS has yet to produce significant profits, and has in fact been operating at recent

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deficits, obligor nevertheless received management fees through related KBS entities totaling just under \$500,000 for the three years in question. Obligor established WFLP pre-separation for estate planning purposes by making investments for the benefit of obligee and the three children, in order to shift wealth from himself to his family. Obligor received distributions totaling over \$1.5 million from the WFLP for the three years at issue.

In addition to these income-producing entities (Penn Waste, KBS, and WFLP), obligor otherwise holds interests or invests in a myriad of limited partnerships, limited liability companies, other investment entities and trusts. Obligor estimated he was invested in roughly twenty-five such entities, the majority of which are pass-through entities. (See D-22 (2008)) Obligor's ownership interests in these entities vary though in most he holds a minority or diluted majority interest. As noted above, his net worth in 2010 was approximately \$20 million. While obligor pays for some of his investments with income, he mostly finances them with borrowings against his assets, primarily through bank loans, lines of credit and his brokerage account. Thus, as the value of his assets increase so too his investments. The record before the court revealed that obligor has, throughout the course of the marriage, approached investment decisions on a long-term basis with the goal of a sizeable investment gain which may not be realized for many years, including well after his support obligation ends (child and spousal) and issues of equitable distribution have been resolved. The consequences of his approach have resulted in the gradual enrichment of the marital estate; however, many of obligor's investments, in their nascent stages, do not realize income for many years and some experience losses. (See D-17 (2008)) The details of obligor's income and expenditures are discussed below as they relate to specific entities.

While obligor has a substantial income and interest in millions of dollars' worth of entities and assets, as of July 2009 his debt exposure was almost \$90 million, though much of this debt exposure he shares with co-investors. (D-4 2008) This was from a combination of direct debt, guarantees on loans through partnerships and guarantees of performance bonds for his business, most notably with Penn Waste. (7/8/09 at 37-38; 7/10/09 at 98) Approximately \$70 million was bank debt exposure and approximately \$20 million was bond exposure. (10/28/09 at 14-15) The latter arose from obligor's personal guarantees on performance bonds he was contractually required to obtain pursuant to Penn Waste's approximate sixty municipalities' waste removal contracts. (10/28/09 at 34-35; 12/7/09 at 12) According to his expert, obligor has limited sources for

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obtaining cash outside of Penn Waste, his largest business enterprise. (7/8/09 at 38)

Obligor also testified that the market collapse in September 2008 and subsequent banking crisis resulted in banks making fewer loans and calling for payment on existing loans and lines of credit, (7/10/09 at 99) For example, in 2008, as a result of market failures, obligor's stock portfolio fell below a required value triggering one of the covenants in his one million dollar line of credit with Citizens Bank. Citizens Bank required him to pay off the entire loan by the end of 2009. (7/10/09 at 104-06)

Obligor and his expert testified that should obligor default on any of a number of financial obligations - whether bank loans, credit lines, business investments or cash calls - such defaults could result in the acceleration of payments on all loans or may otherwise negatively affect his relationship with other banks, including his ability to obtain performance bonds for Penn Waste municipal contracts. (7/8/09 at 38; 7/10/09 at 98-99) Obligor claims broad ramifications of renegeing on agreements to invest, meeting capital calls or failing to provide capital where it is depleted. Should any of the payments go into default, he could theoretically be immediately exposed to \$90 million debt. (7/8/09 at 67)

LEGAL DISCUSSION

The parties presented voluminous evidence concerning obligor's income for 2008, 2009 and 2010, which figures diverged considerably. They agreed that obligor's gross income available from all sources of income was \$3,491,714 in 2008, \$4,140,496 in 2009 and \$3,805,303 in 2010. Nevertheless, obligor initially offered expert opinion that his 2008 and 2009 net income available for support was *de minimis*, including that it was only \$950 per month in 2009. He later submitted figures that his income available to pay support was \$148,477 in 2008 (\$12,373 per month), \$699,642 in 2009 (\$58,304 per month) and \$750,770 in 2010 (\$62,564 per month). Obligee's expert offered evidence that obligor's net income for support purposes was substantially higher: \$1,761,258 in 2008 (\$146,772 per month), \$2,331,520 in 2009 (\$194,293 per month) and \$1,976,805 in 2010 (\$164,733 per month). Upon review of the evidence, I find obligor's monthly net income for 2008, 2009 and 2010 was \$136,545, \$158,647 and \$118,253, respectively.

The parties agreed that obligee, who was not employed or earning other income during the course of the marriage or thereafter, should be assigned a net monthly income of \$1,847 for all time periods at issue, based upon a \$2,000 per month gross earning capacity.

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Under the Support Guidelines promulgated by the Pennsylvania Supreme Court, support is based primarily upon the parties' monthly net incomes or earning capacities. 23 Pa.C.S.A. § 4322(a); Pa.R.C.P. 1910.16-2. Monthly net income is derived from the parties' monthly gross income or earning capacity, less certain limited authorized deductions. Pa.R.C.P. 1910.16-2(c). The definition of "income" that governs support matters, set forth in Section 4302 of the Domestic Relations Code, provides as follows:

"Income." Includes compensation for services, including, but not limited to, wages, salaries, bonuses, fees, compensation in kind, commissions and similar items; income derived from business; gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; all forms of retirement; pensions; income from discharge of indebtedness; distributive share of partnership gross income; income in respect of a decedent; income from an interest in an estate or trust; military retirement benefits; railroad employment retirement benefits; social security benefits; temporary and permanent disability benefits; workers' compensation; unemployment compensation; other entitlements to money or lump sum awards, without regard to source, including lottery winnings; income tax refunds; insurance compensation or settlements; awards or verdicts; and any form of payment due to and collectible by an individual regardless of source.

23 Pa.C.S.A. §4302 (incorporated at Pa.R.C.P. 1910.16-2(a)). *See, Arbet v. Arbet* 863 A.2d 34, 40 (Pa. Super. 2004) (citation omitted) (the court must consider all forms of income when determining income available for support).

The Support Guidelines provide the following rules concerning the authorized deductions from gross income to calculate net income:

- (1) Unless otherwise provided in these rules, the court shall deduct only the following items from monthly gross income to arrive at net income:
 - (A) Federal, state and local income taxes;
 - (B) F.I.C.A. payments (Social Security, Medicare and Self-Employment taxes) and non-voluntary retirement payments;
 - (C) Union dues; and
 - (D) Alimony paid to the other party.

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Pa.R.C.P. 1910.16-2(c)(1). These delineated deductions are not contested in this case, with the exception of obligor's claim that this court should exclude taxes he has paid on behalf of his children, discussed below. The deductions at issue mostly concern obligor's "mandatory" capital contributions, investment expenditures, insurance and loan payments.

Our Supreme Court has held that "in determining the financial responsibilities of the parties to a dissolving marriage, the court looks to the actual disposable income of the parties." *Labar v. Labar*, 731 A.2d 1252, 1255 (Pa. 1999). Income for support must reflect "actual available financial resources" and not the "oft-time fictional financial picture which develops" by application of federal income tax laws. *Id.* (citation omitted). Support orders "must be fair, non-confiscatory and attendant to the circumstances of the parties." *Fennell v. Fennell*, 753 A.2d 866, 868 (Pa. Super. 2000).

Where a support obligor owns his or her own business, the calculation of income for child support purposes must "reflect the actual available financial resources of the payor spouse." *Fitzgerald v. Kempf*, 805 A.2d 529, 532 (Pa. Super. 2002) (citation omitted). As noted above, the income definition includes "income derived from business." 23 Pa.C.S.A. §4302. The Support Guidelines expand upon that definition, specifying that income includes "net income from business or dealings in property." Pa.R.C.P. 1910.16-2(a)(2). Our superior court has noted that "[t]he use of the word 'net' in the Rule specifically implies that there are acceptable business deductions" which a court can consider on a case-by-case basis. *Berry v. Berry*, 898 A.2d 1100, 1107 (Pa. Super. 2006), *appeal denied*, 918 A.2d 741 (Pa. 2007). It is the obligor's burden to present sufficient evidence of bona fide expenses. *Id.*

Nevertheless, "deductions or losses reflected on corporate books or individual tax returns are irrelevant to the calculation of available income unless they reflect an actual reduction in available cash." *Fennell* at 868. In addition, "all benefits flowing from corporate ownership must be considered in determining income available to calculate a support obligation." *Id.* As such, "the owner of a closely-held corporation cannot avoid a support obligation by sheltering income that should be available for support by manipulating salary, perquisites, corporate expenditures, and/or corporate distribution amounts. By the same token, however, we cannot attribute as income funds not actually available to or received by the party." *Id.* Our superior court has additionally agreed that "Pennsylvania case [law] does not accept the cash flow argument" in calculating income available for support. *Spahr v. Spahr*, 869 A.2d 548, 553 (Pa. Super. 2005).

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The crux of this case is what are obligor's "actual available financial resources" when he constantly spends and borrows funds, totally controls the millions in investments, presenting a very complex financial picture about which even reputable financial experts cannot agree. The parties specifically disagree over forty-one (41) items, regarding whether to include or whether to deduct or exclude these items from income computations. These disputed items account for an almost \$4.5 million combined difference in obligor's income calculations for the three years in question.

Much of this yawning gap can be explained by their experts' divergent treatment of two categories of income. The first involves obligor's numerous investments and capital contributions to corporate and partnership businesses, totaling slightly over two million dollars for the three years in question. Obligor's experts deducted these contributions and related costs from his gross income in arriving at his net income available to pay child support and APL, reasoning that such contributions represent income unavailable to him. Obligee's expert did not exclude any of these items. The second category involves just over one million dollars of expenditures and loans made by obligor's company, Penn Waste. Obligee's expert imputed these monies as income to obligor on the basis that they represented income Penn Waste could have paid to shareholders (including obligor) but instead diverted, at obligor's direction, into allegedly non-essential business expenses. Obligor's experts did not impute any of Penn Waste's income to obligor. The remaining items in dispute include, among other things, whether to deduct obligor's costs for payment of his children's taxes, his life insurance, and accounting fees for various entities as well as whether to include various capital gains and interest payments attributed to him.

I. Capital Contributions (Unavailable Income)

Obligor stresses that he was contractually obligated to make most of his capital contributions and thus they were not "voluntary." As such, obligor generally, through his experts, argued that his capital contributions and related costs (primarily in the form of interest on loans) must be deducted in computing his net income. Obligor's experts explained during the numerous hearings in this case that they sought to paint an overall picture of obligor's cash flow, including all inflows and outflows, "to capture everything." (See e.g. 12/1/10 at 123-27) For example, when obligor took out a loan to make a capital contribution, the expert deducted the entire amount of the loan (and costs) so long as the purpose of the related purchase (investment) was to generate income or

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meet his financial obligations. Where obligor realized any gain from an asset sale which he used to fulfill another obligation, they offset it (one income and the other a deduction). (12/1/10 at 127) Obligor argued if he failed to meet his capital contribution obligations “he loses everything. It’s all collateralized. It all starts to come down. The bank starts to call all the loans.” *Id.*

Obligor posits that these investment obligations, legitimately made and not used to shelter income, are excludable from his income computations because they were funds *not available* to him to pay support. Obligor cites the passage from *Labar* advising that a court determining income available for support look to “*actual disposable income.*” *Id.* at 1255 (italics supplied). Obligor also relies on *Fennell* for the proposition that monies diverted for investment purposes are not available to him or received by him and, therefore, are not income for support purposes. *Id.* at 868. Obligor argues that the capital contributions were contractually mandated and/or a longstanding business or investment practice, arguing (as cited above), that we “cannot attribute as income funds not actually available to or received by the party.” *Id.*; *see also Fitzgerald v. Kempf* at 532 (income for support must reflect “actual available financial resources”). Obligor additionally submits that all his deductions from his gross income represent legitimate business deductions. *Berry, supra.*

Obligee counters that *Fennell* is easily distinguishable because the obligor there, who owned minority shares in a Subchapter S corporation, lacked any ability to compel the company to distribute the earnings to the shareholders as opposed to retaining them for business purposes. *Id.* at 868. Obligee stresses that here, obligor did not lack such control and made completely voluntary decisions to invest in various entities during the marriage and continued this practice postseparation. Obligee argues that the law does not recognize such voluntary contributions as legitimate deductions when calculating net income available for support. Doing so, she argues, “results in a warped and disingenuous fiction of [obligor’s] income available for support purposes.” Obligee also cites *Spahr* for the proposition that cash flow is not a legitimate method of determining obligor’s net income.

Our Superior Court has held that a decision to invest in an entity or pay any of the attendant investment costs, even if arising from a contractual obligation entered prior to separation, does not render the payments excludable under the net income definition set forth in the Domestic Relations Code, Support Guidelines or case law. *Lehman v.*

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Lehman, 636 A.2d 1172 (Pa. Super. 1994). There, three years prior to separation, obligor-husband entered into an agreement to purchase the stock of two related business enterprises for \$450,000 secured by a promissory note signed by both husband and wife. The trial court held that the post separation installment payments he was required to make for the purchase were not deductible in calculating his net income. *Id.* at 1172-73. The superior court agreed, rejecting husband's argument "that 'income' may be equated to cash flow and that the sums paid ... for the purchase of the businesses are not available to husband for support payments." *Id.* at 1173. The court reasoned that this deduction was not recognized under the income definition in Domestic Relations Code Section 4302, "[n]or may this payment scheme be fairly seen as a deduction from net 'income from business' as provided under the Support Guidelines." *Id.*

Accordingly, under existing appellate law, the voluntary decision by an investor to commit funds to an investment does not render those funds *unavailable* for support purposes even where there is a contractual obligation to make such investments or contributions and even where that investment decision was made prior to the parties' separation. *Id.* Similarly, in the more common, average-income support case, a party's decision to invest in stocks or other investments, even where the obligation is contractual, does not generally render the cost of such investments deductible from income for support computation purposes.

Nevertheless, this court recognizes the limitation to the legal principle recognized in *Fennell*. As noted, the primary holding there was that undistributed earnings were not income to a minority shareholder where the shareholder had no control over distribution. *Id.* at 868. However, the court noted that "where the individual with the support obligation is able to control the retention or disbursement of funds by the corporation, he or she still will bear the burden of proving that such actions were '*necessary to maintain or preserve*' the business." *Id.* at 869 (italics supplied) (citing *McAuliffe v. McAuliffe*, 613 A.2d 20, 23 (Pa. Super. 1992) (discretionary capital expenditures made by sole owner of business to replace equipment would be deducted from income if owner could prove the expenditures were necessary to maintain or preserve the business)). Thus, under *Fennell*, the legitimate business interests justifying retained corporate earnings by a shareholder with control over the decisions to retain or distribute must be evaluated. It would thus appear that similarly, where an investor can prove that a capital contribution or re-investment is "*necessary to maintain or preserve*" the entity, such payments may be deducted to compute net income as well.

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Obligee acknowledges deductibility of business expenses if they constitute bona fide expenses, the reasonableness of which is to be determined on a case-by-case basis. *Berry* at 1107. Obligee argues, however, that many of obligor's investment obligations do not constitute valid deductible business expenses as envisioned by *Berry*, inasmuch as they relate to his personal and voluntary investment activities as opposed to his ongoing business obligations. Obligee stresses that "these investments do not constitute [obligor's] primary business operations" of Penn Waste and KBS, which obligor operates on a day-to-day basis. Obligor counters that the law makes no distinction between what is a "primary" and "non-primary" business expense in determining whether an expense is deductible from income. Finally, obligor argues that even if investment funds he paid pursuant to contractual obligations or otherwise are not excludable from his income, I should consider whether such expenditures warrant a downward deviation of his support obligation.

As described throughout the proceedings, the bulk of obligor's decisions to continue his practice of investing monies in various companies and partnerships, created liabilities as well as the potential for post-separation economic growth. They also depleted him of monies technically available for support. I will therefore consider the costs of these expenditures in deciding whether to deviate from the ultimate support award as provided under the Support Guidelines, Rule 1910.16-5(b). Pa.R.C.P. 1910.16-5(b)(1) ("unusual fixed obligations") and (b)(5) ("the relative assets and liabilities of the parties").

II. Imputed Income

The second category vigorously disputed by the parties' experts concerned whether to impute income to obligor for what obligee labeled "non-essential business expenditures" made by Penn Waste. Obligor personally owns 80% of Penn Waste and obligee argues that as such, he directs the use of financial resources that could otherwise be available to him for support purposes, and therefore such funds are imputable income for support purposes.⁵ Obligee cites *Labar*; as follows:

5. I previously ruled that the assets of Penn Waste are excluded from equitable distribution under the parties' prenuptial agreement. The law is firmly established that "money included in an individual's income for the purpose of calculating support payments may not also be labeled as a marital asset subject to equitable distribution." *Rohrer v. Rohrer*, 715 A.2d 463, 465 (Pa. Super. 1998). The reverse is true as well; money labeled an asset and subject to equitable distribution cannot also be included in an individual's income for the purpose of calculating support payments. *Miller v. Miller*, 783 A.2d 832, 835 (Pa. Super. 2001). Were Penn Waste assets not excluded from the marital estate here, then to the extent undistributed income or income otherwise diverted into the purchase of assets or loans payable would be subject to equitable distribution and obligee would have had a right to distribution of some portion of them.

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... When it is alleged that the corporation has sheltered cash flows, the sources of those cash flows must be identified, *i.e.*, it must be shown that the cash flows **could have been** disbursed to shareholders. In cases where cash flows which could have been disbursed to shareholders have instead been disbursed for business expenses, the corporation must show that the expenditures **were necessary for the continued operation and smooth running of the business** in order to refute an allegation that the corporation has sheltered cash flows.

Labar v. Labar at 1257 (emphasis added).

Indeed, obligor controls the day-to-day operations of Penn Waste and has considerable latitude to decide how to spend the corporation's money. He also regularly takes money out of the corporation and routinely uses corporate assets for loans and other investments. Obligee's expert thus imputed as income to obligor 80% of the value of numerous loans and investments he directed Penn Waste make in 2009 and 2010. The expert found these expenditures were unnecessary for the continued operations and smooth running of Penn Waste.

Because obligor makes the ultimate business decisions for Penn Waste, I must scrutinize those decisions in order to determine whether such funds should be imputed as income to obligor and available for support computations purposes.

III. Retained Earnings of Pass Through Entities

Retained earnings was one area of income categorization about which the experts largely agreed. As noted above, obligor holds mostly minority interests in dozens of pass-through entities. Obligor has been attributed considerable income from these pass through entities, as is illustrated in the income charts that follow. In most cases, the income attributed to him on his federal K-1 tax forms was never distributed but was retained by the respective entity and obligee has not disputed that much of this income was not available to obligor for support purposes. See *Fennell* at 868 (retained earnings of a Subchapter S corporation, attributed to a minority shareholder, are not income for the purpose of determining his support obligation).

OBLIGOR'S 2008 INCOME

Obligor submits figures by which his claimed 2008 net income was \$148,477, or a monthly net income of \$12,373. Obligee claims it was more than twelve times as much, \$1,761,258, or a monthly net income

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of \$146,772. For the reasons that follow, I find obligor's monthly net income was \$136,545.

The parties agreed obligor's 2008 gross income available from all sources was \$3,491,714 and additionally agreed on many deductions, revealed below (D-2 and P-2 (revised)(2008)):

| OBLIGOR'S 2008 INCOME | Agreed Amount |
|---|----------------------|
| Salaries and Wages | |
| Wages - Penn Waste, Inc. | \$509,554 |
| Interest and Dividend income | |
| Taxable interest | 152,515 |
| Tax Exempt Interest | 323 |
| 2007 Multigenerational Trust | 48,293 |
| Ordinary Dividends | 156,522 |
| Less K-1 pass-through income | 0 |
| 2006 Multigenerational Trust | 0 |
| 2007 Multigenerational Trust | -323 |
| Continental Engines | -10,233 |
| Penn Waste, Inc. | -124 |
| KBS Investments | -84 |
| Sageworth Holdings LLC | -2,309 |
| Hospitality Lodging Investors LP | -2,161 |
| Wagner Equities 11, LP | -1 |
| WDWM Management, LLC | -1 |
| KBS Investments, LP | -8,286 |
| Penn Waste, Inc. | -15 |
| Sageworth Holdings LLC | -291 |
| Hospitality Lodging Investors LP | -365 |
| Scott R. Wagner Insurance Trust | -1,858 |
| 2007 Multigenerational Trust | -2 |
| 2006 Multigenerational Trust | -635 |
| Capital Gains | -3,000 |
| Add back: Cap. gains deduction per tax return | 3,000 |
| Other gains or losses | -140,552 |
| Less net long-term losses from Schedule K-1 | 140,552 |
| Pass-through Entities | |
| 1175 Enterprise Associates | 0 |
| Pass through taxable earnings / loss | 18,070 |
| Less taxable earnings / loss | -18,070 |
| Property distribution (net) | 30,000 |

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| | | |
|---|----------|--|
| Barnhart Drive Associates LLC | | |
| Pass through taxable earnings / loss | 711 | |
| Less taxable earnings / loss | -711 | |
| Property distribution (net) | 0 | |
| BHM Capital, LLC | | |
| Pass through taxable earnings / loss | -1,268 | |
| Less taxable earnings / loss | 1,268 | |
| Continental Engines Partnership | | |
| Pass through taxable earnings / loss | 39,465 | |
| Less taxable earnings / loss | -39,465 | |
| Property distribution (net) | 21,000 | |
| Do-It Outdoors Leasing, LLC | | |
| Pass through taxable earnings / loss | -43,833 | |
| Less taxable earnings / loss | 43,833 | |
| Property distribution (net) | 0 | |
| Do-It Outdoors Media, LLC | | |
| Pass through taxable earnings / loss | 54,970 | |
| Less taxable earnings / loss | -54,970 | |
| Property distribution (net) | 2,475 | |
| ECORE International | | |
| Proceeds from Partial Sale | 250,000 | |
| Greenspring Associates, LLC | | |
| Guaranteed payments | 107,500 | |
| Pass through taxable earnings / loss | 3,603 | |
| Less taxable earnings / loss | -3,603 | |
| Property distribution (net) | 500 | |
| Hospitality Lodging Investors LP | | |
| Pass through taxable earnings / loss | -49,823 | |
| Less taxable earnings / loss | 49,823 | |
| Property distribution (net) | 0 | |
| KBS, Inc. | | |
| Pass through taxable earnings / loss | -252,797 | |
| Less taxable earnings / loss | 252,797 | |
| Property distribution (net) | 0 | |
| Change in shareholder loan balance (Penn Waste) | -620,000 | |
| Change in shareholder loan balance (Personal) | 0 | |
| KBS Investments LP (Grantor Trust) | | |
| Pass through taxable earnings / loss | 461,100 | |
| Less taxable earnings / loss | -461,100 | |
| Property distribution (net) | 0 | |
| KBS Management LLC | | |
| Pass through taxable earnings / loss | 4,658 | |

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| | |
|---|------------|
| Less taxable earnings / loss | -4,658 |
| Property distribution (net) | 172,880 |
| Kourt Security Partners, LLC d/b/a Select Security | |
| Guaranteed payments | 98,519 |
| Pass through taxable earnings / loss | -13,884 |
| Less taxable earnings / loss | 13,884 |
| Property distribution (net) | 64,149 |
| Less shareholder loan made | -300,000 |
| Shareholder loan repaid | 300,000 |
| Penn Waste, Inc. | |
| Pass through taxable earnings / loss | 1,560,429 |
| Less taxable earnings / loss | -1,560,429 |
| Property distribution (net) | 641,600 |
| Change in shareholder loan balance (KBS) | 620,000 |
| Change in shareholder loan balance (personal) | 280,602 |
| Penn Waste, Inc. (Grantor Trust) | |
| Pass through taxable earnings / loss | 195,054 |
| Less taxable earnings / loss | -195,054 |
| Sageworth Holdings, LLC | |
| Pass through taxable earnings / loss | -2,609 |
| Less taxable earnings / loss, | 2,609 |
| Property distribution (net) | 3,098 |
| Springwood Hospitality IV, LP | |
| Pass through taxable earnings / loss | -39,833 |
| Less taxable earnings / loss | 39,833 |
| Property distribution (net) | 0 |
| SWJC, Inc. | |
| Pass through taxable earnings / loss | 9,686 |
| Less taxable earnings / loss | -9,686 |
| Property distribution (net) | 0 |
| W & A Floridian Holdings, LLC | |
| Pass through taxable earnings / loss | -61,692 |
| Less taxable earnings / loss | 61,692 |
| Pass through taxable earnings / loss | 49,505 |
| Wagner Equities I, LP | |
| Pass through taxable earnings / loss | 27,626 |
| Less taxable earnings / loss | -27,626 |
| Property distribution (net) | 0 |
| Expenses paid personally | -9,670 |
| Wagner Equities II, LP | |
| Pass through taxable earnings / loss | -1,779 |
| Less taxable earnings / loss | 1,779 |

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| | |
|--|----------|
| Property distribution (net) | 0 |
| Wagner Family Limited Partnership | 0 |
| Pass through taxable earnings / loss | 106,360 |
| Less taxable earnings / loss | -106,360 |
| Property distribution (net) | 474,755 |

| | |
|--------------------------------------|--------|
| WBDW Management, LLC | |
| Pass through taxable earnings / loss | -1,086 |
| Less taxable earnings / loss | 1,086 |
| Property distribution (net) | 0 |

| | |
|--------------------------------------|------|
| WWR Management, LLC | |
| Pass through taxable earnings / loss | -518 |
| Less taxable earnings / loss | 518 |
| Property distribution (net) | 0 |

Miscellaneous Income

| | |
|--|---------|
| Kourt Security Partners non-employee comp. | 16,495 |
| ECORE International - Bd. of Dir. Fees | 35,000 |
| Bond guarantee fee | 172,787 |
| KBS consulting fee (see below) | 240,000 |

GROSS DISPOSABLE INCOME **\$3,491,714****Adjustments to Gross Income**

| | |
|--------------------------------|----------|
| Investments | |
| KBS Inc. | -26,836 |
| KBS Investments | -326,112 |
| Penn Waste, Inc. | -233,777 |
| W&A Floridian Holdings, LLC | -24,455 |
| Loan payments to buy KBS, Inc. | -234,918 |

Total Adjustments **\$-846,098****ADJUSTED GROSS DISPOSABLE INCOME** **\$2,645,616****DEDUCTIONS**

| | |
|--------------------------|----------|
| Income Taxes | |
| Federal | -768,754 |
| State - Pennsylvania | -89,410 |
| State - non-Pa. (MO, SC) | -329 |
| Local | -11,799 |
| Social Security | -6,324 |
| Medicare | -7,389 |
| Pa. Unemployment Tax | -353 |

TOTAL DEDUCTIONS **\$ -884,358****TOTAL ANNUAL NET INCOME (Agreed)** **\$ 1,761,258**

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Disputed Items (2008)

Obligor proposed that from the agreed amounts, his net income computation should be reduced by an additional \$1,612,781. The income reductions cover twelve (12) items, including deductions for capital contributions, loans, reinvestments and fees, most of which were made prior to the parties' May 2008 separation. The twelve items of disagreement are listed below, followed by my review of the appropriateness of the claimed deductions:

| OBLIGOR'S 2008 INCOME: DISPUTED ITEMS | Obligor's Proposed Figures | Obligee's Proposed Figures | Court's Decision |
|---|--|---|-----------------------------|
| Interest and Dividend Income | | | |
| 1. A-Z Finance non-cash interest | -83,044 | 0 | 0 |
| Pass through Entities | | | |
| 2. BHM Capital, LLC Accounting Bill | -6,300 | 0 | -6,300 |
| 3. Do-it Outdoors Media, LLC Less capital contributed | -100,000 | 0 | 0 |
| 4. ECORE International Less capital contrib. Citizens Bank Loan | -500,000 -250,000 | 0 0 | 0 0 |
| 5. Sageworth Holdings, LLC Less capital contributed | -195,000 | 0 | 0 |
| 6. W&A Floridian Holdings LLC Capital Contribution | -116,424 | 0 | -116,424 |
| 7. Wagner Family Limited Partnership Accounting Bill | -1,200 | 0 | 0 |
| Adjustments and Deductions | | | |
| 8. Investment Interest Owed (Margin Loans) | -193,115 | 0 | 0 |
| 9. Misc. Loan Repayments / Borrowings Principal loan borrowings (various) Principal loan repayments (various) 2007 Multigenerational Trust Less capital contributed Brokerage acct loan Daughter loan repayment | 590,768 -316,931 -630,000 240,000 99,942 | 0 0 0 0 0 | 0 0 0 0 0 |
| 10. Life Insurance premiums | -86,366 | 0 | 0 |
| 11. Taxes Paid on behalf of children | -33,111 | 0 | 0 |
| 12. Private School Tuition (St.Timothy's) | <u>-32,000</u> | <u>0</u> | <u>0</u> |
| Annual Net Income: Disputed Items | \$ -1,612,781 | \$0 | \$-122,724 |
| Annual Net Income: Agreed Items | <u>\$ 1,761,258</u> | <u>\$1,761,258</u> | <u>\$1,761,258</u> |
| TOTAL ANNUAL NET INCOME | \$148,477 | \$1,761,258 | \$1,638,534 |
| TOTAL MONTHLY NET INCOME | \$ 12,373 | \$ 146,772 | \$136,545 |

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1. A-Z Finance (\$ -83,044 v. \$0)

A-Z Finance provides financing for used vehicles at high interest rates. While Obligor owns no interest in the company, he provided a one million dollar loan to it, from a personal credit line, in order for A-Z Finance to make car loans earning obligor a 21% rate of return. In 2008, obligor earned \$97,459 interest income from A-Z Finance as reflected on his 1099 tax form. Obligor chose to retain only \$14,415, voluntarily reinvesting the remaining \$83,044 back into the company. Obligor testified that he must put cash back into A-Z Finance in order to earn further interest. He testified that in prior years he never took cash distributions but had always returned the funds to the business, paying the line of credit from which his loan to A-Z Finance is generated. Obligor indicated that if he had failed to re-invest in A-Z Finance, it would collapse and that he would correspondingly be required to pay the outstanding one million dollar line of credit loan. (7/8/09 at 110- 11, 140-42; 7/10/09 at 91; 10/28/09 at 5-6, 50-54; D-3)

Where an individual with a support obligation is able to control the retention or disbursement of funds by a corporation, that person bears the burden of proving that such actions were “necessary to maintain or preserve” the business. Fennell at 869. I am not convinced A-Z Finance would have been on the verge of collapse without his voluntary reinvestment of \$83,044 in 2008. Obligor has no ownership interest in this entity although it generates a good return on his investment. “Interest” is income under support law. 23 Pa.C.S.A. § 4302; Pa.R.C.P. 1910.16-2(a)(3).

2. BHM Capital (\$ - 6,300 v. \$0)

Obligor owns 100% of BHM Capital which is a 1% owner of underlying entities. In 2008, obligor paid a BHM accounting bill because he claimed it did not have funds to pay it. He also testified he paid the accounting bills on behalf of a few other entities because, while his personal accounting bills are not tax deductible, they are tax deductible to each entity. (10/28/09 at 6-7, 22, 66-67). I agree to deduct this expense because obligor as the sole owner of this entity proved it was a bona fide business expense. *Berry, supra*.

Many of the following items concern obligor’s contributions of over one million dollars to various pass through business entities. As noted above, these contributions and associated costs all arose from voluntary investments for which there is no legal authority to treat as deductions from his income. *Lehman, supra* (income used to pay for the purchase of a business is not deductible in determining net income available for support).

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3. Do-It-Out Doors Media (\$ -100,000 v. \$0)

In 2006, obligor acquired a 20% interest in Do-It-Out Doors Media, an outdoor advertising company. It is a marital asset. Under his purchase agreement, obligor was contractually obligated to make a \$1.1 million capital contribution in 2006 followed by \$100,000 contributions for the next four years (2007-2010). Obligor's expert, in calculating obligor's income under a cash flow method, deducted the 2008 contribution. (7/8/09 at 34-35,112-13, 143-44; 10/28/09 at 7-8)

Obligee argued this capital contribution (as well as those in 2009 and 2010, discussed later) should not be deducted from his gross income because he made a conscious decision to maintain this investment and increase his interest therein. Obligee initially argued obligor had other options such as getting bought out by other partners or restructuring the investment. Obligee's expert acknowledged at a later hearing that if the payment was not made, obligor would likely lose the investment and that there could be a ripple effect on his credit which affects all of his loans. (8/15/11 at 132) Obligor's expert testified that while he was unsure of the exact ramifications of obligor's breaching his contractual promise to make his \$100,000 capital contributions for 2008, 2009 and 2010, there would nevertheless be a downside to a default. (7/8/09 at 143) This also could have detrimentally affected the marital estate.

Under *Lehman, supra*, obligor's contractual obligation to invest in a business entity is not a legitimate deduction from net income under support law, even where the decision to invest is made prior to separation. Nevertheless, I agree with obligor that it is unrealistic to believe he could have easily walked away from his obligation without any negative ramifications. This type of fixed obligation warrants consideration in assessing whether to deviate from the support award determined under the Support Guidelines.

4. E-CORE International (\$ -750,000 v. \$0)

Obligor seeks to deduct \$750,000 for expenditures related to his investment in E-CORE International. E-CORE is a manufacturing company based in Lancaster, Pennsylvania. Obligor is a member of its board of directors. It has generated no income to obligor other than his annual director's fee, which was \$35,000 in 2008. In 2008, E-CORE requested its directors to invest \$500,000. Obligor agreed and voluntarily invested this amount, creating a minority ownership interest in the company, a marital asset. Obligor claimed he made this investment with borrowed funds prior to the parties' May 19th separation, paying \$450,000 on May 6th and the remaining \$50,000 on May 20th. (7/8/09 at 36-38, 113-14, 144-45; 10/28/09 at 8-9, 54-55; D-3 (p. 58))

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As a result of the stock market collapse in September 2008 and the subsequent banking crisis, obligor's stock portfolio fell, triggering one of the covenants in his one million dollar line of credit with Citizens Bank. Citizens Bank, which could have called in the entire loan, agreed to allow obligor to pay only \$250,000 by the end of 2008. Obligor was able to find a buyer and liquidate half his E-CORE investment and used the entire amount, \$250,000, to pay Citizens Bank. Obligor has admittedly always used his personal line of credit to fund investments. Obligor's expert testified that should obligor have failed to satisfy his Citizens Bank covenant and pay on the line of credit, it would have negatively affected his relationship with other banks, including his ability to obtain performance bonds for Penn Waste municipal contracts.

Again, under *Lehman*, obligor's \$500,000 investment is not deductible, even though the decision was made prior to separation. Nevertheless, I will consider the cost of this investment in deciding whether to deviate downward from the support award, particularly where there is no indication on the record obligor made his investment to shelter income, or that his investment decision was inconsistent with similar decisions he has made during the course of the marriage. Also, it created a potential marital asset which will be subject to equitable distribution.

Regarding the \$250,000 payment to Citizens Bank, obligor argues that since it was for a loan payment, it must be recognized as a legitimate expense, citing *Berry*. The court's inquiry is not whether obligor's payment of a personal expense is legitimate. The payment appears completely legitimate; that does not make it deductible, just a subsequent personal expense indistinguishable from all manner of non-deductible expenses which must be paid by obligees and obligors in support cases. However, I will consider this fixed obligation to pay Citizens Bank in my deviation analysis.

5. Sageworth Holdings, LLC (\$ -195,000 v. \$0)

Sageworth Holdings, LLC, provides estate, financial and investment planning services. Obligor, a client of the business who paid it a \$38,000 retainer fee in 2008, agreed in 2004 to purchase a 4.3% interest for \$300,000. Under the terms of his purchase, obligor agreed to pay \$60,000 annually between 2004 and 2008 and to meet any additional capital calls. In 2008, he was subject to a capital call as voted on and approved by the Sageworth owners to effectuate capital equalization, resulting in obligor investing an additional \$135,000, for a total cash outlay of \$195,000 (\$135,000 + \$60,000). Obligor claimed that had he

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failed to meet the capital call he would have defaulted on his investment agreement and would have been bought out for a discounted amount, thus reducing this marital asset value. (7/8/09 at 51-52, 114-16, 145-46; 10/28/09 at 9-11, 55-58)

I decline to grant obligor this deduction for the same reasons set forth above in addressing similar claimed deductions for A-Z Finance, Do-It Outdoors Media and E-CORE International. Similarly, I will consider the costs of obligor's capital contributions assessing whether to deviate from the support award determined under the Support Guidelines.

6. W&A Floridian Holdings, LLC (\$ -116,424 v. \$0)

Obligor is a 50% owner and partner of W&A Floridian Holdings, LLC, created in 2004. It originally purchased five condominiums in the Miami area and obligor personally guaranteed the mortgages. As of 2008, it still owned three of the condominiums which were not totally leased and thus operated at a loss in 2008 to pay mortgages and other costs not offset by rental income. Despite the situation, obligor received a \$49,505 distribution in 2008 which is income to him.

This entity has been unable to sell the remaining units because of the poor Florida real estate market and because these are older model condominiums. Obligor had been funding its deficit and contributed \$116,424 in 2008. His partner, a real estate broker, was nearly bankrupt and unable to contribute so obligor felt compelled to cover all these expenses to avoid mortgage foreclosures. Obligor testified that had he failed to pay these mortgage expenses the three banks would have foreclosed on the units which would in turn have created a domino effect on his ability to obtain credit and deal with other banks with which he regularly conducts business. (7/8/09 at 54-55, 116; 146-48; 10/28/09 at 11-12, 58-59; 12/7/09 at 78-79; 12/2/10 at 117-118, 120,149).

I agree with obligor that this \$116,424 should be deducted from his income for support purposes. Obligor, a 50% owner of this marital property, has taken over his partner's obligations and has established that these payments were "necessary to maintain or preserve" this entity, and/or can be considered bona fide business expenses under the circumstances. *Fennell, Berry, supra*. This court found credible evidence that obligor would have been subjected to very real negative ramifications had he not covered W&A Floridian's expenses, including the loss of this entity, inasmuch as he had personally guaranteed the mortgages and the properties would have been subject to foreclosure. This capital outlay is distinguishable from those he made for A-Z Finance, Do It Outdoors

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Media, E-CORE and Sageworth Holdings (discussed above) inasmuch as here the credible evidence was that the entity would fail without his capital infusion. On the other hand, obligor is a minority owner of the entities noted above and the evidence did not reveal their eminent demise absent obligor's failure to invest therein.

7. Wagner Family Limited Partnership (WFLP) (\$ -1,200 v. \$0)

As noted, obligor established the WFLP during the course of the marriage to shift wealth from himself to obligee and their three children. The parties each own a 27.5% interest and the three children 15% each. Obligor claimed that in 2008, WFLP did not have sufficient funds to pay its accounting bill so obligor personally provided it \$1,200 to satisfy that debt. (7/8/09 at 57-58, 116; 148-49; 10/28/09 at 12, 66-67).

Obligor's argument is based upon application of a cash flow methodology which our appellate courts reject. Furthermore, this entity was able distribute \$474,755 to obligor in 2008 which clearly indicates it did not require obligor's intervention for payment of this bill. As there is no legal basis for this deduction, this court will not permit it.

8. Investment Interest (\$ -193,115 v. \$0)

Obligor argues for the deduction of \$193,115 investment interest paid for margin loans he took against two brokerage accounts, which funds were borrowed for purposes of investing. Though obligor's expert was unable to trace what investments obligor purchased with the underlying loan proceeds, it was not disputed that obligor made these interest payments on his margin loans. (7/8/09 at 62-63, 118-19; 10/28/09 at 13, 22; D-16)

Although I permitted this deduction in my Interim Order, upon reconsideration, I find this investment payment should not be deducted from obligor's income even if it could be proven this investment payment was an associated cost of obtaining loans used to purchase investments, including those obtained pre-separation. There is no legal basis to deduct this cost (interest) of obtaining funds to make voluntary investments for the reasons discussed above. This payment will nevertheless be considered in determining whether a deviation from the support award is warranted.

9. Miscellaneous Borrowings / Repayments (\$ -16,221 v. \$0)

Obligor claims that a group of five items, consisting of payments he made and payments made to him be considered in assessing his income available for support, the aggregate of which he claims is a net \$16,221 reduction to his income. These include a \$590,768 inclusion, \$316,931 deduction, \$630,000 deduction, \$240,000 inclusion and \$99,942 inclusion, discussed below.

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Obligor's expert explained that in 2008, obligor borrowed money and took distributions from various sources to build his overall estate by investing in a number of entities including the Four Concord Partners and King Street Partners. Because it was difficult to trace which funds went into which entity, he treated them as a group. Obligor borrowed \$590,768 from banks and lines of credit (which obligor's expert included as income available to obligor) while making principal loan and interest payments of \$316,931 (which he deducted). All but one of the investments obligor purchased was made pre-separation. The post-separation payment, in June 2008, was made pursuant to a contract entered pre-separation (December 2007). In addition, obligor made a \$630,000 investment into the 2007 Multigenerational Trust, a 99% owner of Wagner Equities II which invests in three entities (Four Concord, 1850 Lemon Street and King Street) and which investment obligor was allegedly obligated to fund. Finally, obligee's expert included as income to obligor \$240,000 he borrowed from a brokerage account to fund his "obligations and commitments" as well as \$99,942 his daughter repaid him for a loan he gave her to refinance a property. (7/8/09 at 63-71; see also 7/8/09 at 119-20; 150-51; 10/28/09 at 13-14)

All these claimed deductions are from loans or other borrowings obligor made to pay investment obligations; as such, they are in the nature of voluntary capital contributions and related expenses which are not deductible in determining net income under support law, as discussed above. The related add-back items are not truly income either (proceeds from a loan, the repayment of the principal on a loan). As such, none of these items will be factored in on the assessment of obligor's net income. I will, however, consider in a deviation analysis obligor's fixed costs for pre-separation investments, including his \$316,931 principal loan payments and \$630,000 capital contribution to 2007 Multigenerational Trust.

10. Life Insurance Premiums (\$ -86,366 v. \$0)

Obligor seeks to exclude the costs of his life insurance policies paid in 2008, 2009 and 2010. In 2008, he spent a total of \$86,366 on life insurance premiums for four policies purchased through Sageworth Holdings (\$69,193), Genworth (\$5,793), Trans America (\$6,084) and Prudential (\$5,296), respectively. These policies provided him with approximately \$18 million in personal coverage. The Sageworth policy provided him between \$8 and \$9 million of coverage. Obligor testified that even though he had only \$340,000 debt with Sageworth, that policy, and the others, had been purchased to cover all of his debt. Obligor

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explained that he is required to purchase life insurance as a condition to many of his financing agreements and bank debt obligations and that he would be in violation of loan covenants if he failed to purchase the policies and pledge them as collateral. (7/8/09 at 71, 121-22; 151-52; 10/28/09 at 14, 59-61; 12/7/09 at 80-82; 8/2/10 at 78) Testimony at hearings concerning obligor's 2009 income indicated that all but the Sageworth Holdings policy were required by lending institutions.

These items are not properly deductible from income. Obligor's payments to purchase life insurance premiums, as he described them, are costs associated with obligor's role as an investor and are thus not excludable from his income for the same reasons set forth above (concerning the direct payments of monies used for investment). While those related to bank loans may be legitimate business tax deductions, that is not determinative for support purposes. Nevertheless, the costs of all but the Sageworth Holdings policy, totaling \$17,173, may be considered a basis for deviation because obligor was required through various investments to purchase the polices and pledge them as collateral.

11. Taxes Paid on Children's Behalf (\$ - 33,111 v. \$0)

Obligor seeks to deduct \$33,101 from his 2008 income for income taxes he has paid on behalf of his daughters Cristina (\$16,019) and Katherine (\$17,092), incurred from pass through income from the WFLP, which income was not distributed. As noted, the WFLP was created for estate planning purposes and it makes investments for the benefit of the three children and obligee. In order to shift wealth from himself to the other family members, obligor claims the entire distribution and always pays his daughters' tax obligations. Obligor's expert deducted the tax payments because it was reflective of obligor's cash flow. (7/8/09 at 78-80)

I conclude these tax payments on behalf of someone else are not properly deductible from obligor's income because there is no legal basis permitting such. Only obligor's own federal, state and local income tax payments are deductible. Pa.R.C.P. 1910.16-2(c)(1)(A). Furthermore, testimony suggested the WFLP could have paid these taxes whereby the substantial distributions made to obligor (\$474,755 in 2008) could have been reduced by the amount of the taxes due for the children. (See 12/1/10 at 44, 46-47, 135-36, 178) While this type of expense might have been considered a reasonable expense obligor paid on Cristina's behalf and thus a factor in a *Melzer* analysis, given that WFLP could have paid the bill on her behalf (deducting it from her accumulating wealth therein), I will not consider it in the *Melzer* computation.

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12. Private School Tuition (St. Timothy's)

Finally, obligor requests that his payment in 2008 for the cost of Cristina's tuition at St. Timothy's School, a Maryland boarding school, should be deducted from his income. The parties enrolled Cristina in this school just prior to their separation and were obligated to pay tuition even though Cristina attended for only a few weeks, in October 2008. (10/28/09 at 15-18) According to obligor, though the tuition charged was \$39,332, he paid approximately \$32,000 because he had tuition insurance. (*Id.* at 15-16) Under the Support Guidelines, where private school tuition is deemed reasonable, tuition must be paid in an amount proportionate to each parent's percentage of the parties' combined incomes. Pa.R.C.P. 1910.16-6(d). The evidence established that private school was a reasonable expense in this case as it was consistent with the parties' standard of living and station in life prior to their separation as well as with their prior practice whereby both Sebastian and Katherine attended private school. *See Murphy v. McDermott*, 979 A.2d 373, 377 (Pa. Super. 2009). This expenditure is considered an "additional expense" to the basic support obligation under the Support Guidelines; it is not otherwise deductible from income. Pa.R.C.P. 1910.16-6(d). Accordingly, I will not deduct this cost from obligor's income.

OBLIGOR'S 2009 INCOME

Obligor claims that his 2009 net income was \$699,642, or a monthly net income of \$58,304. Obligee claims it was more than three times that much, \$2,331,520, or a monthly net income of \$194,293. For the reasons that follow, I find his monthly net income was \$158,647.

The parties agreed to the inclusion and deduction of many items, the total of which established a baseline annual income figure of \$1,678,034 (D-1A and P-5 (2009)), as follows:

| <u>OBLIGOR'S 2009 INCOME</u> | <u>Agreed Amount</u> |
|-------------------------------------|-----------------------------|
| Salaries and Wages | |
| Wages - Penn Waste, Inc. | 481,556 |
| Interest and Dividend Income | |
| Taxable Interest | 509,136 |
| Tax Exempt Interest | 21 |
| Ordinary Dividends | 26,391 |
| Less K-1 pass-through income | |
| 2006 Multigenerational Trust | -1 |
| 2007 Multigenerational Trust | -20 |
| SWJC Inc. | -16,839 |

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| | |
|----------------------------------|---------|
| Continental Engines | -10,289 |
| Penn Waste, Inc. | -42,563 |
| KBS Investments | -14,056 |
| Sageworth Holdings LLC | -1,000 |
| Hospitality Lodging Investors LP | -1,567 |
| Springwood Hospitality IV, LP | -2 |
| Penn Waste, Inc. | -5,320 |
| The Blackstone Group, LP | -338 |
| Sageworth Holdings LLC | -6 |
| Hospitality Lodging Investors LP | -23 |
| Scott R. Wagner Insurance Trust | -1,805 |
| The Blackstone Group LIP | -13 |

Pass-through Entities

1175 Enterprise Associates

| | |
|--------------------------------------|---------|
| Pass through taxable earnings / loss | 49,378 |
| Less taxable earnings / loss | -49,378 |
| Property distribution (net) | 30,000 |

Barnhart Drive Associates LLC

| | |
|--------------------------------------|--------|
| Pass through taxable earnings / loss | 2,221 |
| Less taxable earnings / loss | -2,221 |
| Property distribution (net) | 0 |

BHM Capital, LLC

| | |
|--------------------------------------|------|
| Pass through taxable earnings / loss | 780 |
| Less taxable earnings / loss | -780 |

The Blackstone Group LP

| | |
|--------------------------------------|----|
| Pass through taxable earnings / loss | 3 |
| Less taxable earnings / loss | -3 |
| Property distribution (net) | 0 |

Continental Engines Partnership

| | |
|--------------------------------------|---------|
| Pass through taxable earnings / loss | 23,459 |
| Less taxable earnings / loss | -23,459 |
| Property distribution (net) | 0 |

Do-It Outdoors Leasing, LLC

| | |
|--------------------------------------|---------|
| Pass through taxable earnings / loss | -22,824 |
| Less taxable earnings / loss | 22,824 |
| Property distribution (net) | 0 |

Do-It Outdoors Media, LIMITATION OF LIABILITY CLAUSE

| | |
|--------------------------------------|---------|
| Pass through taxable earnings / loss | 16,973 |
| Less taxable earnings / loss | -16,973 |
| Property distribution (net) | 0 |

Greenspring Associates, LLC

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| | |
|---|------------|
| Guaranteed payments | 0 |
| Pass through taxable earnings / loss | 45,713 |
| Less taxable earnings / loss | -45,713 |
| Property distribution (net) | 53,125 |
| Hospitality Lodging Investors LP | |
| Pass through taxable earnings / loss | -77,128 |
| Less taxable earnings / loss | 77,128 |
| Property distribution (net) | 0 |
| KBS, Inc. | |
| Pass through taxable earnings / loss | -389,474 |
| Less taxable earnings / loss | 389,474 |
| Property distribution (net) | 0 |
| KBS Investments LP (Grantor Trust) | |
| Pass through taxable earnings / loss | 277,832 |
| Less taxable earnings / loss | -277,832 |
| Property distribution (net) | 0 |
| KBS Management LLC | |
| Pass through taxable earnings / loss | 2,806 |
| Less taxable earnings / loss | -2,806 |
| Property distribution (net) | 268,274 |
| Penn Waste, Inc. | |
| Pass through taxable earnings / loss | 1,983,533 |
| Less taxable earnings / loss | -1,983,533 |
| Property distribution (net) | 1,205,954 |
| Change in shareholder loan balance (personal) | 300,000 |
| Penn Waste, Inc. (Grantor Trust) | |
| Pass through taxable earnings / loss | 247,942 |
| Less taxable earnings / loss | -247,942 |
| Property Distribution | 0 |
| Sageworth Holdings, LLC | |
| Pass through taxable earnings / loss | -1,448 |
| Less taxable earnings / loss | 1,448 |
| Property distribution (net) | 3,777 |
| Springwood Hospitality IV, LP | |
| Pass through taxable earnings / loss | -43,902 |
| Less taxable earnings / loss | 43,902 |
| Property distribution (net) | 10,000 |
| SWJC, Inc. | |
| Pass through taxable earnings / loss | 16,716 |
| Less taxable earnings / loss | -16,716 |
| Property distribution (net) | 0 |

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|---|--------------------|
| W & A Floridian Holdings, LLC | |
| Pass through taxable earnings / loss | -43,646 |
| Less taxable earnings / loss | 43,646 |
| Property Distribution | 16,113 |
| Change in Shareholder Loan Balance | 7,258 |
| Wagner Equities I, LP | |
| Pass through taxable earnings / loss | 118,572 |
| Less taxable earnings / loss | -118,572 |
| Property distribution (net) | 0 |
| Wagner Equities I, LP (Grantor Trust) | |
| Pass through taxable earnings / loss | -98,809 |
| Less taxable earnings / loss | 98,809 |
| Property distribution (net) | 0 |
| Wagner Equities II, LP (Grantor Trust) | |
| Pass through taxable earnings / loss | -140,272 |
| Less taxable earnings / loss | 140,272 |
| Property distribution (net) | 0 |
| Wagner Family Limited Partnership | |
| Pass through taxable earnings / loss | 80,048 |
| Less taxable earnings / loss | -80,048 |
| Property distribution (net) | 893,930 |
| WBDW Management, LLC | |
| Pass through taxable earnings / loss | -1,381 |
| Less taxable earnings / loss | 1,381 |
| Property distribution (net) | 0 |
| WWR Management, LLC | |
| Pass through taxable earnings / loss | -960 |
| Less taxable earnings / loss | 960 |
| Property distribution (net) | 0 |
| Miscellaneous Income | |
| ECORE International - Bd. of Dir. Fees | 15,000 |
| Bond guarantee fee | 172,787 |
| KBS Consulting Fee | 240,000 |
| Deutsche Bank, Alex Brown | 956 |
| Barclays Capital, Inc. | 60 |
| GROSS DISPOSABLE INCOME | \$4,140,496 |
| Adjustments to Gross Income | |
| Investment Interest | -76,406 |
| Do It Outdoors Media | -43,325 |
| KBS Inc. | -12,908 |
| Penn Waste, Inc. | -7,239 |

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|--|--------------------|
| Wagner Family LP | -82,110 |
| Springwood Hospitality IV LP | -53,226 |
| W&A Floridian Holdings, LLC | -33,549 |
| Loan payments to buy KBS, Inc. | -221,891 |
| Principal Loan Repayments | -896,394 |
| Total Adjustments | -1,427,048 |
| ADJUSTED GROSS DISPOSABLE INCOME | \$2,723,448 |
| DEDUCTIONS - Income Taxes | |
| Federal | -950,251 |
| State - Pennsylvania | -94,745 |
| State - non-Pa. (IL, MN, NC, NJ, NY, SC, VA) | -2,592 |
| Local | -9,104 |
| Social Security | -6,622 |
| Medicare | -6,982 |
| Pa. Unemployment Tax | -289 |
| Tax Adjustment (as agreed (N.T. 12/1/10 at 202)) | 35,171 |
| TOTAL DEDUCTIONS | -1,035,414 |
| TOTAL NET ANNUAL DISPOSABLE INCOME (Agreed) | \$1,678,034 |

Disputed Income Items (2009)

The parties diverged significantly from this baseline figure. There were fifteen (15) material differences between their computations: obligor sought deductions totaling \$978,392 while obligee sought to add back \$653,486. Again, their most significant area of disagreement concerned treatment of obligor's capital contributions to various investments. In addition, obligee sought imputation of Penn Waste expenditures as income to obligor. Their items of dispute are as follows:

| OBLIGOR'S 2009 INCOME: DISPUTED ITEMS | Obligor's Proposed Figures | Obligee's Proposed Figures | Court's Decision |
|---|----------------------------------|----------------------------------|---------------------|
| Interest and Dividend Income | | | |
| 1. 2007 Multigenerational Trust Interest Income (St. Michael's Loan) | 0 | 75,335 | 75,335 |
| 2. Wells Fargo Brokerage Acct Capital Gain | 0 | 122,864 | 0 |
| Pass through Entities | | | |
| 3. BHM Capital, LLC Accounting Bill | -750 | 0 | -750 |
| 4. Blackstone Group Distribution | 0 | 3,000 | 3,000 |

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|--|---------------------|---------------------|---------------------|----------|
| 5. Do-It Outdoors Media, LLC | | | | |
| Less capital contributed | -100,144 | 0 | 0 | 0 |
| 6. Penn Waste Imputed Income | | | | |
| A-Z Finance | 0 | 372,287 | 186,144 | |
| Southwest Development | | 80,000 | 40,000 | |
| 7. W&A Floridian Holdings LLC | | | | |
| Capital Contribution | -78,000 | 0 | -78,000 | |
| 8. Wagner Family Limited Partnership | | | | |
| Accounting Bill | -4,500 | 0 | | |
| 9. Bennett Buyout | | | | |
| Wagner Entities II (Grantor Trust) | -72,765 | 0 | 0 | 0 |
| WBDW Management, Inc. | -1,500 | 0 | 0 | 0 |
| BHM Capital | -735 | 0 | 0 | 0 |
| Adjustments and Deductions | | | | |
| 10. KBS Investments - Interest Payment | -22,640 | 0 | 0 | 0 |
| 11. Principal Payment of Line of Credit | -325,000 | 0 | 0 | 0 |
| 12. 2007 Multigenerational Trust - Cap Contrib. | -223,985 | 0 | 0 | 0 |
| 13. Life Insurance Premiums | -96,396 | 0 | 0 | 0 |
| 14. Taxes Paid on behalf of children | -38,380 | 0 | 0 | 0 |
| 15. Private School Tuition (Gulliver) | <u>-13,597</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| Annual Net Income: Disputed Items | \$-978,392 | \$653,486 | \$225,729 | |
| Annual Net Income: Agreed Items | <u>\$ 1,678,034</u> | <u>\$ 1,678,034</u> | <u>\$ 1,678,034</u> | |
| TOTAL ANNUAL NET INCOME⁶ | \$699,642 | \$2,331,520 | \$1,903,763 | |
| TOTAL MONTHLY NET INCOME | \$ 58,304 | \$ 194,293 | \$158,647 | |

1. 2007 Multigenerational Trust Interest (\$0 v. \$75,335)

The parties' experts disagreed about interest and dividend income obligor earned in 2009 from the 2007 Multigenerational Trust. Obligee's expert opined obligor received \$75,335 income from the 2007 Multigenerational Trust while obligor's expert found he did not. This Trust is funded from contributions made by obligor (\$630,000 in 2008, \$223,985 in 2009 and \$63,150 in 2010). It also receives contributions from Penn Waste, of which it is a 10% shareholder and from Wagner Equities II, of which it is a 99% owner. Wagner Equities II owns partial interests in a number of properties (Four Concord (24.5%), 1850 Lemon Street (49%) and King Street (24.5%)).

6. This court's calculation of obligor's net annual income of \$713,239, was \$735 more than the figure submitted by obligor (\$712,504). This discrepancy appears to be the result of a double-counting a claimed deduction for the \$735 payment obligor made for his buyout of Ron Bennett's interest in BHM Capital. That deduction is taken in Item 9 of this chart and thus the same deduction has been omitted from Item 3.

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Prior to separation, the 2007 Trust acquired property in St. Michaels, Maryland costing roughly \$2 million. The parties intended to build a vacation home thereon. In the fall of 2008, it became difficult to obtain lending and as a result, obligor took out various shareholder loans from Penn Waste which he in turn loaned to the Trust in order to finance construction on behalf of the Trust. In November 2009, the Trust obtained a one million dollar mortgage with M&T Bank in order to repay obligor. The \$982,846 net loan proceeds paid obligor's loan obligation to Penn Waste plus paid obligor \$57,075 interest which he immediately paid over to Penn Waste. The remaining \$18,260 repaid interest on a second note owed to obligor. Thus, obligor was paid a total of \$75,335 in interest on his loans to the 2007 Trust. (12/7/09 N.T. at 53, 55; 12/1/10 at 130-31, 187, 205-05; 12/2/10 at 13-14, 27-28, at 78-82, 90-97, 207; D-4 (2009)).

Repayment of a loan is not income to the recipient; however, "interest" and "dividends" are income under support law. Pa.R.C.P. 1910.16-2(a)(3). As such, this interest will be included as income to obligor for support computation purposes. However, because he never had use of the money and immediately rolled it over, I will consider it a factor for deviation.

2. Wells Fargo Brokerage Account Capital Gain (\$0 v. \$122,864)

In 2009, obligor sold stock within his brokerage account with Wells Fargo, for a \$122,864 capital gain which he then used to reinvest within the same account, purchasing Blackstone Group stock (discussed below).

While obligor admits that capital gains are normally considered income (see 12/1/10 at 96-97), he argues that this capital gain should be excluded from his income because it was not available to him. His account is a margin account, which effectively permits him to borrow money from Wells Fargo to purchase marketable securities on the NY Stock Exchange and NASDAQ. Pursuant to the covenant documents he must maintain a \$900,000 to one million dollar equity balance in the account. Therefore, before he can remove any money from his account, he must first pay the loan. Thus, in order to receive the \$122,864, he would have had to liquidate additional stocks and pay into the account enough money to maintain that balance. (12/1/10 at 15-16, 98; 12/2/10 at 15-16, 95, 98-100, 179-80; 8/18/11 at 52-54, 137-39)

This situation is analogous to that of a minority shareholder in a pass through entity which retains the shareholder's earnings. In such cases,

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the retained earnings are not considered income to the shareholder for the purpose of calculating support. *Fennell, supra*. The capital gain here was similarly inaccessible to obligor; obligor could not have realized his gain except with significant financial maneuverings. As such, I will exclude it from his income.

3. BHM Capital (\$ -750 v. \$0)

As noted above, obligor owns 100% of BHM Capital. In 2009, he made two payments on its behalf: a \$750 accounting bill for its tax return and a \$735 investment related to obligor's buyout of Ron Bennett, which will be treated below. Regarding the former, obligor testified he paid the accounting bill because BHM was unable to pay it. (12/1/10 at 17, 100) As with the same fee he incurred in 2008, it will be deducted from his income because he has shown it to be a bona fide business expense. *Berry, supra*.

4. The Blackstone Group (\$0 v. \$3,000)

In 2009, obligor purchased \$154,000 worth of The Blackstone Group stock from capital gains realized within his Wells Fargo brokerage account. Blackstone is a publically traded asset management and financial services limited partnership. Obligor's expert testified that this acquisition remained inside the Wells Fargo account. Blackstone Group's K-1 tax return showed the investment netted obligor \$3 as income and \$2,997 as a "distribution." Obligor's expert excluded the distribution from his income since the K-1 identified only \$3 as income, the remaining \$2,997 had to be a return of capital rather than a distribution. The expert admitted, however, that he was unsure whether or not obligor actually received the \$3,000. (12/1/10 at 15-18, 82-85, 254-55) I will thus include this \$3,000 distribution in obligor's income.

5. Do-It Outdoors Media, Inc. (\$ -100,144 v. \$0)

Obligor seeks to deduct \$100,144 in capital contributions made to Do-It Outdoors Media, Inc. As noted above, obligor was obligated to make his second-to-last \$100,000 payment in 2009 for his purchase of a 20% interest in this entity, which obligation he entered into prior to separation.⁷ He paid for this purchase with proceeds from a shareholder loan he took out from Penn Waste. (12/2/10 at 101)

This reduction will not be permitted for the same reasons set forth above addressing the 2008 payment, though this fixed obligation

7. Pursuant to the 2009 K-1 for Do-It Outdoors Media, Inc., the total amount of capital obligor contributed was actually \$100,144.

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warrants consideration when assessing whether to deviate from the support award determined under the Support Guidelines.

6. Penn Waste, Inc. Investments (Imputed Income) (\$0 v. \$452,287)

The next discrepancy between the experts involves \$565,359 that Penn Waste loaned, in the nature of an investment, to two separate companies: A-Z Finance (\$465,359) and Southwest Development (\$100,000). Obligee's expert imputed as income to obligor 80% of the total of these loans, \$452,287, or \$372,287 for A-Z and \$80,000 for Southwest, reflecting obligor's ownership interest in Penn Waste. *Labar; supra*.

A-Z Finance supplies capital for subprime car loans, discussed above. Obligor explained that in 2009 A-Z was not receiving financing from other investors and as such, he felt compelled to meet the financing demands by loaning Penn Waste funds to it in order to protect his personal investment, which he considered at risk. (12/2/10 at 105-06; D-11) Later in 2009, Penn Waste also loaned \$100,000 to Southwest Development, which owns a landfill near Fort Wayne, Indiana. Obligor testified that he foresaw KBS, Inc. transporting garbage collected by Penn Waste to Fort Wayne and then backhauling recyclables to its York County facility. Obligor considered this a very good business opportunity for Penn Waste, KBS and Southwest Development. (12/2/10 at 109-112) Penn Waste extended the loans to A-Z Finance and Southwest Development from its lines of credit at a 3.5% interest rate while receiving a 20% return on both investments. (12/1 /10 at 22-23; 12/2/10 at 114-15).

Obligor argued that this money should not be included as income because loans are not income and that Penn Waste did not have \$565,359 to distribute to its shareholders; it had less than \$200,000 cash at any given time in 2009 and it could not have made these investments without borrowing funds. To make a \$565,359 shareholder distribution, he testified Penn Waste would have had to reduce the equity in the company and violate bank covenants. (12/1/10 at 23, 168) Keith Eldredge, the accountant who prepared Penn Waste's tax returns, confirmed that banks which loaned money to Penn Waste required a certain amount of equity. The banks, however, treated the loans to A-Z Finance and Southwest Development as a purchase of assets which did not reduce its equity. (12/2/10 at 71-72, 84) Obligor's expert nevertheless conceded that Penn Waste is not in the business of loaning money and that neither venture was part of Penn Waste's waste disposal business. (12/1/10 at 62)

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Obligee's expert imputed obligor's share of these loans as income to him on the basis that these were non-essential, non-business loans made by Penn Waste. Since Penn Waste had the ability to lend these monies, obligee's expert opined this revealed an ability to provide these same funds for shareholder distribution, including obligor's majority share, which would have been considered income available for support. He based his opinion on a review of Penn Waste's 2008 and 2009 financial statements, which reflected no restrictions on its ability to make shareholder distributions up to its taxable income. He also noted that both loans were nonbusiness loans in the sense that neither was made to cover expenses arising from the ordinary course of Penn Waste's business. He testified that had the money not been loaned out, it would have been available to distribute or possibly pay down on the line of credit. Thus, he found that Penn Waste had the ability to have distributed \$565,359, including obligor's 80% share. (12/1/10 at 215-218)

Obligor's expert testified that Penn Waste had a total revenue in 2009 of \$41,576,000 and made a profit of \$2,252,000 while carrying approximately \$14 million in debt. (12/1/10 at 66-68) He also indicated that Penn Waste had about \$170,000 cash left at the end of 2009. (12/1/10 at 62-63) Obligor's expert agreed that had the loans at issue not been made, it is possible that obligor, on Penn Waste's behalf, would have been able to distribute some portion of those funds as shareholder dividends though he was not sure if its lender-banks would have permitted this to happen. (12/1/10 at 68) Per obligor's cash flow analysis, obligor received \$5 million total cash from Penn Waste, part of which was classified as loans and part as distributions. (12/1/10 at 70)

As set forth above, where it is alleged that a corporation has sheltered cash flows, there is a two part inquiry. The first question concerns whether it can be shown that it was feasible for cash flows otherwise disbursed for business expenses to have been disbursed to shareholders. *Labar* at 1257. Obligee presented evidence that it was feasible for the loan monies to have been so disbursed. As such, the second question is whether the corporation can prove that the expenditures "were necessary for the continued operation and smooth running of the business in order to refute an allegation that the corporation has sheltered cash flows." *Id.* Obligor did not establish these loans were "necessary for the continued operation and smooth running" of Penn Waste. While they may have been wise business decisions and investments, these loans were not related to Penn Waste's ordinary business operations.

Testimony elicited at hearings on obligor's 2010 income further supports this holding. That testimony was that Penn Waste pays for every

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expenditure through its business line of credit; that is, anytime the company uses funds they are reflected as a loan against the line of credit. Penn Waste further utilizes a “sweep account” within their line of credit so that excess cash is used to pay down the line. This permits the company to keep a minimal amount of cash on hand, which is a good business decision. Thus, the company uses borrowed monies for all transactions. As such, had the investment monies not been spent on A-Z Finance and Southwest Development, the line of credit would have had more excess cash and less cash would have been swept in to pay against it. (See 8/15/11 at 103-04, 174; P-8; see also 8/15/11 at 160) Thus, this was money available for distribution to support his family post-separation, although obligor chose to invest it elsewhere.

Obligee seeks to impute the entire amount of the loans as income to obligor. I disagree. The record did not reveal that had these loans not been made that their entire value, dollar-for-dollar, would have been distributed to the shareholders. Obligee’s expert agreed that any excess cash accruing to Penn Waste might have been used to pay down the line of credit. Obligor’s expert also testified that only a portion of the loans might have been distributed to shareholders, subject to bank limits. Accordingly, I will include as income to obligor one-half the value of these loans in proportion to his Penn Waste interest (\$186,144 for A-Z and \$40,000 for Southwest).

7. W&A Floridian Holdings LLC (\$-78,000 v. \$0)

As discussed above, obligor made similar capital contributions in 2009 to W&A Floridian totaling \$78,000, to pay the three mortgages and related expenses. I agree these payments should be deducted from obligor’s income for support purposes for the same reasons; namely, that it is a fixed obligation obligor is personally obligated to pay and he must cover all payments his partner is unable to make or he risks losing this investment in foreclosure, as well as subjecting himself to significant financial ramifications. As such, this court finds the payments “necessary to maintain or preserve” this marital asset, and/or can be considered bona fide business expenses under the circumstances. *Fennell, Berry, supra.*

8. Wagner Family Limited Partnership (\$ -4,500 v. \$0)

Obligor claimed that a \$4,500 partnership bill he paid to the ParenteBeard accounting firm for preparation of its tax returns should be deducted from his income. (12/2/10 at 32-33). I rejected deduction of a similar payment he made in 2008 and do so again because there is no legal basis for it. I additionally note that this entity distributed almost

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\$900,000 to obligor in 2009, evidencing its ability to meet this obligation.

9. The Bennett Buyout (\$ -75,000 v. \$0)

| | |
|------------------------------------|---------------------|
| Wagner Equities II (Grantor Trust) | (\$ -72,765 v. \$0) |
| WBDW Management, Inc. | (\$ -1,500 v. \$0) |
| BHM Capital | (\$ - 735 v. \$0) |

Sometime prior to 2008, obligor and three other individuals created Four Concord Partners for the purpose of purchasing and renting a 400,000 square foot York area warehouse. Obligor used Wagner Equities II as the investment vehicle to purchase his one quarter interest. As noted, Wagner Equities II is in turn 99% owned by the 2007 Multigenerational Trust. Each of the four partners contributed \$500,000 for the purchase, financing the remaining \$8.5 million. Two of the four partners, Ron Bennett and Walt Dealtry, owned a truck recapping company and planned to move their business to the warehouse and become tenants for a large portion of it. (12/2/10 at 121-23).

In 2009, due to low revenues, Four Concord Partners made a cash call seeking \$50,000 from each partner. Bennett was unable to meet the cash call. Obligor testified that due to the nature of Bennett's relationship and his leasing of the warehouse, obligor (through Wagner Equities II) and the other partners agreed to buyout Bennett and pay him his full \$500,000 investment. Obligor explained at a later hearing (concerning his 2010 income) that it was a tactical business decision to fully return Bennett's investment since Bennett entered a ten-year lease to rent one-fifth of the warehouse and that his rental income assisted Wagner Entities II in paying its expenses. Obligor felt it imperative to keep the tenant and flow of rental income. Because the Trust, which owned 99% of Wagner Equities II, allegedly did not have funds to pay its portion, obligor personally paid Bennett's obligations for Wagner Equities II. His total payments were \$75,000, due to the structure of the partnership (\$72,765 to Wagner Equities II, \$1,500 to WBDW Management, Inc. and \$735 to BHM Capital). (D-1B (p. 136)) According to obligor, had he not paid Bennett's share, Four Concord Partners would have defaulted on bank loans, which the partners personally guaranteed, and the property could have been lost. Obligor further asserted that had this default occurred, it would have caused a domino effect on all of his other loan obligations. (12/1/10 at 31-32, 41-42; 12/2/10 121-22, 127; 8/18/11 at 66-67)

This court has previously addressed a number of similar capital contributions and held that they are not properly deducted from income

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under support law; even to the extent obligor was contractually obligated to make the payments and even where the obligation arose preseparation. As with those contributions, this court will consider whether to grant obligor a downward deviation from his calculated support obligation.

10. KBS Investments, LP (\$ -22,640 v. \$0)

Obligor seeks to deduct from his income \$22,640 interest he paid on a loan used to improve the KBS Investment property. KBS Investments owns the land upon which the trucking company KBS Inc. operates. KBS Inc. is one of obligor's "primary businesses," along with Penn Waste. The 2006 Multigenerational Trust owns 99% of KBS Investments; obligor has no personal stake in it. (12/2/10 at 111) In 2006, obligor secured a \$1.4 million dollar loan to finance the improvements to the trucking terminal. He later determined it needed an additional \$500,000 so he personally guaranteed the loan, paying \$22,640 interest in 2009. (12/2/10 at 37-38, 128-29)

Obligee's expert opined the payments were gifts to the Trust rather than a "required deductible item." (12/2/10 at 219). Obligor personally guaranteed the loan, not the Trust or KBS Investments, and was personally obligated to ensure that the principal and interest payments were made. (12/2/10 at 112-115) Obligor argued the Trust could not make these payments, because the Trust did not make any distributions, nor was it permitted to make any distributions to him. (12/1/10 at 111-115) However, the Trust had substantial assets and as 99% owner of this entity, could have distributed monies to its company's loan guarantor (obligor). As in other support cases, interest paid on loans, while perhaps tax deductible, is not deductible to compute net income for support purposes.

11. Peoples Bank Line of Credit (Principal Repayment) (\$ -325,000 v. 0)

Obligor seeks a \$325,000 reduction to his income for monies paid on his People's Bank's line of credit. In 2009, the bank modified the terms of his credit line by reducing the credit available from one million dollars to \$500,000. Obligor testified that he used this line of credit to finance his investments with A-Z Finance. Obligor explained that when the bank decreased his line to \$500,000, he was overextended by \$325,000, which amount the bank withdrew from his personal checking account. Because he had outstanding checks written against his personal account, including a \$772,000 payment due the IRS for taxes, he took out a \$325,000 shareholder loan from Penn Waste and deposited that amount in his personal account. Had he not borrowed the money, his

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loans because there were insufficient funds to cover the debt obligations. (12/2/10 at 133-36; see also, 12/1/10 at 39-40, 171-74, 221-24, D-2)

Obligor's expert treated the shareholder loan from Penn Waste as income to obligor under a cash flow theory, including it as part of the total \$1,505,594 he received from Penn Waste in 2009. (See 12/1/10 at 39-40; 12/2/10 at 133-35) However, because obligor did not actually receive the money, his expert then deducted the \$325,000 back out of obligor's income reasoning that it was not available to him for support purposes.

Money borrowed to pay personal debts is not an item properly deductible from income for support computation purposes and as such, I will not deduct \$325,000 from obligor's income. Although obligor was forced to reduce his personal account to meet this fixed obligation, it allowed him to replenish his line of credit and then invest more in A-Z. I therefore will not utilize this expenditure in my deviation analysis.

12. 2007 Multigenerational Trust (\$ -223,985 v. 0)

Obligor seeks to deduct a \$223,985 capital contribution he made to the 2007 Multigenerational Trust. The Trust is a 10% shareholder in Penn Waste, having purchased its interest from the previous owner, Dwayne Riley. In 2009, the Trust did not have enough money to meet the buyout payment to Riley. (12/2/10 at 58, 59, 125) It received a \$150,000 distribution from Penn Waste which was not enough to pay \$173,985 due to Riley. (12/2/10 at 53, 60, 63) Obligor felt responsible to make the payment due to Riley, or he would have defaulted on the buyout, as he had personally guaranteed the payment. (12/2/10 at 117-18, 120-21) Obligor asserts that these payments made to the Trust were necessary to meet existing obligations and should therefore be deducted from his income. I will not permit this deduction, however, since it was a capital contribution, not an item deductible from income for support computation purposes.

13. Life Insurance Premiums (\$ -96,396 v. \$0)

Obligor seeks to deduct the cost of four life insurance premiums paid in 2009: Sageworth Holdings (\$78,538), Genworth (\$5,793), Trans America (\$6,084) and Prudential (\$5,981). The Sageworth policy was purchased for the benefit of obligor's spouse and children (named beneficiaries) and was not otherwise pledged as collateral for loans. The remaining premiums, costing \$17,858, were required by the banks as additional collateral for various loans. (12/2/10 at 16-19, 132-33)

These items are not deductible from income for support computation purposes. The Sageworth Holdings premium payment was admittedly a

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gift to the Trust. With regard to the other payments, which are essentially a cost of obligor's investing and lending activities, they are also not properly deducted from obligor's income under support law, as set forth above. Nevertheless, these costs (\$17,858) may be considered as a basis for deviation as obligor was legally obligated to purchase these premiums as collateral for loans (other than the Sageworth Holdings premium cost).

14. Taxes Paid on Behalf of Children (\$ -38,380 v. \$0)

Obligor seeks to deduct taxes he paid on behalf of his two daughters, \$16,090 for Cristina and \$22,290 for Katherine. This deduction will not be permitted for the same reasons set forth above concerning a similar deduction obligor sought in 2008.

15. Private School Tuition (Gulliver School) (\$ -13,597 v. \$0)

Obligor seeks to reduce his income by \$13,597, which was the amount he spent on Cristina's 2009 tuition to attend a private high school in Florida. As discussed above concerning obligor's payment of a similar obligation in 2008, this is not an expenditure which is deductible from income for the purpose of calculating support under support law. Instead, to the extent private tuition is a reasonable cost, which it is in this case, then obligor's payment of his share of that tuition is an obligation arising under the Support Guidelines, as an additional expense, discussed later in this opinion. Pa.R.C.P. 1910.16-6(d).

OBLIGOR'S 2010 INCOME

Obligor claimed his 2010 net income was \$750,770, or a monthly net income of \$62,564. Obligee again claimed the figures were significantly higher: \$1,976,805, or a monthly net income of \$164,733. The parties agreed to a total baseline net annual income of \$1,230,008, set forth below. They diverged significantly, however, from that baseline figure; obligor sought deductions totaling \$479,238 while obligee sought to add back \$746,797 plus the value of perquisites. For the reasons that follow, I find obligor's 2010 monthly net income was \$118,253.

The income items to which the parties agreed were as follows (D-1A and P-1 (2010, as revised)):

| OBLIGOR'S 2010 INCOME | Agreed Amount |
|-------------------------------------|----------------------|
| Salaries and Wages | |
| Wages - Penn Waste, Inc. | \$1,214,300 |
| Interest and Dividend income | |
| Taxable Interest | 675,310 |
| Tax Exempt Interest | 2 |

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| | |
|---|---------------|
| Ordinary Dividends | 14,949 |
| Tax Exempt Dividends | 271 |
| Less K-1 pass-through income | |
| SRW 2007 Multi-Generational Trust | -2 |
| Wagner Family Limited Partners | -3 |
| SWJC, Inc. | -14,778 |
| Penn Waste, Inc. | -50,359 |
| KBS Investments | -5,608 |
| Sageworth Holdings LLC | -90 |
| Hospitality Lodging Investors LP | -1,037 |
| Springwood Hospitality IV, LP | -9 |
| Penn Waste, Inc. | -6,295 |
| Atlas Pipeline Partners | -2,208 |
| Springwood Hospitality III LP | -65 |
| Hospitality Lodging Investors LP | -480 |
| Scott R Wagner Insurance Trust | -1,309 |
| SRW 2006 Multi-Generational Trust | -271 |
| Sageworth Holdings LLC | -2 |
| Hospitality Lodging Investors LP | -1 |
| Other Gains or Losses | 63,741 |
| Less net long-term gains or (losses) from K-1 | |
| SWJC Inc. | -168 |
| Penn Waste Inc. | 46 |
| KBS Inc. | -2,401 |
| Penn Waste Inc. - Flow Through 2007 Trust | 6 |
| Atlas Pipeline Partners | -61,224 |
| Pass-through Entities | |
| 1175 Enterprise Associates | |
| Pass through taxable earnings / loss | 37,379 |
| Less taxable earnings / loss | -37,379 |
| Property distribution (net) | 30,000 |
| Atlas Pipeline Partners | |
| Pass through taxable earnings / loss | -17,033 |
| Less taxable earnings / loss | 17,033 |
| Property distribution (net) | 180,558 |
| Less Capital Contributed | -135,605 |
| Barnhart Drive Associates LLC | |
| Pass through taxable earnings / loss | 2,290 |
| Less taxable earnings / loss | -2,290 |
| Property distribution (net) | 6,000 |
| BHM Capital, LLC | |
| Pass through taxable earnings / loss | 1,288 |

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| | |
|--------------------------------------|----------|
| Less taxable earnings / loss | -1,288 |
| Property distribution (net) | 0 |
| Less Capital Contributed | 0 |
| The Blackstone Group LP | |
| Pass through taxable earnings / loss | 3,726 |
| Less taxable earnings / loss | -3,726 |
| Property distribution (net) | 0 |
| Continental Engines Partnership | |
| Pass through taxable earnings / loss | 29,196 |
| Less taxable earnings / loss | -29,196 |
| Property distribution (net) | 5,000 |
| Do-It Outdoors Leasing, LLC | |
| Pass through taxable earnings / loss | -16,640 |
| Less taxable earnings / loss | 16,640 |
| Property distribution (net) | 0 |
| Do-It Outdoors Media, LLC | |
| Pass through taxable earnings / loss | -16,631 |
| Less taxable earnings / loss | 16,631 |
| Property distribution (net) | 0 |
| Greenspring Associates, LLC | |
| Guaranteed payments | 0 |
| Pass through taxable earnings / loss | -38 |
| Less taxable earnings / loss | 38 |
| Property distribution (net) | 0 |
| Hospitality Lodging Investors LP | |
| Pass through taxable earnings / loss | -60,355 |
| Less taxable earnings / loss | 60,355 |
| Property distribution (net) | 0 |
| KBS, Inc. | |
| Pass through taxable earnings / loss | -12,413 |
| Less taxable earnings / loss | 12,413 |
| Property distribution (net) | 0 |
| KBS Investments LP | |
| Pass through taxable earnings / loss | 4,931 |
| Less taxable earnings / loss | -4,931 |
| Property distribution (net) | 38,967 |
| Change in Shareholder Loan Balance | 90,000 |
| KBS Investments LP (Grantor Trust) | |
| Pass through taxable earnings / loss | 488,168 |
| Less taxable earnings / loss | -488,168 |
| Property distribution (net) | 313,983 |
| Distribution to Trust | -313,983 |

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| | | |
|---|------------|--|
| Penn Waste, Inc. | | |
| Pass through taxable earnings / loss | 1,376,820 | |
| Less taxable earnings / loss | -1,376,820 | |
| Property distribution (net) | 2,383,531 | |
| Change in shareholder loan balance (personal) | -1,075,902 | |
| Penn Waste, Inc. (Grantor Trust) | | |
| Pass through taxable earnings / loss | 172,103 | |
| Less taxable earnings / loss | -172,103 | |
| Property distribution (net) | 297,941 | |
| Distribution to Trust | -297,941 | |
| Sageworth Holdings, LLC | | |
| Pass through taxable earnings / loss | 18,592 | |
| Less taxable earnings / loss | -18,592 | |
| Property distribution (net) | 5,008 | |
| Springwood Hospitality III, LP | | |
| Pass through taxable earnings / loss | -18,311 | |
| Less taxable earnings / loss | 18,311 | |
| Property distribution (net) | 0 | |
| Springwood Hospitality IV, LP | | |
| Pass through taxable earnings / loss | -22,064 | |
| Less taxable earnings / loss | 22,064 | |
| Property distribution (net) | 12,500 | |
| | 0 | |
| SWJC, Inc. | | |
| Pass through taxable earnings / loss | 66,418 | |
| Less taxable earnings / loss | -66,418 | |
| Property distribution (net) | 0 | |
| W&A Floridian, LLC | | |
| Pass through taxable earnings / loss | -42,952 | |
| Less taxable earnings / loss | 42,952 | |
| Property distribution (net) | 20,312 | |
| Change in shareholder loan balance | -14,718 | |
| Wagner Equities I, LP (Scott R. Wagner) | | |
| Pass through taxable earnings / loss | -8,652 | |
| Less taxable earnings / loss | 8,652 | |
| Property distribution (net) | 0 | |
| Wagner Equities I, LP (Grantor Trust) | | |
| Pass through taxable earnings / loss | -7,210 | |
| Less taxable earnings / loss | 7,210 | |
| Property distribution (net) | 0 | |
| Wagner Equities II, LP (Grantor Trust) | | |
| Pass through taxable earnings / loss | -111,773 | |

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| | |
|---|--------------------|
| Less taxable earnings / loss | 111,773 |
| Wagner Family Limited Partnership | |
| Pass through taxable earnings / loss | 112,781 |
| Less taxable earnings / loss | -112,781 |
| Property distribution (net) | 164,550 |
| WBDW Management, LLC | |
| Pass through taxable earnings / loss | -1,028 |
| Less taxable earnings / loss | 1,028 |
| Property distribution (net) | 0 |
| Less capital contributed | 0 |
| WWR Management, LLC | |
| Pass through taxable earnings / loss | 348 |
| Less taxable earnings / loss | -348 |
| Property distribution (net) | 0 |
| Miscellaneous income | |
| Bond guarantee fee | 172,787 |
| KBS consulting fee | 80,000 |
| ECORE International-Board of directors fee | 20,000 |
| GROSS DISPOSABLE INCOME | \$3,805,303 |
| Adjustments to Gross Income | |
| Investment Interest | -102,747 |
| Do-It Outdoors Media, LLC | -47,987 |
| KBS Inc. | -1,047 |
| Penn Waste, Inc. | -51,992 |
| Wagner Family LP | -86,080 |
| Springwood Hospitality IV, LP | -22,972 |
| W&A Floridian Holdings, LLC | -54,509 |
| Loan Payments to buy KBS Inc. | -77,218 |
| Principal Loan Re-payments | -964,482 |
| Total Adjustments | -1,409,034 |
| Deductions - Taxes | |
| Federal | -1,010,540 |
| State - Pa. | -114,025 |
| State - non-Pa. (MD, NC, NY, SC) | -2080 |
| Local | -14,871 |
| Social Security | -6,622 |
| Medicare | -17,607 |
| PA unemployment tax | <u>-971</u> |
| Total Deductions | -1,166,716 |
| ANNUAL NET DISPOSABLE INCOME: AGREED | \$1,230,008 |

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It is important to note that in 2010, Penn Waste re-characterized obligor's then outstanding shareholder loans, totaling \$1,338,364, as a shareholder distribution. As such, these previously loaned monies converted to income. (8/15/11 at 105-06; P-8 (2010)) The parties experts agreed, however, not to include this amount as income to him for 2010 as they had already agreed to include as income the value of Penn Waste shareholder loans he received in 2008 and 2009, in the amounts of \$280,602 and \$300,000, respectively, which appear in the preceding Agreed Income charts. The remaining sum represented shareholder loan balances existing as of separation and not relevant for support calculation purposes.

Disputed Income Items (2010)

The parties, through their experts, submitted fourteen (14) income areas with material differences, in addition to one court adjustment, as follows:

| OBLIGOR'S 2010 INCOME: DISPUTED ITEMS | Obligor's Proposed Figures | Obligee's Proposed Figures | Court's Decision |
|---|---|---|-----------------------------|
| Interest and Dividend Income | | | |
| 1. 2007 Multigenerational Trust Loan Interest | 0 | 152,185 | 152,185 |
| 2. Wells Fargo Brokerage Acct. Capital Gain | 0 | 18,548 | 0 |
| Pass through Entities | | | |
| 3. Do-It Outdoors Media, LLC Less capital contributed | -100,000 | 0 | 0 |
| 4. Springwood Hospitality III, LP Capital Contribution | -75,000 | 0 | 0 |
| 5. W&A Floridian Holdings LLC Capital Contribution | -65,365 | 0 | -65,365 |
| 6. Wagner Entities II (Grantor Trust) Bennett Buyout | -74,250 | 0 | 0 |
| 7. Wagner Family Limited Partnership Capital Contribution | -3,606 | 0 | 0 |
| Miscellaneous Income | | | |
| 8. Penn Waste Imputed Income Rapid Remedy Capital Waste & Recycling Capital Investment Loan | 0 0 0 298,814 | 200,000 77,250 38,625 149,407 | 0 |

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| | | | |
|---|---------------------|---------------------|---------------------|
| 9. Perquisites | 0 | NA | 4,178 |
| Adjustments and Deductions | | | |
| 10. KBS Investments - loan payments | -24,050 | 0 | 0 |
| 11. Sageworth Trust | -28,818 | 0 | 0 |
| 12. 2007 Multigenerational Trust | | | |
| Cash Call | -30,400 | 0 | 0 |
| Capital Contribution | -32,750 | 0 | 0 |
| 13. Life Insurance Premiums | -35,976 | 0 | 0 |
| 14. Taxes Paid on behalf of Child (Cristina) | -9,023 | 0 | 0 |
| 15. Court Adjustment - Loan Add Back | 0 | 0 | -90,000 |
| Annual Net Income: Disputed Items | -479,238 | \$746,797 | \$189,030 |
| Annual Net Income: Agreed Items | \$ 1,230,008 | \$ 1,230,008 | \$ 1,230,008 |
| TOTAL ANNUAL NET INCOME | \$750,770 | \$ 1,976,805 | \$1,419,038 |
| TOTAL MONTHLY NET INCOME | \$62,564 | \$164,733 | \$118,253 |

1. 2007 Multigenerational Trust (\$0 v. \$152,185)

Note #5 Interest (\$0 v. \$ 108,363)

Note #3/3A Interest (\$0 v. \$ 33,193)

Note # 3/3A Interest (\$0 v. \$ 10,629)

The 2007 Multigenerational Trust, which has been discussed above, was created by obligor along with the 2006 Multigenerational Trust primarily for estate planning purposes. As of the beginning of 2010, obligor had loaned the 2007 Trust almost \$1.6 million, evidenced by Notes, because it did not earn sufficient income to pay its expenses. Obligor was imputed with \$152,185 interest from the 2007 Multigenerational Trust generated from its payment to obligor for three of the underlying loans: \$108,363 on Note 5, \$33,193 on Note 3/3A and \$10,629 from a Note 3/34. (8/18/11 at 31; D-11)

Note 5 (\$108,363) and Note 3/3A (\$10,629): In late 2010, the 2007 Trust borrowed \$995,123 from a bank in order to fully repay obligor on Note 5 including \$770,715 principal and \$108,364 interest. The remaining \$116,045 loan proceeds paid obligor under Note 3/3A, including \$10,629 accrued interest. (8/18/11 at 6, 9, 46; D-11) Obligor testified the money never left the bank; only the debtor's name on the loan changed from obligor to the 2007 Trust. Obligor applied all monies to repay his loan which provided the 2007 Trust funds to construct the St. Michael's property. Because obligor never physically received any money and was not available to him, his expert did not include it as income. (8/18/11 at 6, 9, 46)

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Note 3A (\$33,193): In August 2010, the Trust documented a credit to obligor of \$90,000, consisting of \$56,807 in principal and \$33,193 in interest on Note 3A. The Trust never physically made that \$90,000 payment to obligor, but applied the \$90,000 to obligor's annual rent obligation on the St. Michael's property which the Trust owned. In other words, obligor was relieved of his obligation to pay the trust \$90,000 rent and in exchange, the Trust was credited an identical amount as a loan payment to him. (8/18/11 at 38)

Obligor argued that these interest payments should not be considered income to him for support purposes because he never actually received any money from the Trust, and thus it was not income available for support. (8/15/11 at 9, 12, 25, 31; see also 8/18/11 at 8, 52) However, the law is clear that interest is income and the entire \$152,185 must be included in obligor's income for support calculation purposes. This court will nevertheless consider a downward deviation for his imputed income of \$118,993 in interest that he immediately rolled over to cover the principal and interest payment due to the bank. On the other hand, I will not factor in a deviation analysis his interest income of \$33,193 because that income was used to pay a personal debt.

2. Wells Fargo Brokerage Account (\$0 v. \$18,548)

Obligor's expert excluded from obligor's income capital gains of \$18,548 he received from his Wells Fargo brokerage account. He reasoned that this was money obligor did not actually receive or have the ability to receive. (8/15/11 at 12-13) Obligor testified that he did not withdraw and could not withdraw any money from the account in 2010. (8/18/11 at 52-54, 137-39)

Obligor sought a similar reduction in 2009 which this court permitted, reasoning that the funds were not available to obligor and analogizing the situation to that of retained earnings. I find that this same rationale applies as well here and as such, will exclude it from his income. I additionally note that obligee's expert testified that he would exclude the gain from obligor's income if the removal of the gain would not be allowed under brokerage covenants which prohibit the equity balance to dip below specified amounts. (8/15/11 at 129)

3. Do-It Outdoors Media, LLC (\$ -100,000 v. \$0)

Obligor seeks to deduct his final \$100,000 capital contribution made to Do-It Outdoors Media, Inc. to complete his purchase of a 20% interest in this entity. He paid for this purchase by taking out a shareholder loan from Penn Waste, Inc. (12/2/10 at 101)

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This reduction will not be permitted for the same reasons set forth above addressing the 2008 and 2009 payments to this entity. Similarly, this fixed obligation warrants consideration by the court in assessing whether to deviate from the support award determined under the Support Guidelines.

4. Springwood Hospitality III, LP (\$ -75,000 v. \$0)

In 2010, obligor invested in a new venture, spending \$75,000 in Springwood Hospitality III, LP and acquiring one unit, as well as securing a large service contract for Penn Waste. Obligor's expert excluded this capital contribution under his cash flow analysis and to remain consistent with his treatment of all partnership contributions. (8/15/11 at 14). This court declines to deduct this capital outlay from obligor's income as there is no legal authority supporting such a decision, noting this investment decision was made post-separation.

5. W & A Floridian Holdings LLC (\$-65,365 v. \$0)

As with 2008 and 2009, obligor continued to make capital contributions into this marital entity to meet expenses of paying the mortgage and other fees for the three condos which were still unsold at the end of 2010. Obligor made such payments totaling \$65,365 in 2010. (8/18/11 at 61) Again, this court agrees with obligor to deduct these expenses for the same reasons set forth above in granting similar deductions in 2008 and 2009.

6. Wagner Entities II (Bennett Buyout) (\$ -74,250 v. \$0)

Obligor seeks to exclude from his income \$74,250 for a capital contribution he made to Wagner Entities II, on behalf of the 2007 Multigenerational Trust. This payment was part of his agreement with the other partners to buyout partner Ron Bennett's one quarter interest after Bennett was unable to meet a 2009 capital call. The background for this buyout is fully described in the 2009 income section (Item 9, Bennett Buyout). For 2010, obligor contributed \$74,250 in additional capital on the Trust's behalf as part of his obligation to the buyout and to meet the obligations of Wagner Equities II. (8/18/10 at 64) Obligor argues that because this money was not available for support, it must be excluded from his income.

This exclusion will not be permitted for the same reasons as set forth above though this contribution will be considered in a deviation analysis. This court additionally notes that in his testimony, obligor indicated that his \$74,250 payment was a loan to the Trust, which he will ostensibly pay back, with interest. (8/18/11 at 64, 67, 147-48)

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7. Wagner Family Limited Partnership (\$-3,606 v. \$0)

As in 2009, obligor again seeks a deduction from his income for an accounting bill he paid on behalf of the WFLP, under a cash flow analysis. Obligor explained that he paid the bill because the WFLP did not have money to pay it at the time. (8/15/11 at 17-18, 49; 8/18/11 at 69) This payment is not deductible for the same reasons as set forth above; notably, there is no legal basis permitting it and particularly because the WFLP revealed that it had sufficient funds to ultimately pay this expense inasmuch as it distributed \$164,550 to obligor in 2010.

8. Penn Waste Add Backs (Imputed Income) (\$0 v. \$576,064)

| | |
|---------------------------|--------------------|
| Rapid Remedy | (\$0 v. \$200,000) |
| Capital Waste & Recycling | (\$0 v. \$376,064) |

Obligee's expert imputed to obligor \$576,064 of income which Penn Waste expended on three business-related transactions, under *Labar* and/or *Berry, supra*. (See P-8) The imputed income figure represents obligor's 80% share of \$720,079 spent by Penn Waste in 2010 at obligor's direction. The three transactions included a \$250,000 investment in Rapid Remedy, a \$373,517 loan to Capital Waste and Recycling Services and a \$96,562 investment to Capital Waste and Recycling Services.

Rapid Remedy (\$0 v. \$200,000): In 2010, Penn Waste, at obligor's direction, invested \$250,000 in Rapid Remedy, obtaining a 5% interest therein. Rapid Remedy is a company that implements web-based interaction with physicians at the work-place. The company is designed to assist employees in servicing their healthcare needs, without having to leave work. According to obligor, Penn Waste has incurred exorbitant employee health care costs and believed that the use of telemedicine would help Penn Waste reduce costs. Obligor notes as well that if the business venture is profitable, it will give the company a significant return on this investment and is thus a sound business decision. In 2010, Penn Waste was not charged any fees for use of the service as it was a test site for Rapid Remedy, though it may be charged such fees in the future. Obligor argues that this investment was a bona fide business expense under *Berry*. Obligor also argues that because the investment monies were borrowed against the company's line of credit, the money was not otherwise available for distribution. (8/18/11 at 77-81, 107, 125-30; D-6, D-18)

Obligee counters that this investment was not a direct operating activity of Penn Waste. Furthermore, Penn Waste was not required to invest

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in the company in order to become a client. Obligee also asserts as disingenuous obligor's claims that the investment funds would not have been otherwise available because they were borrowed against the line of credit. As discussed above in the 2009 income section (Item 6, Penn Waste Imputed Income), Penn Waste utilizes a sweep account on the business line of credit against which all transactions are paid. As such, had \$250,000 not been borrowed to invest in Rapid Remedy, the line of credit would have had more excess cash and less cash would have been swept in to pay against it, such that this was money available for distribution. Furthermore, obligee suggests that instead of Penn Waste making these payments (at obligor's direction), it could have distributed these funds to obligor and he then could have personally invested in Rapid Remedy and Capital Waste & Recycling (discussed below). Such investment activity was consistent with obligor's past activities. Obligor in fact testified that it was "possible" that he could have personally made the same investment and loan into Rapid Remedy and Capital Waste & Recycling as did Penn Waste. (8/15/11 at 103-04, 160-61, 174; P-8; 8/18/11 at 128, 152-53)

While I find this to be a very close call, I am persuaded that the Penn Waste investment into Rapid Remedy, to address employee health care costs and for the benefit of Penn Waste employees, was a legitimate, bona fide expense under *Berry, supra* as well as one "necessary for the continued operation and smooth running of the business," under *Labar*. Accordingly, I will not impute the amount of the Rapid Remedy investment into obligor's income.

Capital Waste & Recycling (\$0 v. \$376,064): Capital Waste & Recycling was created in 2010 and is based in Columbus, Ohio. It provides the identical waste disposal services as Penn Waste, absent a recycling facility. PW Capital, a wholly-owned subsidiary of Penn Waste, obtained a 27-1/2 % ownership interest in Capital Waste & Recycling in 2010 in exchange for providing it with a \$96,562 investment and a \$373,517 loan. The investment was in the form of older trucks and hauling vehicles which had been used by Penn Waste. The loan was taken against Penn Waste's line of credit. Obligor testified that Penn Waste's interest in Capital Waste & Recycling (via PW Capital) is designed to expand its waste disposal market by making contacts in the Columbus area. (8/18/11 at 81-84, 124)

Obligee argued that neither the investment nor the loan made by Penn Waste were essential business expenses of Penn Waste. Obligee also argued that the evidence showed that instead of Penn Waste making

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these payments (at obligor's direction), it could have just as easily distributed these funds to obligor and he could have personally made the investment and loan. As noted, obligor agreed that this was a possibility. (8/18/11 at 152-53) For these reasons, obligee's expert imputed Penn Waste's disbursements to Capital Waste & Recycling as income to obligor or in proportion to his ownership interest. (8/15/11 at 103-04, 139-41, 159-61)

As noted above, where it is alleged that a corporation has sheltered cash flows from shareholders, the first of the two-question inquiry is whether it can be shown that it was feasible for cash flows otherwise disbursed for business expenses to have been disbursed to shareholders. *Labar* at 1257. Obligee presented evidence that this was possible, given flexibility with which Penn Waste / obligor can borrow funds through the business line of credit which line is then paid down with the sweep account. The second question is whether the corporation can prove that the expenditures "were necessary for the continued operation and smooth running of the business in order to refute an allegation that the corporation has sheltered cash flows." *Id.*

Obligor failed to indicate how an investment into an entity with a waste disposal business in the Columbus market was necessary to Penn Waste's continued operation and smooth running. While it may be a good business decision which might eventually profit Penn Waste and obligor, neither the loan nor investment were necessary for the continued operation of Penn Waste and thus, some portion of these monies must be imputed as income to obligor. Obligee's expert included the entire amount in proportion to obligor's Penn Waste ownership interest. However, as with his 2009 imputed income from Penn Waste, I find it unlikely that had these monies not been loaned to and invested in Capital Waste & Recycling, that they would have been distributed to the shareholders, dollar-for-dollar. Accordingly, I will include as income to obligor one-half the value of these monies, or \$149,407 on the loan and \$38,625 for the investment.

9. Perquisites

Neither expert included the value of perquisites in their 2008 and 2009 income calculations because both parties received personal benefits from obligor's businesses. (See 8/15/11 at 88-89) Obligee argued that this was not the case in 2010 and thus sought that an unspecified amount of income be attributed to obligor for the personal value of business perquisites. Alternatively, obligee sought that the perquisites be considered a factor in an upward deviation or a factor against a downward deviation from the ultimate support award.

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Because our courts have clearly stated that perquisites are income to the recipient, this court will consider them as income and not as a deviation factor. See *Mascaro v. Mascaro*, 803 A.2d 1186, 1194 (Pa. 2002) (citation omitted) (employer-provided perquisites such as automobiles, fuel expenses and automobile insurance for personal use must be included as income to the recipient under support law since they are reflective of the true nature and extent of a party's financial resources). See also, *Murphy v. McDermott* 979 A.2d 373, 379-80 (Pa. Super. 2009) (employer-provided auto and employer's contribution to an employee's retirement plan are income) and *Arbet v. Arbet* at 40 (health insurance, life insurance, disability insurance, pension benefits, professional development benefits and employee services included as income).

Though obligee suggested no specific figures for the value of the perquisites, she has requested that the court treat the value of obligor's business-provided car, mobile phone, country club membership, health insurance, home furniture and air travel as income to him. To the extent these items were used for personal reasons, I will include them as income to obligor.

In 2010, Penn Waste spent up to \$900 per year for obligor's mobile phone plan. It also paid for obligor's vehicle and related expenses. The vehicle was purchased for \$47,208, financed over five years. (8/18/11 at 86-87, 100) The testimony indicated that while obligor used his phone and car primarily for business, he nevertheless utilized them for personal reasons as well. (8/18/11 at 88, 100) Accordingly, for 2010, I will assign as income 10% of his usage of the phone (\$90) and car (\$944 (\$47,208/5 x 10)).

Obligor's 2010 country club membership dues of \$4,560 were paid in full by Penn Waste. Obligor testified he used the membership strictly for business purposes. (8/18/11 at 90-91) He claims that on the rare occasions when his daughters used the club, he paid those expenses from his own personal money. (8/18/11 at 90-91, 158-59; P-5, P-6) I am not convinced obligor obtains no personal benefit from his membership and will thus impute 10% of his dues as income to him (\$456).

Penn Waste also pays for obligor's health insurance plan which costs \$72.50 per week. It also covers his daughter, Cristina, as well as obligee, despite her continued representations that she was going to secure health insurance in Florida where she has resided since August 2009. (8/18/11 at 101) I will impute one-third of these costs as income to obligor (\$1,257).

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In 2010, obligor charged to Penn Waste \$1,590 for Adirondack chairs he purchased for his St. Michael's vacation property and which he claimed were a necessary expense for client entertainment. (8/18/10 at 93, 122) This court is unconvinced that these chairs serve a wholly business purpose and will assign 90% of their use and value (\$1,431) as personal, and thus income to obligor.

Finally, Penn Waste pays for obligor to fly on a private jet utilizing his NetJets membership. In 2005, Penn Waste, KBS Inc. and a third entity purchased a 1/8 interest in the use of a light jet through NetJets Aviation, for \$800,000 and created an entity known as PennShip Partners, of which 50% is owned by Penn Waste. In 2010, Penn-Ship Partners paid a \$6,394 monthly membership fee regardless of whether the jet was used. Penn Waste's half interest in Penn-Ship Partners entitles it to 100 hours of flying time per year, which must be paid for as used at an hourly rate of \$1,700 plus a \$600 fuel surcharge. As of October 2009, obligor (on behalf of Penn Waste) had only used the plane two times in the prior year and a half though his usage increased slightly through 2010 when he used the service five times for business purposes (10/28/09 at 44, 87-89; P-12 (2008); 8/18/10 at 94-99; D-14, D-15 (2010)). Clearly NetJets is a luxury; however, the evidence revealed that the costs expended by Penn Waste were all legitimate business expenses and that obligor otherwise paid for any personal use of the jet from personal funds and not through the company. (10/28/10 at 88; 8/18/11 at 94-95) Accordingly, I will not include these expenses as income to obligor.

10. KBS Investments (\$ -24,050 v. \$0)

As he did in 2009, obligor seeks to deduct from his income interest paid on a personal loan he took out from a bank to finance capital improvements to the KBS Investment truck terminal, totaling \$24,050 in 2010. (8/18/11 at 70-71; D-13) For the same reasons set forth above, this deduction will not be permitted: interest paid on loans, while perhaps tax deductible, is not deductible to compute net income for support purposes.

11. Sageworth Trust (\$ -\$28,818 v. \$0)

Obligor also seeks to reduce his income by \$28,818 he loaned to Sageworth Trust in 2010 to assist it in paying for taxes and improvements made to the St. Michael's property. The expenses were all obligations of the 2007 Trust that it did not have the money to pay. (8/18/11 at 44, 61) This deduction is not recognized as one permissible under support law and will not be permitted in determining obligor's income available for support computation purposes.

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12. 2007 Multigenerational Trust (Bennett Buyout) (\$ -63,115 v. \$0)

| | |
|----------------------|---------------------|
| Capital Contribution | (\$ -32,750 v. \$0) |
| Cash Call | (\$ -30,400 v. \$0) |

Obligor's expert excluded \$63,115 from obligor's income for money he paid on behalf of the 2007 Multigenerational Trust so that the Trust could meet certain obligations. The first was a \$32,750 payment obligor made related to the buyout of Ron Bennett from Four Concord Partners. As noted above, obligor, acting through Wagner Equities II, purchased a one-quarter share in Four Concord Partners which was created for the purpose of purchasing and renting a York area warehouse. Wagner Equities II is 99% owned by the 2007 Multigenerational Trust. (This buyout is more fully described above in the 2009 income section. (Item 9, Bennett Buyout)) In 2010, the 2007 Trust, through its ownership interest in Four Concord Partners, was required to come up with its share of the Bennett buyout. Because the 2007 Trust had limited funds, obligor felt he had no choice but to loan the 2007 Trust the money for its portion of the buyout. (8/18/11 at 10-11; D-1 at 167-69)

The 2007 Trust also needed additional sums of money in 2010 in order to meet the cash call for Wagner Equities II. As noted, the Trust is a 99% owner of Wagner Equities II which in turn has minority interests in both the Lemon Street and State Street entities, both of which rent out commercial space. In 2010, due to the lack of tenants, both experienced financial difficulties and were unable to meet their financial obligations. As a result, there was a cash call to pay the mortgage and taxes. Because the Trust was unable to come up with the \$30,400 cash call, obligor stepped in and paid on its behalf. (8/18/11 at 11-12, 73-74; 166)

This court has previously reviewed similar capital contributions and held that they are not properly deducted from income under support law, even to the extent obligor was contractually obligated to make the payments and even where the initial financial obligation to the entity may have arisen pre-separation. As with those contributions, this court will consider these payments in determining whether to grant obligor a downward deviation from his calculated support obligation.

13. Life Insurance Premiums (\$ -35,976 v. \$0)

Obligor seeks to deduct the cost of three life insurance premiums he paid in 2010 totaling \$35,976, with Sageworth Holdings, Trans America and Prudential. These policies were required as collateral for personal loans guaranteed by obligor and assigned to banks pursuant to the terms of the loans. (8/15/11 at 43-44, 64; D-1A)

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These items are not deductible from income for support computation purposes as discussed above concerning similar claims made for 2008 and 2009. Nevertheless, these costs may be considered as a basis for deviation as obligor was legally obligated to purchase these premiums as collateral for loans.

14. Taxes Paid on Child's Behalf (\$ -9,023 v. \$0)

Obligor's payment of Cristina's 2010 taxes for income attributed to her from the Wagner Family Limited Partnership is not deductible from his income, as set forth above in this court's analysis of the same requested deduction made in 2008 and 2009.

15. Court Adjustment - Loan (KBS Investments) (\$90,000)

For 2010, obligor's expert included as income to obligor \$90,000 in loan proceeds he received by borrowing that amount from KBS Investments through a shareholder loan. Obligor's expert included these proceeds as income to obligor because they were representative of his cash flow. This court declines to include these monies in obligor's income since loan proceeds are not income under support law. See 23 Pa.C.S.A. § 4302.

CALCULATION OF SUPPORT

The calculation of child support and APL in this case covers five time periods:

- Period 1. Child Support and APL from August 7, 2008 through Dec. 31, 2008 (using 2008 incomes and applying a *Melzer* calculation)
- Period 2. Child Support and APL from Jan. 1, 2009 through Dec. 31, 2009 (using 2009 incomes and applying a *Melzer* calculation)
- Period 3. Child Support and APL from Jan. 1, 2010 through May 11, 2010 (using 2010 incomes and applying a *Melzer* calculation)
- Period 4. Child Support and APL from May 12, 2010 through May 25, 2011 (using 2010 incomes and current Support Guidelines)
- Period 5. APL only from May 26, 2011 to date (using 2010 incomes and current Support Guidelines)

Based upon the reasoning set forth above, I have found obligor's monthly net income for the years 2008, 2009 and 2010 to have been

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\$136,545, \$158,647 and \$118,253, respectively. The parties agree for 2011 and 2012, that the court will use obligor's 2010 income. The parties further agree that obligee's monthly net income for all time periods is \$1,847. For the first three time periods, because the parties' combined monthly net incomes exceeded \$20,000, the calculation of support must be based upon *Melzer v. Witsberger*, codified under the thenapplicable Support Guidelines as follows:

Rule 1910.16-2. Support Guidelines. Calculation of Net Income

- (e) Net Income Affecting Application of the Child Support Guidelines
- (2) *High Income Child Support Cases.* When the parties' combined net income exceeds \$20,000 per month, child support shall be calculated pursuant to *Melzer v. Witsberger*; 505 Pa. 462, 480 A.2d 991 (1984). The presumptive minimum amount of child support shall be obligor's percentage share of the highest amount of support which can be derived from the schedule for the appropriate number of children and using the parties' actual combined income to determine obligor's percentage share of this amount. The Court may award an additional amount of child support based on the parties' combined income and the factors set forth in *Melzer*. The *Melzer* analysis in high income child support cases shall be applied to all of the parties; income, not just to the amount of income exceeding \$20,000 per month. In a *Melzer* analysis case, the presumptive minimum remains applicable.

* * *

Pa.R.C.P. 1910.16-2(e)(2).

As directed by this Rule, the court must initially compute the presumptive minimum amount of child support, which for one child is \$2,301 at the \$20,000 combined monthly net income column on the schedule, for Periods 1 through 3. Obligor's proportionate share of the parties' combined incomes is 98.7% for Period 1 (\$136,545 - (\$1,847 + \$136,545)), 98.8% for Period 2 (\$158,647 ÷ (\$1,847 + \$158,647)) and 98.5% for Period 3 (\$118,253 ÷ (\$1,847 + \$118,253)). Thus, his presumptive minimum monthly child support obligation, without any

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adjustments and before *Melzer* factors are considered, is \$2,271 for Period 1 (\$2,301 x 98.7%), \$2,273 for Period 2 (\$2,301 x 98.8%) and \$2,266 for Period 3 (\$2,301 x 98.5%).

The Court may award an additional amount of child support above the presumptive minimum “based on the parties’ combined income and the factors set forth in *Melzer*.” Pa.R.C.P. 1910.16-2(e)(2). Under *Melzer*, I must “first calculate the reasonable expenses of raising the children involved, based upon the particular circumstances - the needs, the custom, and the financial status - of the parties.” *Id.* at 995. I must also determine “the respective abilities of the parents to support their children” based upon their incomes, making “due allowance for the reasonable living expenses of the [custodial] parent.” *Id.* at 996 (emphasis in original). “Once the Court has determined the reasonable needs of the children and the amount of each parent’s income which remains after the deduction of the parent’s *reasonable* living expenses, it must calculate each parent’s total support obligation in accordance with the [*Melzer* formula].” *Id.* That formula requires computation of each parent’s child support obligation in proportion to their share of the total parents’ income available for support, multiplied by the total amount of the child(ren)’s needs. *Id.* The *Melzer* formula is as follows:

Parent A’s

$$\text{Child Support Obligation} = \frac{\text{Parent A's support income (net income less reasonable living expenses)}}{\text{Parent A's support income + Parent B's support income}} \times \text{Children's Needs}$$

Parent B’s

$$\text{Child Support Obligation} = \frac{\text{Parent B's support income (net income less reasonable living expenses)}}{\text{Parent B's support income + Parent A's support income}} \times \text{Children's Needs}$$

In assessing a child’s reasonable needs, the court must consider not only the bare necessities required. Since, “parents do have an obligation to share with their children the benefit of their financial achievement, where the parents’ incomes permit, it may be perfectly proper for a Court to recognize that certain expenditures for recreation, entertainment, and other nonessential items are reasonable and in the best interests of the children.” *Spahr* at 554 (quoting *Melzer* at 995). *See also Branch v. Jackson*, 629 A.2d 170, 171 (Pa. Super. 1993) (wealthy parent with assets and ability to provide has legal duty to give his children advantages in reasonable accord with his financial status); *DeWalt v. DeWalt*, 529 A.2d 508, 510 (Pa. Super. 1987) (child is entitled to reasonable standard of living based upon social station, fortune and financial achievements of parents).

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Parents have an absolute duty to support their children in a fashion consistent with their own station in life. *Coffey v. Coffey*, 575 A.2d. 587, 589 (Pa. Super. 1990). Where an affluent lifestyle was maintained during marriage, that lifestyle must be continued for the benefit of the minor child, particularly where there have been no changes to the good fortunes of the financially successful parent. *Id.*

Parties' Expenses

Prior to separation, the parties lived in their marital residence valued at between \$800,000 and one million dollars. (7/8/09 at 160) They and their children lived affluently throughout the marriage. For example, the parties were members of a country club, ate out frequently at fine establishments and entertained often; they spent approximately \$60,000 per year on family vacations; they traveled without their children two or more times each year, attending business meetings in Europe, Asia and South America, always traveling either by private jet or first class; they employed a full-time housekeeper at \$1,200 per month; utilized professional services to care for their landscaping and other household needs; were in the process of purchasing and constructing a \$2 million vacation home on St. Michael's at the time of separation; obligor purchased cars for his children Sebastian and Katherine; Cristina was involved in equestrian sports and owned a horse, took piano lessons, skied, and was involved with golf and tennis; both Sebastian and Katherine attended private school costing approximately \$50,000 per year per child; and in the fall of 2008, after the parties' separation, obligor paid over \$30,000 non-refundable tuition for Cristina to attend St. Timothy's, where she stayed for only a short period of time. (7/8/09 at 159-181; 7/10/09 at 76-78)

Upon separation, obligor moved into a rented townhouse and obligee and Cristina continued to live in the marital home until August of 2009 when they moved to a two-bedroom Florida apartment owned by Sebastian. As previously noted, during the time obligee and Cristina occupied the marital residence, obligor paid all their personal expenses and those related to the marital home, which ranged between \$6,244 and \$17,165 per month (from May to December 2008). (7/8/09 at 158; P-6; D-23 (2008)) At the time of the initial support conference, counsel for both parties agreed to an Interim Order (October 8, 2008), under which obligor agreed to continue paying these expenses, totaling \$216,600 between January to September 2008. (7/8/09 at 5; 7/10/09 at 124; P-6) Obligor moved back into the marital home in October 2009, and continued to maintain it and pay all related expenses. After he refinanced the mortgage on the marital residence to an interest-only loan in January 2009, the monthly home expenses ranged between \$2,062 and \$13,668. (D-24)

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The parties submitted considerable evidence concerning their post-separation living expenses for themselves and what they claim to have spent on Cristina, for the *Melzer* analysis.⁸ (See e.g. 7/8/09 at 157-280; 7/10/09 at 112-151) Obligee claimed she spent a combined total of \$33,573 per month on reasonable living expenses, including \$20,079 for herself and \$13,494 for Cristina. (P-5 (2008)) Obligor claimed total combined monthly expenses of \$30,411, including \$23,943 for himself and \$4,458 for Cristina. (D-5, D-6 (2008)) Following my review of the evidence, I find, under the legal standards set forth above, that the reasonable living expenses for the parties and Cristina are as follows:

| OBLIGEE'S REASONABLE MONTHLY EXPENSES: | <u>Obligee</u> | <u>Child</u> | <u>Combined</u> |
|---|----------------|--------------|-----------------|
| Court Assignment | | | |
| RENT | 1,875 | 1,875 | 3,750 |
| UTILITIES | | | |
| Electric | 35 | 35 | 70 |
| Telephone | 150 | 150 | 300 |
| Water | 75 | 75 | 150 |
| Cell | 160 | 160 | 320 |
| Cable/Internet | 125 | 125 | 250 |
| INSURANCE | | | |
| Renters | 40 | 10 | 50 |
| Auto | 138 | 280 | 418 |
| AUTOMOBILE | | | |
| Lease/Loan | 0 | 250 | 250 |
| Fuel | 150 | 150 | 300 |
| Repairs/Maintenance | 134 | 66 | 200 |
| PERSONAL | | | |
| Clothing | 660 | 1,340 | 2,000 |
| Groceries | 264 | 536 | 800 |
| Hair | 100 | 100 | 200 |
| Nails | 75 | 75 | 150 |
| Gym | 20 | 20 | 40 |

8. The parties have agreed that the expense evidence presented will apply to all periods of time for which a *Melzer* analysis is utilized, which covers August 7, 2008 through May 11, 2010.

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COUNTRY CLUB

| | | | |
|--------------------------|-----------------|----------------|-----------------|
| Membership | 185 | 185 | 370 |
| Dining | 334 | 166 | 500 |
| MISCELLANEOUS | | | |
| Dry Cleaning | 100 | 100 | 200 |
| Household Help | 300 | 300 | 600 |
| Papers/Magazines | 20 | 15 | 35 |
| Entertainment | 250 | 250 | 500 |
| Pets | 0 | 0 | 0 |
| Vacations | 835 | 835 | 1,670 |
| Gifts | 300 | 100 | 400 |
| Charitable Contributions | 100 | 0 | 100 |
| Child's Parties | 0 | 75 | 75 |
| Professional Fees | <u>7,198</u> | <u>-0</u> | <u>7,198</u> |
| TOTAL | \$13,623 | \$7,273 | \$20,896 |

**OBLIGOR'S REASONABLE
MONTHLY EXPENSES:
Court Assignment****HOUSE**

| | | | |
|-------------|-------|----|-------|
| Mortgage | 1,248 | 0 | 1,248 |
| Maintenance | 200 | 18 | 218 |
| Lawn Care | 500 | 8 | 508 |
| Taxes | 1,705 | 0 | 1,705 |

UTILITIES

| | | | |
|----------------|-----|----|-----|
| Electric | 254 | 18 | 272 |
| Gas | 327 | 23 | 350 |
| Telephone | 215 | 0 | 215 |
| Cell | 36 | 3 | 39 |
| Water | 94 | 7 | 101 |
| Sewer | 144 | 10 | 154 |
| Cable/Internet | 513 | 37 | 550 |

INSURANCE

| | | | |
|------|-----|---|-----|
| Home | 312 | 0 | 312 |
| Auto | 0 | 0 | 0 |
| Life | 0 | 0 | 0 |

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MEDICAL

| | | | |
|--|-----|---|-----|
| Doctor (<i>pd outside order</i>) | 107 | 0 | 107 |
| Dental (<i>pd outside order</i>) | 31 | 0 | 31 |
| Hospital (<i>pd outside order</i>) | 0 | 0 | 0 |
| Medication (<i>pd outside order</i>) | 125 | 0 | 125 |
| Counseling (<i>pd outside order</i>) | 260 | 0 | 260 |
| Glasses (<i>pd outside order</i>) | 50 | 0 | 50 |

PERSONAL

| | | | |
|-------------------------------------|-----|-----|-------|
| Clothing, Dry Cleaning | 395 | 236 | 631 |
| Groceries | 978 | 105 | 1,083 |
| Hair | 100 | 0 | 100 |
| Memberships | 89 | 205 | 294 |
| Lessons (<i>pd outside order</i>) | 0 | 0 | 0 |

MISCELLANEOUS

| | | | |
|--|-----------|----------|-----------|
| Security System | 50 | 0 | 50 |
| Household Help | 173 | 0 | 173 |
| Sports/Hobbies (<i>pd outside order</i>) | 229 | 0 | 229 |
| Papers/Magazines | 60 | 0 | 60 |
| Entertainment /Restaurants | 400 | 150 | 550 |
| Pets (dog/horse) (<i>outside order</i>) | 0 | 0 | 0 |
| Vacations | 450 | 250 | 700 |
| Gifts | 0 | 100 | 100 |
| Prof Fees | 11,015 | 0 | 11,015 |
| Charitable Contributions | 400 | 0 | 400 |
| P.O. Box | <u>17</u> | <u>0</u> | <u>17</u> |

| | | | |
|--------------|-----------------|----------------|-----------------|
| TOTAL | \$20,477 | \$1,170 | \$21,647 |
|--------------|-----------------|----------------|-----------------|

The total combined reasonable monthly expenses for the child, based upon these figures, are \$8,443 (\$7,273 + \$1,170). Application of the *Melzer* formula results in obligor owing the entire amount of these expenses for all three periods at issue and obligee owing nothing since her expenses exceed her income for all periods. Because this figure is greater than the presumptive minimum amounts of child support due under the schedule, discussed earlier, it constitutes the amount of child support owed in this case, illustrated as follows:

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Period 1 (August 7, 2008 to Dec. 31, 2008):

\$136,545 (obligor's monthly net income)
 - \$20,477 (obligor's monthly expenses) = \$116,068 = 100% x \$8,443 = \$8,443 / month
 \$116,068 (obligor's income available for support)
 + \$0 (obligee's income available for support) = \$116,068

Period 2 (Jan. 1, 2009 to Dec. 31, 2009):

\$158,647 (obligor's monthly net income)
 - \$20,477 (obligor's monthly expenses) = \$138,170 = 100% x \$8,443 = \$8,443 /month
 \$138,170 (obligor's income available for support)
 + \$0 (obligee's income available for support) = \$138,170

Period 3 (Jan. 1, 2010 to May 11, 2010):

\$118,253 (obligor's monthly net income)
 - \$20,477 (obligor's monthly expenses) = \$97,776 = 100% x \$8,443 = \$8,443 /month
 \$97,776 (obligor's income available for support)
 + \$0 (obligee's income available for support) = \$97,776

In addition to owing \$8,443 per month in child support, obligor owes obligee the following amounts for APL, as determined under the applicable formula set forth in Rule 1910.16-4(a), Part IV:

Period 1 (August 7, 2008 to Dec. 31, 2008):

\$136,545 (obligor's monthly net income) - \$1,847 (obligee's monthly net income) - \$8,443 (obligor's child support obligation under *Melzer*) = \$126,255 x .30 = \$37,877 APL /month

Period 2 (Jan. 1, 2009 - Dec. 31, 2009):

\$158,647 (obligor's monthly net income) - \$1,847 (obligee's monthly net income) - \$8,443 (obligor's child support obligation under *Melzer*) = \$148,357 x .30 = \$44,507 APL / month

Period 3 (Jan. 1, 2010 - May 11, 2010):

\$118,253 (obligor's monthly net income) - \$1,847 (obligee's monthly net income) - \$8,443 (obligor's child support obligation under *Melzer*) = \$107,963 x .30 = \$32,389 APL /month

During Period 4 (May 12, 2010 to May 25, 2011), the Guidelines were amended and *Melzer* eliminated as the method of calculating child support in high income cases and replaced with a new "child support formula." Pa.R.C.P. Rule 1910.16-3.1 (a) and (b). The amendments, which also address APL in high income cases, and which apply to Period 4 and 5 (May 26, 2011 to date), provide as follows:

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Rule 1910.16-3.1. Support Guidelines. High Income Cases

(a) Child Support Formula. When the parties' combined monthly net income is above \$30,000, the following three-step process shall be applied to calculate the parties' respective child support obligations. The amount of support calculated pursuant to this three-step process shall in no event be less than the amount of support that would have been awarded if the parties' combined net monthly income were \$30,000. That amount shall be a presumptive minimum.

(1) First, the following formula shall be applied as a preliminary analysis in calculating the amount of basic child support to be apportioned between the parties according to their respective incomes:

One child: \$2,756 + 6.5% of combined net income above \$30,000 per month. Two children: \$3,777 + 8.0% of combined net income above \$30,000 per month. Three children: ...

(2) And second, the trier of fact shall apply Part II and Part III of the formula at Rule 1910.16-4(a), making any applicable adjustments for substantial or shared custody pursuant to Rule 1910.16-4(c) and allocations of additional expenses pursuant to Rule 1910.16-6;

(3) Then, third, the trier of fact shall consider the factors in Rule 1910.16-5 [Deviation] in making a final child support award and shall make findings of fact on the record or in writing. After considering all of the factors in Rule 1910.16-5, the trier of fact may adjust the amount calculated pursuant to subdivisions (1) and (2) above upward or downward, subject to the presumptive minimum.

(b) Spousal Support and Alimony Pendente Lite. In cases in which the parties' combined monthly net income exceeds \$30,000, the trier of fact shall apply the formula in Part IV of Rule 1910.16-4(a) as a preliminary analysis in calculating spousal support or alimony pendente lite. In determining the amount and duration of the final spousal support or alimony pendente lite award, the trier of fact shall consider the factors in Rule 1910.16-5 [Deviation] and shall make findings of fact on the record or in writing.

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Pa.R.C.P. 1910.16-3.1(a).

Under the high income formulas, obligor's preliminary child support and APL obligations for Period 4, and his APL only obligation for Period 5 (following Cristina's emancipation), are as follows:

Period 4 (May 12, 2010 to May 25, 2011):

Child Support:

$$\begin{aligned} \$2,756 + \$5,857 (6.5\% \times 90,100 (\$1,847 + \$118,253 - \\ \$30,000))) &= \$8,484 / \text{month} \\ = \$8,613 \times 98.5\% \text{ (obligor's share of parties' incomes)} \end{aligned}$$

APL:

$$\begin{aligned} \$118,253 \text{ (obligor's monthly net income)} \\ - \$1,847 \text{ (obligee's monthly net income)} &= \$32,377 / \text{month} \\ - \$8,484 \text{ (child support)} = \$107,922 \times .30 \end{aligned}$$

Period 5 (May 26, 2011 to date):

APL:

$$\begin{aligned} \$118,253 \text{ (obligor's monthly net income)} \\ - \$1,847 \text{ (obligee's monthly net income)} &= \$46,562 / \text{month} \\ = \$116,406 \times .40 \end{aligned}$$

In summary, the calculation of obligor's monthly unallocated support obligations, without consideration for further adjustments or deviation factors, is as follows:

Period 1: August 7, 2008 to Dec. 31, 2008, **\$46,320** (\$8,443 child support / \$37,877 APL);

Period 2: Jan. 1, 2009 to Dec. 31, 2009, **\$52,950** (\$8,443 child support / \$44,507 APL);

Period 3: Jan. 1, 2010 to May 11, 2010, **\$40,832** (\$8,443 child support/ \$32,389 APL);

Period 4: May 12, 2010 to May 25, 2011, **\$40,861** (\$8,484 child support / \$32,377 APL); and

Period 5: May 26, 2011 to date, **\$46,562** (APL only).

DEVIATION FROM SUPPORT AWARD

Under the Support Guidelines, the amounts calculated above are presumed to be the correct amounts of support. Pa.R.C.P. 1910.16-1 (d). This presumption can be rebutted where the fact finder determines that

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the award “would be unjust or inappropriate.” *Id.* The presumption that the Guideline support amount is correct is a strong one. *Ball v. Minnick* 648 A.2d 1192, 1196 (Pa. 1994).

Both parties seek deviation from the final support award under the factors set forth in the Support Guidelines, as follows:

Rule 1910.16-5. Support Guidelines. Deviation

(a) Deviation. If the amount of support deviates from the amount of support determined by the guidelines, the trier of fact shall specify, in writing or on the record, the guideline amount of support, and the reasons for, and findings of fact justifying, the amount of the deviation.

Note: The deviation applies to the amount of the support obligation and not to the amount of income.

(b) Factors. In deciding whether to deviate from the amount of support determined by the guidelines, the trier of fact shall consider:

- (1) unusual needs and unusual fixed obligations;
- (2) other support obligations of the parties;
- (3) other income in the household;
- (4) ages of the children;
- (5) the relative assets and liabilities of the parties;
- (6) medical expenses not covered by insurance;
- (7) standard of living of the parties and their children;
- (8) in a spousal support or alimony pendente lite case, the duration of the marriage from the date of marriage to the date of final separation; and
- (9) other relevant and appropriate factors, including the best interests of the child or children.

Pa.R.C.P. 1910.16-5.

This court is “required to consider all relevant factors and any one factor alone will not necessarily dictate that the amount of support should be other than the guideline figure. Rather, the trier of fact must

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carefully consider all the relevant factors and make a reasoned decision as to whether the consideration thereof suggests that there are special needs and/or circumstances which render deviation necessary.” *Ball v. Minnick* at 1196. Any departure from the guideline amount must be explained in writing “giving particular attention to those factors which [the Supreme Court], in adopting the guidelines, has specifically deemed relevant.” *Id.* “However, where the facts demonstrate the inappropriateness of such an award, the trier of fact may deviate therefrom. This flexibility is not, however, intended to provide the trier of fact with unfettered discretion to, in each case, deviate from the recommended amount of support. Deviation will be permitted only where special needs and/or circumstances are present such as to render an award in the amount of the guideline figure unjust or inappropriate.” *Id.*

The deviation factors chiefly implicated in this case involve (1) unusual fixed obligations, (5) relative assets and liabilities of the parties and (7) the parties’ and the child’s standard of living. Many of these factors are not implicated in this case, including (2), (3), (4), (6). A number of others are factors favor neither party, including (8) and (9).

Downward Deviation

Obligor seeks a downward deviation from his support obligations, primarily due to his substantial fixed obligations, outlined above. I note initially that most of obligor’s decisions resulting in various fixed obligations for investments, capital contributions, interest payments and the like, though voluntary, created fixed liabilities and depleted him of monies technically available for support. These financial obligations constitute “unusual fixed obligations” which, while not deductible from the computation of his income for support purposes, warrant consideration as a factor for a downward deviation, inasmuch as they were based upon decisions he had made prior to the parties’ separation and became obligations he was, by-and-large, contractually obligated to make. Pa.R.C.P. 1910.16-5(b)(1). In fact, obligee’s expert generally admitted that the types of obligations obligor owed on his many investments could be fairly labeled “unusual obligations.” (12/1/10 at 254)

Obligee stresses that the law does not permit downward deviation where the obligations arose from a party’s voluntary incurrence of debt. *Terpak v. Terpak*, 697 A.2d 1006 (Pa. Super. 1997). There, the trial court permitted a downward deviation of the obligor’s monthly spousal support payment for a number of reasons, including obligor’s payment of a monthly premium to maintain an irrevocable life insurance trust for his emancipated children. The superior court reversed, holding that “a voluntary incurrence of a debt does not reduce the [obligor’s]

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obligation to his spouse, especially with its conspicuous absence from the criteria set forth in [current Rule 1910.16-5] in deciding whether to deviate from the amount of support." *Id.* at 1009 (citation omitted, italics in original). Obligee stresses here that obligor's various financial obligations constitute such voluntary incurrences of debt.

I find obligor's payments in this case dissimilar to those in *Terpak* because in this case, though obligor made a voluntary decision to incur debt (as is the case for most such decisions), his decisions did in fact result in "unusual fixed obligations." Furthermore, almost all his fixed obligations arose from decisions made prior to separation and thus revealed a lack of any intent to shelter income from support and were consistent with those made during the course of the marriage and many benefit the marital estate. Thus, the next inquiry is whether obligor's unusual fixed obligations warrant a reduction in his support obligations for any of the years in question.

In 2008, obligor was responsible for approximately \$2.1 million in financial obligations for investments, capital contributions, interest payments and the like which I did not deduct from his income for support computation purposes. These included payments arising from contractual and legal obligations to pay \$100,000 to Do It Outdoors Media, \$500,000 to ECORE International, \$250,000 to Citizens Bank, \$195,000 to Sageworth Holdings, \$193,115 interest on margin loans, \$316,931 principal loan payments, a \$630,000 capital contribution and \$17,173 for life insurance premiums required as collateral for bank loans, reviewed previously in this opinion. Though these financial obligations were significant, in the context of obligor's very high income, I conclude they are not so significant as to warrant deviation.

Obligor's 2008 monthly income, after expenses, is \$69,748 (\$136,545 (monthly net income) - \$20,477 (reasonable monthly expenses) - \$8,443 (child support) - \$37,877 (APL)). The cost of his 2008 fixed obligations was \$175,000 per month (\$2.1 million/12 months). On its face, obligor's excess income of \$69,748 is not sufficient to cover this amount; however, as noted, obligor financed most of his obligations with borrowed money, as was his custom. (See 7/10/09 at 104-06) The more his assets grew, the more collateral he had to borrow against and the more investing he did. Though the evidence did not indicate the precise amount he actually paid towards these obligations, either directly or related to the loans (in principal, interest and costs), his excess income of \$69,748 was sufficient to cover just under 40% percent of this \$175,000 gross obligation. Since I find it likely that obligor's actual costs for financing these unusual monthly obligations

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was lower than 40% of the total amount, I find his excess income sufficient to cover their likely true cost and as such, no deviation is warranted. Furthermore, to the extent that there was a shortfall, the record revealed that obligor has the ability to meet his debts through manipulation of Penn Waste income, as needed, through distributions, loans or otherwise. For example, as noted above, obligor borrowed heavily from Penn Waste in 2008 and 2009 but was able to direct or obtain (as majority shareholder) the forgiveness of those loans in 2010.

Obligor is similarly not entitled to a downward deviation in 2009 and 2010, years in which his fixed obligations were significantly less than in 2008. In 2009, he had \$193,002 of fixed obligations which I did not deduct from his income but which I indicated warranted consideration in a deviation analysis. These obligations included \$100,144 to Do It Outdoors Media, \$75,000 concerning the Bennett buyout and \$17,858 for life insurance premiums required as collateral for bank loans, as discussed above. In addition, I included as income to obligor \$75,335, from interest received on a loan he made to the 2007 Multigenerational Trust which I noted I would consider as a factor for downward deviation because he immediately rolled it over to pay interest owed on a loan he took out to pay the loan upon which he generated interest. Accordingly, obligor had a combination of unusual fixed obligations and income imputed to him, not technically available, totaling \$268,337, or \$22,337 per month.

Performing the same calculation as above indicates that, even assuming 100% of the cost of these fixed obligations and imputed income are attributed to him, obligor still had more than sufficient excess income, after deduction of his expenses, to cover these 2009 unusual expenses and the missing income: his excess monthly income in 2009 of \$85,186 (\$158,647 (monthly net income) - \$20,477 (reasonable monthly expenses) - \$8,477 (child support) - \$44,507 (APL)), more than covers the \$22,337 per month.

In 2010, obligor was required to pay \$273,341 for fixed obligations which I did not deduct from his income but warranted consideration in a deviation analysis. These included \$100,000 to Do It Outdoors Media, \$74,250 concerning the Bennett buyout, \$63,115 for contributions to the 2007 Trust and \$35,976 for life insurance premiums required as collateral for bank loans. In addition, I included as income to obligor \$118,993 loan interest from the 2007 Trust. As with my treatment of this amount in 2009, I similarly noted I would consider this income a factor for a downward deviation because he immediately rolled this amount over to pay principal and interest owed on a loan to pay the loan upon

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which he generated interest. Accordingly, obligor had a combination of obligations and income imputed to him, not technically available, totaling \$392,334, or \$32,695 per month.

Again, assuming 100% of the cost of his 2010 fixed obligations and imputed income are considered, obligor still had more than sufficient excess monthly income to cover these items during both Period 3 (*Melzer* support figures) and Period 4 (post-*Melzer* Guideline support figures). His total excess income after deduction of his expenses in Period 3 was \$56,944 (\$118,253 (monthly net income) - \$20,477 (reasonable monthly expenses) - \$8,443 (child support) - \$32,389 (APL)) and for Period 4 was \$56,915 (\$118,253 (monthly net income) - \$20,477 (reasonable monthly expenses) - \$8,484 (child support) - \$32,377 (APL)). Both excess income figures easily cover the \$32,695 of unusual fixed obligations and imputed income.

Upward Deviation

Obligee seeks an upward deviation on the bases that there is a considerable gap between the relative assets of the parties and that a deviation upward is necessary for obligee to obtain the standard of living which she enjoyed during the marriage. With regard to the gap in assets, obligee points primarily to obligor's majority ownership in Penn Waste, by far obligor's largest asset and income producer, which is excluded from the marital estate under the parties' prenuptial agreement pursuant to my earlier ruling.

The presumptive child support and APL figures, as calculated under the Support Guidelines, direct the following payments to obligee: Period 1 (August 7, 2008 to Dec. 31, 2008) \$46,320; Period 2 (Jan. 1, 2009 to Dec. 31, 2009), \$52,950; Period 3 (Jan. 1, 2010 to May 11, 2010) \$40,832; Period 4 (May 12, 2010 to May 25, 2011) \$40,861; and Period 5 (May 26, 2011 to date) \$46,562. As noted, there is a strong presumption that these are the correct amounts of support to be awarded. Pa.R.C.P. 1910.16-1(d); *Ball v. Minnick* *supra*. This presumption can be rebutted "only where special needs and/or circumstances are present such as to render an award in the amount of the guideline figure unjust or inappropriate." *Id.* at 1160.

Obligee's request seeking a deviation upward is unwarranted where the calculated amount of support covers all her claimed expenses and those of the child prior to her emancipation. *Rich v. Rich*, 967 A.2d 400 (Pa. Super. 2009). In *Rich*, father was a coal company CEO whose annual income was between \$9 and \$10 million with assets of \$40 million. The mother did not work outside the home and was completely dependent on child support to meet the needs of their four children. On

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appeal, mother argued that child support awarded under a *Melzer* calculation was unreasonable in light of father's income and assets inasmuch as it failed to provide an environment remotely similar to the environment the children enjoyed in father's home. In dismissing mother's argument, the superior court initially noted that under *Melzer*, reasonable expenses are "not limited to those things which are absolutely necessary to sustain life, but extend to articles that are reasonably necessary for the proper and suitable maintenance of the child in view of his social station in life, the customs of the social circle in which he lives or is likely to live and the fortune possessed by him and his parents." *Id.* at 409-10 (citing *Melzer*, 480 A.2d at 995-96). The court then pointed out that mother's own detailed accounting of her expenses, submitted to the court for the purpose of the *Melzer* calculation, was accepted by the court in awarding child support, fatally undermining her claim that the award was insufficient. *Id.* at 410. Here too obligee has submitted expense figures which are more than covered by the presumptive support amounts. Her presumptive support for all periods ranges from a low of \$40,861 per month to a high of \$52,950. These amounts more than meet her reasonable monthly expenses of \$20,896 (\$13,623 for her and \$7,273 for Cristina), addressed above in the *Melzer* calculation. In fact, the presumptive support exceeds the total monthly expenses obligee submitted to the court, of \$33,573 (\$20,079 for herself and \$13,494 for Cristina), prior to my reduction of them to "reasonable" amounts. (P-5 (2008))

The presumptive support amounts calculated above are considerable; in addition to covering obligee's expenses and allowing a healthy excess, they provide obligee and Cristina, prior to her emancipation, a standard of living appropriate under the circumstances. See *Rich* at 410 (citation omitted) (the law does not require that both homes be an equal environment or merely adequate, but appropriate upon consideration of all relevant circumstances). The fact that obligor has assets significantly greater than obligee's does not, standing alone, warrant further adjustment to the support award; the purpose of support is not to balance the equities or to address issues better left for equitable distribution.

Finally, obligee seeks an upward deviation for child support because obligor does not exercise his physical custodial responsibilities the standard 30% of time anticipated under the Support Guidelines. Pa.R.C.P. 1910.16-1 (Explanatory Comment E.) I routinely add 15% to child support orders where obligors neglect their custodial responsibilities. In this case, the facts indicate some alienation between obligor and his daughter due to many factors, most probably because of obligor's alleged affair. Nevertheless, he attempted reconciliation but

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obligee precipitously moved to Florida, without notice to obligor, thereby making it nearly impossible for him to exercise his physical custodial responsibilities in any routine fashion. Because the presumptive support amounts are neither unjust or inappropriate, obligee is not entitled to further deviation.

MISCELLANEOUS ISSUES

Allocation / Tax Consequences

Under the Support Guidelines, this court must consider whether to allocate a support award between the spouse and child as well as the tax consequences of the final support award. Pa.R.C.P. 1910.16-4(f). An order for both spousal/APL and child support may be unallocated or allocated. Pa.R.C.P. 1910.16-4(f)(1). An unallocated support award including spousal support/ APL and child support is completely taxable to the obligee and completely deductible to the obligor; where the order is allocated, the portion ordered as child support is neither taxable to the obligee nor deductible to the obligor. Pa.R.C.P. 1910.16-4(f)(2). The Support Guidelines assume that an order will be unallocated for tax purposes. Pa.R.C.P. 1910.16-4(f)(1) and 2005 Explanatory Comment.

Where an order is allocated, “an adjustment shall be made to the award giving consideration to the federal income tax consequences of an allocated order as may be appropriate under the circumstances.” Pa.R.C.P. 1910.16-4(f)(1). No consideration of federal income tax consequences shall be applied if the order is unallocated or the order is only for spousal support / APL. *Id.*; *see also*, Pa.R.C.P. 1910.16-4 2005 Explanatory Comment (“... an obligor’s tax savings from payment of ... an unallocated order for a spouse and child should not be considered in calculating the obligor’s available net income for support purposes”). In making the allocation decision where the parties are in higher income brackets, to address the reality that income tax considerations are likely to be more significant, the guidelines specifically provide that the trier of fact “should utilize the guidelines which result in the greatest benefit to the obligee.” Pa.R.C.P. 1910.16-4(f)(2). Accordingly, this court must decide whether to allocate the child support and APL awards for Periods 1 through 4 (covering tax years 2008 through 2011) and if so, whether an adjustment is appropriate in light of federal tax considerations.

Obligee, who has no separate income and had primary physical custody of the child prior to her emancipation, would qualify as head of household and pay a lower income tax. Her estimated tax savings receiving an allocated order, as opposed to an unallocated order, would be quite significant in this case given the relatively large child support payable. Based upon the estimated calculations that follow, she would

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gain approximately \$99,000 more in income for the four tax years concerned if the order is allocated, as follows⁹:

| Obligee's Annual Support Income | Total Owed to Obligee | APL | Child Support | Estimated Federal Taxable Income | Obligee's Estimated Federal Income Tax | Obligee's Income Gain as Between Allocated and Unallocated Orders |
|---------------------------------|-----------------------|-----------|---------------|----------------------------------|--|---|
| 2008 Unallocated | \$224,474 | \$224,474 | 0 | \$224,474 | \$51,689 | |
| 2008 Allocated | \$224,474 | \$183,558 | \$40,916 | \$183,558 | \$38,874 | +\$12,815 |
| 2009 Unallocated | \$635,400 | \$635,400 | 0 | \$635,400 | \$191,273 | |
| 2009 Allocated | \$635,400 | \$534,084 | \$101,316 | \$534,084 | \$155,812 | +\$35,461 |
| 2010 Unallocated | \$490,205 | \$490,205 | 0 | \$490,205 | \$140,394 | |
| 2010 Allocated | \$490,205 | \$388,577 | \$101,628 | \$388,577 | \$104,840 | +\$35,554 |
| 2011 Unallocated | \$531,116 | \$531,116 | 0 | \$531,116 | \$154,261 | |
| 2011 Allocated | \$531,116 | \$490,001 | \$41,115 | \$490,001 | \$138,870 | +\$15,391 |

9. This chart utilizes the following support obligations:

Period 1: August 7, 2008 to Dec. 31, 2008, \$46,320 (\$8,443 child support / \$37,877 APL);

Period 2: Jan. 1, 2009 to Dec. 31, 2009, \$52,950 (\$8,443 child support / \$44,507 APL);

Period 3: Jan. 1, 2010 to May 11, 2010, \$40,832 (\$8,443 child support / \$32,389 APL);

Period 4: May 12, 2010 to May 25, 2011, \$40,861 (\$8,484 child support / \$32,377 APL); and

Period 5: May 26, 2011 to date, \$46,562 (APL only).

For 2008, the chart reflects 21 weeks of income at the Period 1 Figures. For 2010, the chart reflects 19 weeks at Period 3 figures and 33 weeks at Period 4 figures. For 2011, the chart reflects 21 weeks at Period 4 figures and 31 weeks at Period 5 figures. Obligee's federal tax owed was calculated by the Domestic Relations Section Office utilizing the PAC-SES system and assumes obligee is filing head of household with two exemptions.

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As noted above, this court is directed under the Support Guidelines to utilize the guidelines which result in the greatest benefit to obligee. Pa.R.C.P. 1910.16-4(f)(2). Because an allocated order will provide the greatest benefit to obligee, this court will so allocate.

Since the order will be allocated, this court must consider whether an adjustment to the support computation is appropriate given the federal tax consequences of an allocated order. Pa.R.C.P. 1910.16-4(f)(1). Under an allocated order, obligor loses the ability to deduct the child support portion from his income. Assuming he pays at the highest federal tax rate of 35% for all tax years concerned (2008 through 2011), he would theoretically be subject to greater tax obligations under an allocated order versus an unallocated order, of approximately \$14,320 in 2008 (\$40,916 (child support) x .35), \$35,460 in 2009 (\$101,316 x .35), \$35,042 in 2010 (\$100,120 x .35) and \$14,054 in 2011 (\$40,155 x .35). I nevertheless decline further adjustment to the support award inasmuch as his excess income is sufficient to meet this potential tax liability. Furthermore, obligor has available to him many business related tax deductions not available to obligee, which may offset this potential additional tax liability

Dependency Tax Exemption

The Support Guidelines require that the court assess whether to award the dependency tax exemption to the non-custodial parent, “as justice and fairness require,” and to consider the tax consequences if such an award is made. Pa.R.C.P. 1910.16-2(f). In this case, obligee has no taxable wage earnings; however, she will continue to pay tax to the IRS on her APL income, unlike obligor has no business related deductions, and will benefit most from this dependency deduction. See Pa.R.C.P. 1910.16-4(f)(2).

Additional Expenses

A number of “additional expenses,” which are not subsumed within the basic combined child support and APL obligations calculated under the support formula, must be paid in an amount proportionate to each parties’ percentage of their combined incomes. Pa.R.C.P. 1910.16-6. The additional expenses for which obligor is responsible include unreimbursed medical expenses above \$250 for both obligee and the child, as well as private school tuition¹⁰ and “other needs” of the child. Pa.R.C.P.

10. With regard to tuition payments, obligor has already paid for all of the child’s 2008 tuition of \$32,000. From 2009 through her emancipation on May 26, 2011, the child’s tuition cost \$2,231 per month. Obligor paid \$13,597 in 2009, or \$1,133 per month. Thus he owes his proportionate share of the remaining amount (98.8%) of \$1,098, or \$1,085. It appears obligee paid the entire tuition amount in 2010 through the date of emancipation, May 26, 2011, and obligor thus owes his proportionate share (98.5% in 2010 and 2011), or \$2,198 per month.

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1910.16-6(c) and (d). The superior court has interpreted “other needs” to include a child’s reasonable extracurricular activities consistent with the family’s standard of living and station in life. *See Silver v. Pinskey*, 981 A.2d 284, 302 (Pa. Super. 2009) (citations omitted) (“other needs” may include costs of music, dance and equestrian lessons; racquet and swim club memberships; costs of sports participation; religious education, field trips and summer camps).

Arrears

Based upon the support obligations calculated above, as well as the payments and credits obligor has made to date through the Domestic Relations Section, his total arrearage is approximately \$800,000.¹¹ Obligee requests all arrears be immediately payable in a lump sum.

Under the second interim order (effective May 26, 2011), obligor had been paying APL of \$39,362 per month plus \$5,000 per month on arrears. Under my revised final APL order (Period 5), he will be paying, pending the final divorce decree, \$46,562 per month. The parties could agree that obligor pay all arrears together with equitable distribution of the marital assets at the time of divorce, as many parties do. However, the litigious nature of this case, the utter failure of a mediation attempt at its outset, makes the concept unlikely at best. In any event, obligor does not own any liquid assets in that amount to remit the arrears in a lump sum.

Currently, obligor has approximately \$51,214 monthly excess income as of May 2011, based upon this court’s prior computations of his income, reasonable living expenses and APL obligation (\$118,253 (monthly net income) - \$20,477 (reasonable monthly expenses) - \$46,562 (APL)). Assuming he continued to incur unusual fixed obligations through 2011 and 2012 similar to those from 2010 of \$32,695 per month, he would still have \$18,519 discretionary, excess monthly income. Therefore, I will order roughly half of that amount, or \$9,250 per month, payable on arrears, satisfying this arrearage within the next seven years.

ATTORNEY’S FEES

Obligee also requests that the obligor pay all of her counsel fees, costs and expenses related to litigation of this support action, pursuant to Section 4351 of the Domestic Relations Code. 23 Pa.C.S.A. §4351(a). That Section provides that where an obligee prevails in a proceeding to

11. This figure includes a \$300,000 credit the parties agreed to grant obligor on August 29, 2011. It does not include any other credits which may exist for direct payments made under the parties’ initial order entered October 8, 2008.

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obtain support, the court may assess against the obligor reasonable attorney fees and costs as well as necessary travel expenses incurred by the obligee. *Id.* Our supreme court has held that it is within the court's discretion to award counsel fees upon a consideration of the totality of the relevant circumstances. *Bowser v. Blom*, 807 A.2d 830, 835 (Pa. 2002).

Obligee claims that through March 2, 2011, she incurred \$223,115 in fees and related costs. (See, Petition for Counsel Fees, Costs and Expenses; P-8 (2009) and P-5, P-9 (3/4/11)) Obligee claims that she has exhausted all of her assets in meeting these fees. She claims to have paid the entire \$110,000 she received as an advance in equitable distribution from obligor, between August 2008 and December 2009, towards her counsel fees and expenses. She also claims that she paid her entire \$25,000 advance on support arrears, awarded by this court in January 2010, toward her counsel fees and expenses.

Obligee stresses that obligor's income dwarfs hers and that even after consideration of his support obligations, he has a very significant discretionary excess income. Obligor cites *Bowser* for envisioning a situation where the "incomes of the parties [are] so disparate (with the obligor's income exceeding that of the obligee), or where the obligee's financial situation is so strained that the cost of the action would necessarily affect the child, that an award of counsel fees to the obligee would be appropriate or, in some instances, required." *Id.* at 836.

Obligor counters that obligee failed to offer proof that she has exhausted her assets in meeting these fees and costs or that she was forced to live below her married standard of living. Instead, obligor notes that he paid for all of obligee's and the child's expenses after they remained in the marital home following the parties' separation, including obligee's credit card expenses, and that following their move to Florida, the child continued to live under her prior standard of living, including attending private school and enjoying the same extracurricular activities. Obligor argues that obligee's attorney fees are exorbitant and include significant double billing for two lawyers, over which obligor has no control. In any event, obligor claims that the support he is obligated to pay obligee was clearly sufficient to meet all of expenses, including legal fees.

Under the totality of the relevant circumstances presented in this case, I find that obligee is entitled to receive payment for a portion of her legal fees under Section 4351(a) primarily because she has already had to expend \$110,000 in assets (as an advance on equitable distribution) to

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cover some of these expenses and because the parties' incomes are so significantly disparate. *Bower, supra*. In addition, the bulk of the legal resources utilized in this case have been committed to the determination of obligor's income. In fact, as noted above, obligee was required to extensively litigate her support claim based upon obligor's expert's low assessment of his 2009 net income, initially claimed to be a mere \$950 per month. (7/8/09 at 83-96; D-2 (p. 11)(2008))

Therefore, I will direct obligor pay one-half of obligee's reasonable attorney fees and expenses to date, relating solely to this support and APL litigation.

Accordingly, I enter the following order:

ORDER

AND NOW, this 1st day of June, 2012, Obligor Scott Wagner is hereby ordered to pay Obligee Silvia Wagner the following allocated amounts of child support and alimony pendente lite (APL):

Period 1: August 7, 2008 to December 31, 2008, \$8,443 per month for child support and \$37,877 per month for APL (\$46,320 per month);

Period 2: January 1, 2009 to December 31, 2009, \$8,443 per month for child support and \$44,507 per month for APL (\$52,950 per month);

Period 3: January 1, 2010 to May 11, 2010, \$8,443 per month child support and \$32,389 per month APL (\$40,832 per month);

Period 4: May 12, 2010 to May 25, 2011, \$8,484 per month child support and \$32,377 per month APL (\$40,861 per month); and

Period 5: May 26, 2011 to date, \$46,562 per month APL only.

Effective today, Obligor is directed to pay \$9,250 per month towards arrears.

Wagner v. Wagner

Obligor is additionally responsible for the payment of 99% of Obligee's and the child's uninsured health, dental, psychological and medical expenses, above \$250 per year, as well as the costs of all of the child's extracurricular activities. Obligor is also responsible to pay his portion of the child's tuition expenses which remain unpaid for Period 2 in the amount of \$1,085 per month, and for Periods 3 and 4 in the amount of \$2,198 per month.

Obligor is entitled to a credit for monies paid to date towards this Support Order.

—————o—————

FIRST PUBLICATION

Estate Notices

ESTATE OF PEGGY JAYNE PIERCE,
late of Lower Paxton Township, Dauphin
County, Pennsylvania. Executor: William S.
Pierce, 1201 Saradana Road, Harrisburg, PA
17112. Attorney: Bridget M. Whitley, Esq.,
Skarlatos Zonarich LLC, 17 S. 2nd Street,
6th Floor, Harrisburg, PA 17101. a3-a17

ESTATE OF JOYCE D. WITMER, late of the Borough of Penbrook, Dauphin County, Pennsylvania. Personal Representative: Cheryl W. Yocom, c/o Lowell R. Gates, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043. Attorney: Lowell R. Gates, Esq., Gates, Halbruner, Hatch & Guise, P.C., 1013 Mumma Road, Suite 100, Lemoyne, PA 17043. a3-a17

ESTATE OF ALBERT LUCIANI, late of Derry Township, Dauphin County, Pennsylvania (died June 28, 2012). Executrix: Gloria J. Herberg. Attorney: George W. Porter, Esq., 909 East Chocolate Avenue, Hershey, PA 17033. a3-a17

ESTATE OF MARTHA D. RADIC, late of Lower Paxton Township, Dauphin County, Pennsylvania (died June 5, 2012). Executor: Matthew J. Radic, 6205 Pine Street, Harrisburg, PA 17112. Attorney: Harry L. Bricker, Jr., Esq., 921 Bradford Road, Harrisburg, PA 17112. a3-a17

SECOND PUBLICATION

ESTATE OF SYLVESTER E. SHILEY,
late of Swatara Township, Dauphin County,
Pennsylvania. Executrix: Beverly A. Putric,
1048 Main Street, Oberlin, Steelton, PA
17113. Attorney: Gregory M. Kerwin, Esq.,
Kerwin & Kerwin, LLP, 4245 State Route
209, Elizabethville, PA 17023. v2-a10

ESTATE OF SANDY L. OLSZEWSKI,
late of Hummelstown, Dauphin County,
Pennsylvania. Executor: Richard A.
Olszewski, 439 Pine Hill Road,
Hummelstown, PA 17036. Attorney: Howard
B. Krug, Esq., Purcell Krug & Haller, 1719
North Front Street, Harrisburg, PA 17102.

ESTATE OF GARRETT HAUBERT, late of Harrisburg, Dauphin County, Pennsylvania. Executrix: Vicki I. Nease, 746 Shirk Road, Mifflintown, PA 17059. Attorney: Donis H. Zagurskie, Esq., Johnston & Zagurskie, 117 Main Street, P.O. Box O, Mifflin, PA 17058. y2-a10

ESTATE OF ROBERT J. BOGDON, late of Swatara Township, Dauphin County, Pennsylvania (died June 28, 2012). Executor: Scott J. Bogdon, 706 Veronica Lane, Enola, PA 17025. Attorney: Jeffrey M. Mottern, Esq., 28 East Main Street, Hummelstown, PA 17036. y2-a10

ESTATE OF JANET H. ROBINSON, late of Dauphin County, Pennsylvania (died June 16, 2012). Administratrix: Diane L. Rhine. Attorney: Patricia Carey Zucker, Esq., Daley Zucker Meilton Miner & Gingrich, LLC, 635 North 12th Street, Suite 101, Lemoyne, PA 17043 V2-a10

SECOND PUBLICATION

Estate Notices

ESTATE OF DOROTHY M. FULKROD, late of Upper Paxton Township, Dauphin County, Pennsylvania. Executrix: Diane K. Hammaker, 1228 State Route 209, Millersburg, PA 17061. Attorney: Earl Richard Etzweiler, Esq., 105 North Front Street, Harrisburg, PA 17101. Telephone (717) 234-5600.

y2-a10

ESTATE OF VERA J. FRANZESE, late of Derry Township, Dauphin County, Pennsylvania (died May 28, 2012). Executrix: Bettina Franzese, 830 Zermatt Drive, Hummelstown, PA 17036. Attorney: Francis A. Zulli, Esq., Wion, Zulli & Seibert, 109 Locust Street, Harrisburg, PA 17101.

y2-a10

ESTATE OF ROBERT C. FENSTER-MACHER, late of Upper Paxton Township, Dauphin County, Pennsylvania. Executor: Roger E. McCahill, 274 River Drive (Paxton) Dalmatia, PA 17017. Attorney: Earl Richard Etzweiler, Esq., 105 North Front Street, Harrisburg, PA 17101. Telephone (717) 234-5600.

y2-a10

ESTATE OF MARY M. BATEMAN, late of the Borough of Lykens, Dauphin County, Pennsylvania (died June 23, 2012). Administratrix: Sally A. Reiner, 344 North Street, Lykens, PA 17048. Attorney: Joseph D. Kerwin, Esq., Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethville, PA 17023.

y2-a10

ESTATE OF HELEN M. GUSLER, late of Middletown Borough, Dauphin County, Pennsylvania (died February 9, 2012). Executrix: Helen I. Gusler, 1039 Plane Street, Middletown, PA 17057. Attorney: Kendra A. Mohr, Esq., Pannebaker & Mohr, P.C., 4000 Vine Street, Middletown, PA 17057. Telephone (717) 944-1333. y2-a10

THIRD PUBLICATION

ESTATE OF MARTHA DE ANGELIS, late of Swatara Township, Dauphin County, Pennsylvania. Administratrix: Christina M. De Angelis, 6301 Ann Street, Harrisburg, PA 17111. Attorney: Gerald J. Brinser, Esq.

y20-a3

ESTATE OF PHYLLIS T. BOLLINGER, late of Lower Paxton Township, Dauphin County, Pennsylvania (died June 19, 2012). Co-Executors: Steven H. Bollinger and Philip D. Bollinger. Attorney: Robert L. Knupp, Esq., Knupp Law Offices, LLC, 407 North Front Street, P.O. Box 630, Harrisburg, PA 17108. Telephone (717) 238-7151.

y20-a3

ESTATE OF ANNALEA F. BINGAMAN a/k/a ANNALEA C. BINGAMAN, late of Derry Township, Dauphin County, Pennsylvania (died June 23, 2012). Executrix: Eileen P. Baer, 1462 Geiger Road, Friedens, PA 15541. Attorney: Elizabeth H. Feather, Esq., Caldwell & Kearns, P.C., 3631 North Street, Harrisburg, PA 17110. Telephone (717) 232-7661.

y20-a3

ESTATE OF MIRIAM HERVITZ, late of Dauphin County, Pennsylvania. Executor: Joel Hervitz, 1612 Mitchell Road, Harrisburg, PA 17110. Attorney: Elliot A. Strokooff, Esq., Strokooff & Cowden, P.C., 132 State Street, Harrisburg, PA 17101. y20-a3

THIRD PUBLICATION

Estate Notices

ESTATE OF CAROL ANN RADER, late of the City of Harrisburg, Dauphin County, Pennsylvania. Executor: Stephen P. Rader, 5515 Partridge Court, Harrisburg, PA 17111.

y20-a3

ESTATE OF GERTRUDE M. LINGLE, late of Derry Township, Dauphin County, Pennsylvania (died June 6, 2012). Administrator: Daniel K. Clouser, 5031 Crestland Drive, La Mesa, CA 91941. Attorney: Kevin M. Scott, Esq., Rhoads & Sinon LLP, One S. Market Square, P.O. Box 1146, Harrisburg, PA 17108-1146. y20-a3

ESTATE OF ANTONETTA NOTARANGELO a/k/a ANTONIA ANTONETTA NOTARANGELO, late of the City of Harrisburg, Dauphin County, Pennsylvania. Personal Representative: Julia G. Rowe, 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. y20-a3

ESTATE OF LEE M. PARTHEMORE, late of Lower Paxton Township, Dauphin County, Pennsylvania (died May 26, 2012). Administratrix: Patricia A. Parthemore, 4440 Linglestown Road, Harrisburg, PA 17112. Attorney: John S. Davidson, Esq., 320 West Chocolate Avenue, P.O. Box 437, Hershey, PA 17033-0437. y20-a3

ESTATE OF JOHN TERANCE ALLIO, late of the Borough of Dauphin, Dauphin County, Pennsylvania (died December 10, 2009). Executor: Christopher B. Allio. Attorney: Robert L. Knupp, Esq., Knupp Law Offices, LLC, 407 North Front Street, P.O. Box 630, Harrisburg, PA 17108. Telephone (717) 238-7151. y20-a3

ESTATE OF MARGARET C. ROBINSON, late of the City of Harrisburg, Dauphin County, Pennsylvania (died May 2, 2012). Executrix: Kathryn A. Robinson, 926 Highland Street, Steelton, PA 17113. Attorney: Christa M. Aplin, Esq., Jan L. Brown & Associates, 845 Sir Thomas Court, Suite 12, Harrisburg, PA 17109. Telephone (717) 541-5550. y20-a3

ESTATE OF JAMES E. GORMLEY, late of Harrisburg, Dauphin County, Pennsylvania. Administratrix: Terry E. Roth, 3518 North Third Street, Harrisburg, PA 17110. y20-a3

ESTATE OF GERTRUDE (TRUDY) SORIN a/k/a GERTRUDE K. SORIN formerly GERTRUDE K. BENSON, late of Lower Paxton Township, Dauphin County, Pennsylvania. Executor: Richard D. Michlovitz, 1705 Fox Hunt Lane, Harrisburg, PA 17110. y20-a3

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 7/17/2012 by **Toshiba Global Commerce Solutions, Inc.**, a foreign corporation formed under the laws of the State of Delaware with its principal office located at 3039 Cornwallis Road, Research Triangle Park, NC 27709 for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988. The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Dauphin County. a3

NOTICE IS HEREBY GIVEN that **Rockbochs Inc.**, a foreign business corporation incorporated under the laws of Minnesota, with its princ. office located at 231 E. First St., Duluth, MN 55802, 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 Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a3

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA on July 18, 2012 for the purpose of obtaining a Certificate of Incorporation as a Domestic Nonprofit Corporation organized under the Pennsylvania Nonprofit Corporation Law of 1988.

The name of the proposed corporation is:
Dauphin County Community Fund. a3

NOTICE IS HEREBY GIVEN that **DRKW Finance Inc.**, a foreign business corporation incorporated under the laws of Delaware, with its princ. office located at Legal Dept., Commerzbank AG, New York Branch, 2 World Financial Center, New York, NY 10281-1050, intends to apply 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 Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a3

NOTICE IS HEREBY GIVEN that **Simple Signal Inc.**, a foreign business corporation incorporated under the laws of California, with its princ. office located at 34232 Pacific Coast Hwy., Ste. E, Dana Point, CA 92629, 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 Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a3

NOTICE IS HEREBY GIVEN that **Yargus Manufacturing, Inc.**, a foreign business corporation incorporated under the laws of Illinois, with its princ. office located at 12285 E Main St., Marshall, IL 62441, 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 Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a3

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that **Pipeline Energy Group, Inc.**, a foreign business corporation incorporated under the laws of West Virginia, with its princ. office located at 472 Windsor Dr., Mineral Wells, WV 26150, 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 Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a3

NOTICE IS HEREBY GIVEN that **Real Food Works, Inc.**, a foreign business corporation incorporated under the laws of Delaware, with its princ. office located at c/o CSC, 2711 Centerville Rd., Ste. 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 Co., and shall be deemed for venue and official publication purposes to be located in Dauphin County. a3

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by **ACCIDENT RECONSTRUCTION ONLINE, INC.** with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

a3

CRAIG A. DIEHL, Esq., CPA

NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **Surgical Instrument Services and Savings, Inc.** The address of its principal office under the laws of its jurisdiction is 2747 S.W. Sixth Street Redmond Oregon 97756. The name of this corporation's commercial registered office provider is CT Corporation System in the county of Dauphin. The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124(b). a3

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 9, 2012, by **ARO, Inc.**, a foreign corporation formed under the laws of the State of Washington, where its principal office is located at 505 5th Ave. S, #180, Seattle, WA 98104, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988. The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed by **EAGLE MOUNTAIN OUTDOORS, INC.** with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of incorporating under the Pennsylvania Business Corporation Law of 1988, Act of December 21, 1988, P.L. 1444, No. 177, as amended and supplemented.

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CRAIG A. DIEHL, Esq., CPA

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **Hayashi Telempu North America Corporation**. The address of its principal office under the laws of its jurisdiction is 1500 Kingsview Drive, Lebanon, OH 45036. The name of this corporations commercial registered office provider is National Registered Agents, Inc., in the county of Dauphin. The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124(b). a3

NOTICE IS HEREBY GIVEN that a Certificate of Authority for a Foreign Business Corporation was filed in the Department of State of the Commonwealth of Pennsylvania for **PRIAXON INC.** The address of its principal office under the laws of its jurisdiction is 874 Walker Road, Suite C, Dove, DE 19904. The name of this corporations commercial registered office provider is United Corporate Services, Inc. in the county of Dauphin. The Corporation is filed in compliance with the requirements of the applicable provision of 15 Pa. C.S. 4124(b). a3

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with the Department of State for **ROE Marketing, Inc.**, a corporation organized under the Pennsylvania Business Corporation Law of 1988.

STRADLEY RONON STEVENS
& YOUNG, LLP, Solicitors
30 Valley Stream Pkwy.
Malvern, PA 19355-1481

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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 19, 2012, by **BEPC, Incorporated**, a foreign corporation formed under the laws of the State of Texas, where its principal office is located at 2009 W. Beauregard, San Angelo, TX 76901, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 13, 2012 by **Weekes & Callaway Inc.**, a foreign corporation formed under the laws of the State of Florida, where its principal office is located at 3945 W. Atlantic Ave., Delray Beach, FL 33445, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on June 21, 2012, by **MED PLUS DISABILITY EVALUATIONS, INC.**, a foreign corporation formed under the laws of the State of Alabama, where its principal office is located at 331 Sipsey Pines Rd., Arley, AL 35541-2667, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 24, 2012, by **Bishop Lifting Products, Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 125 McCarty Dr., Houston, TX 77029, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 26, 2012, by **Task Management, Inc.**, a foreign corporation formed under the laws of the State of Connecticut, where its principal office is located at 99 Danbury Rd., Ridgefield, CT 06877, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 24, 2012, by **Artic Glacier U.S.A., Inc.**, a foreign corporation formed under the laws of the State of Delaware, where its principal office is located at 1654 Marthaler Lane, West St. Paul, MN 55118, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

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

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 20, 2012, by **SK Energy Americas, Inc.**, a foreign corporation formed under the laws of the State of California, where its principal office is located at 21250 Hawthorne Blvd., Ste. 465, Torrance, CA 90503, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

FIRST PUBLICATION

Corporate Notices

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for **Radiant Window Cleaning, Inc.** on July 13, 2012. The said corporation has been incorporated under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

THE KEISLING LAW OFFICES, P.C.
Bret Keisling, Esq.

17 South Second Street, Suite 301
a3 Harrisburg, PA 17101

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 10, 2012, by **GROUP MANAGEMENT SERVICES, INC.**, a foreign corporation formed under the laws of the State of Ohio, where its principal office is located at 3296 Columbia Rd., Richfield, OH 44286, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that an Application was made to the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on July 25, 2012, by **DOUGLAS MANAGEMENT, LTD.**, a foreign corporation formed under the laws of the State of New York, where its principal office is located at 9560 Cedarbrook Dr., Beverly Hills, CA 90210, for a Certificate of Authority to do business in Pennsylvania under the provisions of the Pennsylvania Business Corporation Law of 1988.

The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located at c/o CT Corporation System, Dauphin County. a3

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of 15 Pa.C.S. Section 8586 of the Business Corporation Law of 1988, **Linn Operating, LLC**, a limited liability company of the State of Delaware with principal office at 600 Travis St., Ste. 5100, Houston, TX 77002, and having a Commercial Registered Office Provider and county of venue as follows: CT Corporation System, Dauphin County, which on September 4, 2003, was granted a Certificate of Authority to transact business in the Commonwealth, intends to file a Certificate of Cancellation of Registration-Foreign with the Department of State. a3

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of 15 Pa.C.S. Section 8586 of the Business Corporation Law of 1988, **Nemacolin Resources, LLC**, a limited liability company of the State of Delaware with principal office at 600 Travis St., Ste. 5100, Houston, TX 77002, and having a Commercial Registered Office Provider and county of venue as follows: CT Corporation System, Dauphin County, which on October 6, 2000, was granted a Certificate of Authority to transact business in the Commonwealth, intends to file a Certificate of Cancellation of Registration-Foreign with the Department of State. a3

FIRST PUBLICATION

Fictitious Notices

NOTICE IS HEREBY GIVEN, pursuant to the provisions of the Fictitious Name Act, 54 Pa.C.S. § 301, et seq., and its amendments and supplements, of filing with the Secretary of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on the 19th day of July, 2012, an application for conducting business under the assumed or fictitious name of **Universal Solar & Heating** with its principal place of business located at 162 Savidge Road, Millersburg, Dauphin County, Pennsylvania 17061.

The names and addresses of all persons owning or interested in said business are: Elmer L. Lapp, 162 Savidge Road, Millersburg, PA 17061, and Elmer J. Ebersol, 520 Savidge Road, Millersburg, PA 17061.

GREGORY M. KERWIN, Esq
KERWIN & KERWIN, LLP
4245 State Route 209
Elizabethville, PA 17023
(717) 362-3215

a3

FIRST PUBLICATION

Miscellaneous Notices

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

CIVIL ACTION – LAW

No. 2011-CV-11398-MF

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**

CITIMORTGAGE, INC., Plaintiff

vs.

WAYNE A. GOULD, Defendant

NOTICE

TO: Wayne A. Gould, Defendant,
whose last known addresses are
303 East Curt Avenue
Jeffersonville, IN 47310
and
669 Main Street
Lykens, PA 17048

**COMPLAINT IN
MORTGAGE FORECLOSURE**

YOU ARE HEREBY NOTIFIED that Plaintiff, CitiMortgage, Inc., has 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-11398-MF, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 669 Main Street, Lykens, PA 17048, whereupon your property would be sold by the Sheriff of Dauphin County.

FIRST PUBLICATION

Miscellaneous Notices

NOTICE

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

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 THE 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

GREGORY JAVARDIAN, Esq.
MARY F. KENNEDY, Esq.
MEGHAN K. BOYLE, Esq.
POWERS, KIRN & JAVARDIAN, LLC
1310 Industrial Blvd., Ste. 101
Southampton, PA 18966
(215) 942-2090

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

No. 2012 CV 4722 NC

**PETITION FOR
CHANGE OF NAME**

NOTICE

NOTICE IS HEREBY GIVEN that on June 28, 2012, the Petition of **Terrany Darnel Kershaw II** was filed in the above named court, requesting a decree to change his/her name from **Terrany Darnel Kershaw II** to **Tee Jay Hoffman**.

The Court has fixed August 15, 2012 at 1:45 p.m. in Courtroom No. 11, at Juvenile Justice Center, 25 South Front Street, 7th Floor, Harrisburg, PA as the time and place for the hearing on said Petition, when and where all persons interested may appear and show cause if any they have, why the prayer of the said Petition should not be granted.

TEE JAY HOFFMAN, Esq.
128 James Street
Elizabethville, PA 17023

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FIRST PUBLICATION

Miscellaneous Notices

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

CIVIL ACTION – LAW

No. 2010-CV-03926-MF

**NOTICE OF ACTION IN
MORTGAGE FORECLOSURE**

**U.S. BANK, NATIONAL ASSOCIATION,
AS TRUSTEE UNDER THE POOLING
AND SERVICING AGREEMENT,
DATED AS OF AUGUST 1, 2002,
AMONG CREDIT-BASED ASSET
SERVICING AND SECURITIZATION,
LLC, RESIDENTIAL ASSET FUNDING
CORPORATION, LITTON LOAN
SERVICING, LP AND U.S. BANK,
NATIONAL ASSOCIATION,
C-BASS MORTGAGE LOAN
ASSET-BACKED CERTIFICATES,
SERIES 2002-CB4, Plaintiff**

vs.

**RUTH GILCHREST
a/k/a RUTH L. GILCHREST IN HER
CAPACITY AS EXECUTRIX OF
THE ESTATE OF SHARON O. MINGO
AND AS HEIR OF MARY L. MINGO,
DECEASED AND UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS, AND ALL
PERSONS, FIRMS, OR ASSOCIATIONS
CLAIMING RIGHT, TITLE OR
INTEREST FROM OR UNDER
MARY L. MINGO, DECEASED,
Defendants**

**NOTICE OF SALE OF REAL
PROPERTY**

**TO: Unknown Heirs, Successors,
Assigns, and All Persons,
Firms, or Associations Claiming
Right, Title or Interest
From or Under Mary L. Mingo,
Deceased, Defendant(s),
whose last known address is
49 North 16th St.
Harrisburg, PA 17103**

YOU ARE HERBY NOTIFIED that your house (real estate) at 49 North 16th St., Harrisburg, PA 17103, is scheduled to be sold at the Sheriff's Sale on October 18, 2012 at 10:00 a.m. in the Dauphin County Admin. Bldg., 4th Fl., 2nd & Market Streets, Commissioners Hearing Room, Harrisburg, PA 17101, to enforce the court judgment of \$70,363.08, obtained by Plaintiff above (the mortgagee) against you. If the sale is postponed, the property will be relisted for the Next Available Sale.

PROPERTY DESCRIPTION

ALL THAT CERTAIN real estate and premises situate in the City of Harrisburg, County of Dauphin and Commonwealth of Pennsylvania, more particularly described as follows, to wit:

BEGINNING at a point or post at the south-east corner of Sixteenth and Regina Streets; thence eastwardly along Regina Street for a distance of eighty-eight feet to a four feet wide alley; thence southwardly along said alley for a distance of sixteen (16) feet to the line of property presently known and numbered as No. 47 North Sixteenth Street; thence westwardly by the line of said property for a distance of eighty-eight (88) feet to the line of Sixteenth Street; thence northwardly by the line of Sixteenth Street to the place of BEGINNING.

FIRST PUBLICATION**Miscellaneous Notices**

HAVING THEREON ERECTED property known and numbered 49 North Sixteenth Street, Harrisburg Pennsylvania.

BEING THE SAME PREMISES which Horace V. Wilder and Georgellen Wilder, husband and wife, by deed dated February 3, 1983 and recorded April 6, 1983 in the Office of the Recorder of Deeds of Dauphin County in Record Book 164 at page 520 granted and conveyed unto Rufus Mingo and Marl L. Mingo, husband and wife, and Sharon Mingo, grantors herein.

PARCEL NO: 09-028-001.

BEING KNOWN AS: 49 North 16th Street, Harrisburg, PA 17103. PROPERTY ID NO.: 09-028-001.

TITLE TO SAID PREMISES IS VESTED IN Sharon O. Mingo BY DEED FROM Rufus Mingo and Mary L. Mingo and Sharon O. Mingo DATED 12/19/1994 RECORDED 12/20/1994 IN DEED BOOK 2341 PAGE 465.

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

a3

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

No. 2010-CV-12672-MF

NOTICE OF SHERIFF'S SALE

BANK OF AMERICA, N.A.
AS SUCCESSOR BY MERGER
TO BAC HOME LOANS
SERVICING, LP, Plaintiff

vs.
EDWARD E. WARE
a/k/a EDWARD EUGENE WARE and
FREDONIA MARIE WARE, Defendants

NOTICE

TO: EDWARD E. WARE
a/k/a **EDWARD EUGENE WARE**
and **FREDONIA MARIE WARE**

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

BEING PREMISES: 2150 NORTH 7TH STREET, HARRISBURG, PA 17110-2414.

BEING in CITY OF HARRISBURG, County of DAUPHIN, Commonwealth of Pennsylvania.

TAX No. 10-012-009-000-0000.

IMPROVEMENTS consist of residential property.

SOLD as the property of EDWARD E. WARE a/k/a EDWARD EUGENE WARE and FREDONIA MARIE WARE.

YOU ARE HERBY NOTIFIED that your house (real estate) at 2150 NORTH 7TH STREET, HARRISBURG, PA 17110-2414 is scheduled to be sold at the Sheriff's Sale on 10/18/2012 at 10:00 AM, at the DAUPHIN County Courthouse, 101 Market Street, Harrisburg, PA 17107-2012, to enforce the Court Judgment of \$70,890.25 obtained by, BANK OF AMERICA, N.A. AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP (the mortgagee), against the above premises.

PHELAN HALLINAN
& SCHMIEG, LLP

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

ORPHANS' COURT DIVISION,

No. 49 ADOPTIONS 2012

TO: Charles Davis

**IN RE:
ADOPTION OF
J.A.D.
DOB: 12/09/2009**

FIRST PUBLICATION
Miscellaneous Notices

NOTICE

YOU ARE HEREBY NOTIFIED that a petition has been filed asking the court to terminate any rights you have to your child, J.A.D. The Court has set a hearing to consider ending your rights to your child. The hearing will be held in Courtroom 3, 4th Floor, Cumberland County Courthouse, Carlisle, Pennsylvania, on September 26, 2011, at 11:00 A.M. If you do not appear at the hearing, the Court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the hearing by a lawyer.

YOU SHOULD TAKE THIS NOTICE to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

CUMBERLAND COUNTY BAR ASSOC.
32 S. Bedford Street
Carlisle, PA 17013
(717) 249-3166

LINDSAY D. BAIRD, Esq.
Solicitor, Cumberland County
Children & Youth Services
a3-a10

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

No. 2011CV9347MF

**CENLAR FSB, Plaintiff
vs.
TERRANCE JONES, Defendant**

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

TO: Terrance Jones
2704 Waldo Street
Harrisburg, Pennsylvania 17110

TAKE NOTICE

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

DATE: September 6, 2012

TIME: 10:00 a.m.

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

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

THE LOCATION of your property to be sold is 2704 Waldo St, Harrisburg, Pennsylvania 17110

THE JUDGMENT under or pursuant to which your property is being sold is docketed in the within Commonwealth and County to:
Number 2011 CV9347MF

FIRST PUBLICATION

Miscellaneous Notices

THE NAME OF THE OWNER OR REPUTED OWNER of this property is: Terrance Jones.

A SCHEDULE DISTRIBUTION, being a list of the persons and/or governmental or corporate entities or agencies being entitled to receive part of the proceeds of the sale received and to be disbursed by the Sheriff (for example, to banks that hold mortgages and municipalities that are owed taxes) will be filed by the Sheriff of this County thirty (30) days after the sale and distribution of the proceeds of sale in accordance with this schedule will, in fact, be made unless someone objects by filing exceptions to it within ten (10) days of the date it is filed.

Information about the Schedule of Distribution may be obtained from the Sheriff of the Court of Common Pleas of the within County at the Courthouse address specified herein.

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

**IT HAS BEEN ISSUED BECAUSE
THERE IS A JUDGMENT
AGAINST YOU.**

**IT MAY CAUSE YOUR PROPERTY
TO BE HELD, TO BE SOLD
OR TAKEN TO PAY THE JUDGMENT.**

YOU MAY HAVE LEGAL RIGHTS to prevent your property from being taken away. A lawyer can advise you more specifically of these rights. If you wish to exercise your rights, YOU MUST ACT PROMPTLY.

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

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

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

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

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

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

2. After the Sheriff's Sale, you may file a petition with the Court of Common Pleas of the within County to set aside the sale for a grossly inadequate price or for other proper cause. This petition **MUST BE FILED BEFORE THE SHERIFF'S DEED IS DELIVERED.**
3. A petition or petitions raising the legal issues or rights mentioned in the preceding paragraphs must be presented to the Court of Common Pleas of the within County. The petition must be served on the attorney for the creditor or on the creditor before presentation to the Court and a proposed order or rule must be attached to the petition.

If a specific return date is desired, such date must be obtained from the Court Administrator's Office - Civil Division, of the within County Courthouse, before a presentation to the Court.

SHERIFF'S OFFICE

FIRST PUBLICATION

Miscellaneous Notices

Sale #: _____

McCabe, Weisberg and Conway, P.C.

Judgment Amount: \$44,999.86

ALL THAT CERTAIN piece or parcel of land situate in the City of Harrisburg, Dauphin County, Pennsylvania, bounded and described in accordance with a survey by Michael C. D'Angelo, Registered Surveyor, dated December 4, 1975 as follows, to wit:

BEGINNING at a point on the Western side of Waldo Street, said point being 157.24 feet South of the Southwest corner of Division and Waldo Streets; thence continuing along Waldo South 14 degrees, East 16 feet to the Northern line of premises No. 2702 Waldo Street; thence along said line thru a party wall and beyond, South 76 degrees West 78.36 feet to a point in the center of a 4 foot wide concrete alley; thence thru said alley North 12 degrees 35 minutes West 16 feet to a point in the Southern line of premises No. 2706 Waldo Street; thence along last said line and thru a party wall North 76 degrees, East 77.96 feet to the Place of BEGINNING

BEING Lot No. 52 on Plan of Penn-Roosevelt, Inc., recorded in Wall Map Book Page 2.

HAVING THEREON ERECTED a 2 story brick dwelling known as No. 2704 Waldo Street, Harrisburg, Pennsylvania.

TAX PARCEL NO. 10-006-036.

PREMISES BEING: 2704 Waldo St, Harrisburg, Pennsylvania 17110.

BEING the same premises which Pro-Trust Property, LLC by Deed dated November 18, 2005 and recorded November 28, 2005 in Deed Book 6297, Page 419, in the Dauphin County Recorder's Office, granted and conveyed unto Terrance Jones.

SEIZED, taken in execution and to be sold as the property of which Terrance Jones, Mortgagor(s) herein, under Judgment No. 2011CV9347MF.

NOTICE is further given to all parties in interest and claimants. A proposed schedule of distribution of the proceeds in the sale will be filed by the Sheriff of Dauphin County, Pennsylvania on a date specified by the Sheriff not later than thirty (30) days after sale and distribution of said proceeds will be made in accordance with said proposed schedule of distribution unless exceptions are filed thereto within ten (10) days thereafter.

TERRENCE J. McCABE, Esq.

MARC S. WEISBERG, Esq.

EDWARD D. CONWAY, Esq.

MARGARET GAIRO, Esq.

ANDREW L. MARKOWITZ, Esq.

HEIDI R. SPIVAK, Esq.

MARISA J. COHEN, Esq.

KEVIN T. McQUAIL, Esq.

CHRISTINE L. GRAHAM, Esq.

BRIAN T. LaMANNA, Esq.

McCABE, WEISBERG AND CONWAY,

P.C.

123 South Broad Street, Suite 2080

Philadelphia, PA 19109

(215) 790-1010

a3

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY PENNSYLVANIA

**IN THE MATTER OF
ROBERT STEVEN MIRIN
(ATTORNEY REGISTRATION
No. 25305)**

CIVIL DIVISION

No. 2012 CV 1982 (MP)

NOTICE

By order dated March, 12, 2012, Joseph J. Huss, Esquire, of the Office of Disciplinary Counsel, was appointed as Conservator for the law practice of Robert Steven Mirin (deceased).

FIRST PUBLICATION

Miscellaneous Notices

If you are a former client who wishes to retrieve your file, please call the Conservator's office, as soon as possible, at (717) 783-0990. All unclaimed files will be destroyed in accordance with Rule 322 of the Pennsylvania Rules of Disciplinary Enforcement.

If you are in need of substitute counsel, you can contact the Dauphin County Bar Association Lawyer Referral and Information Service at (717) 232-7536, 123 N. Front Street, Harrisburg, PA 17101.

JOSEPH J. HUSS, Esq.
Conservator for Robert Steven Mirin
601 Commonwealth Avenue, Suite 2700
P.O. Box 62485
Harrisburg, PA 17106-2485
(717) 783-0990
a3-a10

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY PENNSYLVANIA

No. 2012 CV 4586 NC

PETITION FOR CHANGE OF NAME

NOTICE

NOTICE IS HEREBY GIVEN that on June 22, 2012, the Petition of **Surina R. Bivins** was filed in the above named court, requesting a decree to change her name from **Surina R. Bivins** to **Rosaria S. Bivins**.

The Court has fixed Monday, September 24, 2012, in Courtroom No. 11, at 1:30 P.M., Juvenile Justice Center, 25 South Front Street, 7th Floor, Harrisburg, PA as the time and place for the hearing on said Petition, when and where all persons interested may appear and show cause if any they have, why the prayer of the said petition should not be granted.

a3

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY PENNSYLVANIA

NAME CHANGE NOTICE

PUBLIC NOTICE IS HEREBY GIVEN pursuant to law that a Petition filed in the Court of Common Pleas of Dauphin County praying that an Order be entered to change the legal names of **Olivia Fiona Langlois** and **Jackson Robert Langlois**. A Hearing is scheduled for September 24, 2012 at 2:30 p.m. in Courtroom No. 11 of the Juvenile Justice Center, 25 South Front Street, 7th Fl., Harrisburg, PA.

a3

IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY PENNSYLVANIA

CIVIL ACTION – LAW

No. 2012-CV-00756

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION, Plaintiff
vs.

MICHAEL STRAUSS AND
NEIGHBORHOOD
TRANSFORMATION GROUP, LLC,
Defendants

NOTICE OF SHERIFF'S SALE OF REAL PROPERTY

TO: Michael Strauss and Neighborhood Transformation Group, LLC, Defendants, whose last known address is 2513 Agate Street Harrisburg, PA 17110

YOU ARE HEREBY NOTIFIED that your house (real estate) at: 2513 Agate Street, Harrisburg, PA 17110, 10-015-044, is scheduled to be sold at Sheriff's Sale on October 18, 2012 at 10:00 AM, in Dauphin County Admin. Bldg., 4th Fl., Commissioners Hearing Rm., Market Square (former Mellon

FIRST PUBLICATION

Miscellaneous Notices

Bank Bldg.,), Harrisburg, PA 17101, to enforce the court judgment of \$52,331.25, obtained by JPMorgan Chase Bank, National Association against you.

NOTICE OF OWNER'S RIGHTS, YOU MAY BE ABLE TO PREVENT THIS SHERIFF'S SALE

TO PREVENT THIS SHERIFF'S SALE you must take immediate action: 1. The sale will be cancelled if you pay back to JPMorgan Chase Bank, National Association the amount of the judgment plus costs or the back payments, late charges, costs, and reasonable attorneys fees due. To find out how much you must pay, you may call: 610-278-6800. 2. You may be able to stop the sale by filing a petition asking the Court to strike or open the judgment, if the judgment was improperly entered. You may also ask the Court to postpone the sale for good cause. 3. You may be able to stop the sale through other legal proceedings. 4. You may need an attorney to assert your rights. The sooner you contact one, the more chance you will have of stopping the sale. (See notice below on how to obtain an attorney.) YOU MAY STILL BE ABLE TO SAVE YOUR PROPERTY AND YOU HAVE OTHER RIGHTS EVEN IF THE SHERIFF'S SALE DOES TAKE PLACE. 5. If the Sheriff's Sale is not stopped, your property will be sold to the highest bidder. You may find out the price bid by calling 610-278-6800. 6. You may be able to petition the Court to set aside the sale if the bid price was grossly inadequate compared to the value of your property. 7. The sale will go through only if the buyer pays the Sheriff the full amount due in the sale. To find out if this has happened you may call 717-255-2660. 8. If the amount due from the buyer is not paid to the Sheriff, you will remain the owner of the property as if the sale never happened. 9. You have a right to remain in the

property until the full amount due is paid to the Sheriff and the Sheriff gives a deed to the buyer. At that time, the buyer may bring legal proceedings to evict you. 10. You may be entitled to a share of the money, which was paid for your house. A schedule of distribution of the money bid for your house will be filed by the Sheriff no later than thirty days after the Sheriff Sale. This schedule will state who will be receiving the money. The money will be paid out in accordance with this schedule unless exceptions (reasons why the proposed distribution is wrong) are filed with the Sheriff within ten (10) days after the date of filing of said schedule. 11. You may also have other rights and defenses or ways of getting your house back, if you act immediately after the sale.

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

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

PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT YOU ARE ADVISED THAT THIS LAW FIRM IS DEEMED TO BE A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

CHRISTOPHER A. DENARDO, Esq.
Shapiro & DeNardo, LLC
3600 Horizon Dr., Ste. 150
King of Prussia, PA 19406
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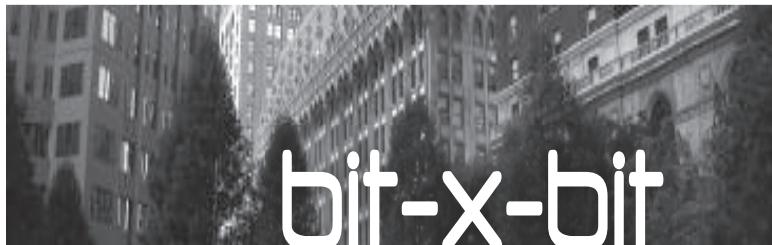
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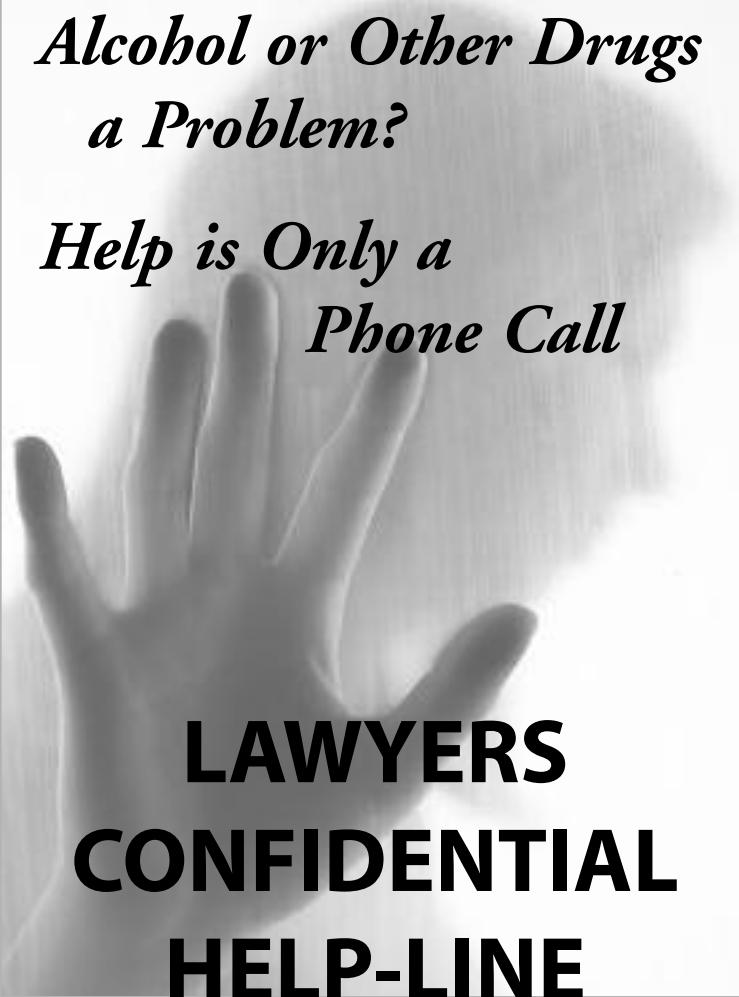
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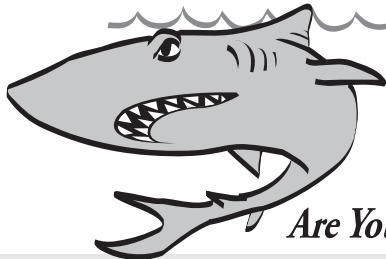
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CUMULATIVE TABLE OF CASES

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BAR ASSOCIATION PAGE
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213 North Front Street • Harrisburg, PA 17101-1493
Phone: 232-7536 • Fax: 234-4582

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Directors

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

AUGUST 2012

Judge Bruce F. BRATTON

SEPTEMBER 2012

Judge Richard A. LEWIS

Opinions Not Yet Reported

BAR ASSOCIATION PAGE – Continued

MISCELLANEOUS SECTION

APPEALS OFFICER/STAFF ATTORNEY — The Office of Open Records is seeking a full time appeals officer for its Harrisburg office. The ideal candidate will have 3-5 years litigation experience in one or more of the following areas: education, municipal law, administrative agency practice, or appellate advocacy, and have familiarity with the Rules of Civil Procedure and General Rules of Administrative Practice and Procedure. Strong and demonstrable research and writing skills are required. Judicial clerkship experience is a plus. The Office of Open Records is an equal opportunity employer. Please submit your resume by August 3, 2012 via email to:

Nathan Byerly, Deputy Director
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225
NByerly@pa.gov

y20-a3

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y20-a3

BAR ASSOCIATION PAGE – Continued
MISCELLANEOUS SECTION

**EARN 3 CLE CREDITS AT
PMAA'S
SOLICITOR DAY
INCLUDES LUNCH & RECEPTION**

Monday, August 27 12:30 – 6:00

Hershey Lodge & Convention Center

Contact Sullivan@municipalauthorities.org for details

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