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Vazquez-Santiago v. Dep't of Transp., Bureau of Driver Licensing
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**THE
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in this case, based upon an interim change in the law, we are not cajoled by that appreciation to allow his self-inflicted situation to affect the rule of law.

I. Conclusion.

In conclusion, we find that the *amended version* of 75 Pa.C.S.A. § 1532, which took effect during the pendency of the instant License Suspension Appeal, shall not apply retroactively to this case since the *prior version* of Section 1532 was in effect at both the time of Petitioner's actual drug-possession conviction and the mandated administrative action of PennDOT when it suspended his operating privileges. Therefore, this Court **DISMISSES** Petitioner's appeal of PennDOT's suspension of his operating privileges, and **REINSTATES** said suspension.

ISSUED AT HARRISBURG, the date first above written.

ORDER

AND NOW, to wit, this 18th day of February, 2020, upon consideration of the argument presented at the Hearing in this matter as well as the parties' post-Hearing Briefs, together with the Court's Memorandum Opinion of even date herewith, the appeal filed in the above-captioned matter is hereby **DISMISSED** and the suspension of Petitioner Justis Tyler Yost's driving privileges shall be **REINSTATED**.

ISSUED AT HARRISBURG, the date first above written.

BY THE COURT:

Lawrence F. Clark, Jr., S.J.

Vazquez-Santiago v. Dep't of Transp., Bureau of Driver Licensing

Motor Vehicles - Driver's License Suspension Appeal - Knowing and Conscious Refusal to Submit to a Blood Test - Language Barrier

Petitioner challenged the suspension of his driver's license, contending that his refusal to submit to a blood test was not knowing and conscious because he only speaks Spanish, does not comprehend the English language, and therefor did not understand the consequences of his refusal.

1. Section 1547 of the Pennsylvania Vehicle Code, commonly referred to as the "Implied Consent Law," authorizes suspension of the driving privileges of a licensee for a specified duration of time if the licensee is arrested for driving under the influence of alcohol or a controlled substance and the licensee refuses a police officer's request to submit to chemical testing. 75 Pa. C.S. § 1547

2. A refusal of chemical testing must be knowing and conscious in order for a license suspension to be upheld. The law has always required that the police must tell the arrestee of the consequences of a refusal to take the test so that he can make a knowing and conscious choice. *Com., Dep't of Transp., Bureau of Traffic Safety v. O'Connell*, 555 A.2d 873, 877 (Pa. 1989).

3. Some circumstances, such as a language barrier, might affect a licensee's ability to make a knowing and conscious refusal. *Martinovic v. Dep't of Transp., Bureau of Driver Licensing*, 881 A.2d 30, 34-35 (Pa. Commw. Ct. 2005). The determination of whether a licensee was able to make a knowing and conscious refusal is a factual one that is to be made by the trial court. *Kollar v. Com., Dep't of Transp., Bureau of Driver Licensing*, 7 A.3d 336, 340 (Pa. Commw. Ct. 2010).

License Suspension Appeal. C.P., Dau. Co., No. 2019-CV-05838-LS. Appeal sustained and suspension rescinded.

John T. Fegley, for the Petitioner

Kelly E. Solomon, for the Commonwealth

Clark, S.J. April 6, 2020.

TRIAL COURT MEMORANDUM OPINION AND ORDER

Currently before this Court is Petitioner Isak Vazquez-Santiago's ("Petitioner") challenge to the decision of the Pennsylvania Department of Transportation, Bureau of Driver Licensing ("PennDOT") to suspend his driver's license for one (1) year pursuant to Section 1547(b)(1)(i) of the Pennsylvania Vehicle Code, 75 Pa.C.S. § 1547(b)(1)(i). For the reasons set forth below, we **RESCIND** the suspension of Petitioner's license and **SUSTAIN** his appeal.

I. Factual Background and Procedural History.

On or about July 6, 2019, PennDOT mailed a letter to Petitioner, notifying him that because his previous refusal to submit to blood testing violated provisions of the Implied Consent Law as contained in the Pennsylvania Motor Vehicle Code, 75 Pa.C.S. § 1547(b)(1)(i), he would be subjected to a one (1)-year driver's license suspension effective August 10, 2019. On August 2, 2019, Petitioner, through counsel, filed in this Court an appeal of his license suspension. On August 8, 2019, we issued an Order scheduling a License Suspension Appeal Hearing in this matter and ordering that the impending suspension of Petitioner's driver's license be stayed pending this Court's final decision in this matter. On November 25, 2019, the parties, each represented by counsel, appeared before the undersigned for a License Suspension Hearing ("the Hearing") which featured the testimony of two witnesses. Each witness's testimony will be recounted, in turn, below.

A. Testimony of Police Officer Carson O'Connor.

The first witness to testify at the Hearing was Harrisburg City Police Officer Carson O'Connor (hereinafter "Officer O'Connor" or "the Officer"), who testified on behalf of PennDOT. At approximately 1:58 a.m. on June 24, 2019, while on patrol in the area of Second and Maclay Streets in the City of Harrisburg, Dauphin County, Officer O'Connor observed a Toyota sedan cross over the double yellow line on Maclay Street. (Notes of Testimony, 11/25/19 License Suspension Appeal Hearing, hereinafter "N.T.", at 6-7). The Officer proceeded to follow the vehicle, and the driver of the vehicle made a right-hand turn onto Second Street without using a turn signal. (N.T. at 7). Officer O'Connor continued following the vehicle on Second Street, and after driving in the center lane of Second Street for a period of time, the driver of the vehicle veered all the way over to the far-right lane of Second Street without using a turn signal. (N.T. at 7). At that point, the Officer initiated a traffic stop on the vehicle. (N.T. at 7).

After initiating the traffic stop, the Officer approached the driver, who was ultimately identified as Petitioner, and requested that Petitioner put his window down. (N.T. at 7). Petitioner began to manipulate various buttons in an attempt to put down his window, but because he encountered difficulty in doing so, he ultimately elected to open the driver's side car door to make contact with the Officer. (N.T. at 7). When Petitioner opened the door, Officer O'Connor detected a strong smell of alcoholic beverage emanating from the vehicle. (N.T. at 7-8). The Officer also observed that Petitioner's eyes were bloodshot and had a "glazed look." (N.T. at 8). To prevent Petitioner from leaving his vehicle, Officer O'Connor closed the door and, using a mixture of verbal commands and hand signals, requested again that Petitioner roll down his window. (N.T. at 8, 12-13). Petitioner "eventually" understood the Officer's request and rolled down the window. (N.T. at 8). At that point, the Officer asked Petitioner to provide his driver's license, registration, and proof of insurance. (N.T. at 8). Petitioner provided his license and registration, but he did not have insurance. (N.T. at 8).

After obtaining Petitioner's license and registration, Officer O'Connor returned to his patrol car to run a check for outstanding warrants and to wait for additional officers to arrive on the scene. (N.T. at 8). The Officer, however, then returned to Petitioner's vehicle and observed Petitioner asleep in the driver's seat. (N.T. at 8). The Officer attempted to wake Petitioner and was only successful in doing so after a few attempts. (N.T. at 8). As soon as Petitioner was awakened, the Officer asked Petitioner how much he had had to drink that night. (N.T. at 8). Once again, Petitioner initially was unable to understand the Officer's inquiry spoken in English, so the Officer attempted to ask the question through the use of hand signals. (N.T. at 8).

Ultimately, Petitioner appeared to understand the inquiry and indicated that he had consumed three alcoholic beverages. (N.T. at 8). At the Officer's request, Petitioner then stepped outside of his vehicle, but he was stumbling as he did so. (N.T. at 8). Once Petitioner was outside of the vehicle, the Officer was able to detect a strong odor of alcohol coming directly from Petitioner's person. (N.T. at 9). The Officer attempted to conduct a field sobriety test, but according to the Officer, Petitioner was unable to comprehend the Officer's directions, and, therefore, no sobriety test was completed. (N.T. at 8-9, 14).

Based on his observations, Officer O'Connor placed Petitioner under arrest. (N.T. at 9). Because of the serious communication problems that had already transpired so far that evening between the Officer and the Petitioner, Officer O'Connor (who does not speak Spanish) placed a police radio call throughout Dauphin County's communications network for the assistance of any available Spanish-speaking officer to assist him (O'Connor), but he was unsuccessful in locating such a Spanish-speaking officer. (N.T. at 9-10). Thus, being unable to locate an officer that could speak Spanish, Officer O'Connor himself drove Petitioner to the Dauphin County Booking Center where he requested that Petitioner submit to a chemical test of his blood. (N.T. at 10). When attempting to communicate with the Petitioner about drawing blood, the Officer had to utilize various hand signals such as pointing to his arm, and based on these hand signals, it "appeared" that Petitioner understood that the Officer was requesting to draw blood. (N.T. at 15). The Officer also read to Petitioner, verbatim and **in English**, PennDOT's entire DL-26B Form (hereinafter "the Form"), which warns a motorist of the consequences of refusal to submit to a blood test.¹ (N.T. at 10-11). **The Officer testified that he strictly read the Form as it was printed in English and used no visual aids or hand signals when describing and reading the Form to Petitioner.** (N.T. at 15-16). This reading of the DL-26B Form **in English** is the gravamen of this case, and will be specifically addressed later herein.

¹ The warnings in PennDOT's DL-26B Form provide, in pertinent part, as follows:

1. You are under arrest for driving under the influence of alcohol or a controlled substance in violation of Section 3802 of the Vehicle Code.
2. I am requesting that you submit to a chemical test of the blood.
3. If you refuse to submit to the blood test, your operating privilege will be suspended for at least 12 months. If you previously refused a chemical test or were previously convicted of driving under the influence, your operating privilege will be suspended for up to 18 months. . . .

After reading the Form, Officer O'Connor asked Petitioner whether he would submit to the blood test, and Petitioner answered, "No." (N.T. at 10). Moreover, Petitioner refused to sign the portion of the Form that is signed by a motorist when acknowledging that the motorist had been advised of the warnings contained on the DL-26B Form. (N.T. at 11, 16). The Officer deemed all of this to be indicative of a refusal on the part of the Petitioner. (N.T. at 10). However, Officer O'Connor candidly admitted that he was unsure as to whether Petitioner understood exactly what was being asked of him; and of even greater moment, the Officer was absolutely uncertain as to whether Petitioner understood the consequences of his refusal to submit to a blood test—namely, that his license would be suspended for a period of one (1) year. In particular, during the November 25, 2019 Hearing, the following exchange occurred between the Court and Officer O'Connor:

THE COURT: Officer, was there any doubt in your mind that [Petitioner] understood what you were asking him to do to submit to the blood test?

OFFICER O'CONNOR: *It's hard to say fully whether he was understanding or not understanding.* I think I tried my best to make sure that he understood what the test was. I tried my best to make sure he was certain with what he was refusing.

And when he would – when I would ask him something, he would make very clear if he did not understand.

So when he said that he did understand with – you know, it was very clear. He said, I'm not taking the test.

I said, you're not taking the test?

He said, "No," very clearly. It was very – like a stern no. I took that as he fully understood.

(N.T. at 16) (emphasis supplied).

Moreover, and of even greater significance to the instant matter, the following exchange occurred between Officer O'Connor and Petitioner's counsel:

PETITIONER'S COUNSEL: You're stating that you believe [Petitioner] understood that he was refusing the test?

OFFICER O'CONNOR: Correct.

PETITIONER'S COUNSEL: *Are you certain that he understood his license would be suspended if he didn't take the test?*

OFFICER O'CONNOR: *I wouldn't be able to answer that. I don't know.*

(N.T. at 17) (emphasis supplied).

B. Testimony of Petitioner.

The second and final witness to testify at the Hearing was Petitioner, who briefly testified on his own behalf.² Petitioner, who has lived in the mainland United States for about two and a half years, testified that he was born in Puerto Rico and that he does not speak English. (N.T. at 18-19). Petitioner is currently employed at a warehouse where he receives all of his work-related instructions in Spanish. (N.T. at 19-20). With regard to the events giving rise to the instant matter, Petitioner recalled having been stopped by Officer O'Connor, and he admitted that he was intoxicated at the time of the stop. (N.T. at 18, 20). However, Petitioner testified that he did not recall being asked to submit to a blood test, nor did he recall the Officer warning him that his driver's license would be suspended. (N.T. at 18). Petitioner stated that he did not provide a blood sample to Officer O'Connor because he didn't know what the Officer was saying to him. (N.T. at 18).

At the conclusion of the Hearing, this Court permitted counsel for the parties to each submit a post-Hearing Memorandum of Law. The parties' Memoranda of Law have been submitted, and Petitioner's License Suspension Appeal is ripe for disposition.

II. Discussion.

Section 1547 of the Pennsylvania Vehicle Code, commonly referred to as the "Implied Consent Law," authorizes suspension of the driving privileges of a licensee for a specified duration of time if the licensee is arrested for driving under the influence of alcohol or a controlled substance and the licensee refuses a police officer's request to submit to chemical testing. 75 Pa.C.S. § 1547. To sustain a license suspension under the Implied Consent Law, PennDOT has the initial burden of proving that the driver: (1) was arrested for driving while under the influence by a police officer who had reasonable grounds to believe that the licensee was operating a vehicle while under the influence of alcohol or a controlled substance, (2) was asked to submit to a chemical test, (3) refused to do so, and (4) was warned that a refusal would result in a license suspension. Zwibel v. Com., Dep't of Transp. Bureau of Driver Licensing, 832 A.2d 599, 604 (Pa. Commw. Ct. 2003) (citing Banner v. Department of Transportation, Bureau of Driver Licensing, 737 A.2d 1203 (Pa. 1999)).

² Petitioner testified in Spanish throughout the Hearing, and his testimony was translated to English by a Court-Certified Interpreter.

It is “well-established law” that once PennDOT meets its initial burden under the Implied Consent Law, the burden then shifts to the licensee to establish that either: (1) his refusal was not knowing or conscious; or (2) he was physically unable to take the chemical test. Zwibel, 832 A.2d at 606 (citing Dep't of Transp., Bureau of Driver Licensing v. Boucher, 691 A.2d 450 (Pa. 1997)). In the instant matter, Petitioner does not dispute that PennDOT has met its initial burden of proof based on the facts presented. Nor does Petitioner contend that he was physically unable to take a chemical test. Petitioner, however, asserts that his refusal to submit to a blood test was not knowing and conscious because the DL-26B Form, including the warnings as to the consequences of refusal, were only read to Petitioner in English. Therefore, Petitioner avers, since he only speaks Spanish and does not comprehend the English language, he was unaware that his license would be suspended if he refused the blood test. For the reasons set forth below, we agree with Petitioner that based upon the specific facts and circumstances of the instant case, his refusal to submit to a chemical test of his blood was not knowing and conscious.³

Our courts have repeatedly recognized that “the determination of whether a licensee was able to make a knowing and conscious refusal is a factual one that is to be made by the trial court.” Kollar v. Com., Dep't of Transp., Bureau of Driver Licensing, 7 A.3d 336, 340 (Pa. Commw. Ct. 2010) (citing Barbour v. Dep't of Transp., Bureau of Driver Licensing, 732 A.2d 1157 (Pa. 1999)); see also Patane v. Com., Dep't of Transp., Bureau of Driver Licensing, 192 A.3d 335, 343 (Pa. Commw. Ct. 2018) (noting that the determination as to whether a refusal was knowing or conscious is a “fact-intensive inquiry” and must be judged based on the circumstances present “at the time of the warning and refusal”). Cases involving an alleged language barrier are no exception from said fact-intensive inquiry.

Our Commonwealth Court has acknowledged that “some circumstances, such as a language barrier, might affect a licensee’s ability to make a knowing and conscious refusal.” Martinovic v. Dep't of Transp., Bureau of Driver Licensing, 881 A.2d 30, 34-35 (Pa. Commw. Ct. 2005) (citing Dep't of Transp., Bureau of Motor Vehicles v. Yi, 562 A.2d 1008 (Pa. Commw. Ct. 1989)). However, a language barrier alone is insufficient to establish that a Petitioner’s refusal was not knowing or conscious if other facts are presented which infer a Petitioner’s understanding of the consequences of refusal. For example, in Im v. Com., Dep't

³ In the alternative, Petitioner argues that his license suspension should be rescinded because Section 1547 of the Pennsylvania Vehicle Code is unconstitutional inasmuch as it penalizes an individual for exercising their constitutional right to refuse consent to a warrantless blood draw. Because we find that Petitioner’s refusal of chemical testing was not knowing or conscious, we will not address Petitioner’s alternative argument at this time.

of Transp., 529 A.2d 94 (Pa. Commw. Ct. 1987), the court found that Im, a native-Korean licensee had failed to establish that his refusal to submit to a breathalyzer test was not knowing and conscious because he responded in English to all of the arresting officer's inquiries and responded to inquiries in English at a Hearing without the assistance of an interpreter. Id. at 95-96. As another example, in Balthazar v. Dep't of Transp., Bureau of Driver Licensing, 553 A.2d 1053 (Pa. Commw. Ct. 1989), *appeal denied*, 525 Pa. 586 (1990), the court found that Balthazar, a native Spanish-speaking licensee had not met his burden of establishing that his refusal was not knowing and conscious where the record established that Balthazar testified extensively at a Hearing without the assistance of an interpreter and a Spanish-speaking nurse had tried to convince him to submit to a blood test before licensee made his decision to refuse a blood test). Id. at 1054-55. Finally, in Martinovic, 881 A.2d 30, the Commonwealth Court found that licensee Martinovic, a Serbo-Croatian speaker, had not met his burden of showing that his chemical breath test refusal was not knowing and conscious when the facts showed that Martinovic actually tried to submit to a breath test multiple times but simply could not register a sample after multiple attempts. Id. at 35-36. Moreover, although not explicitly discussed in the Court's legal analysis, it is worth noting that Martinovic was able to respond in broken English to the English-speaking officer's multiple inquiries at the traffic-stop site, readily responded to the officer's multiple commands, and was able to comprehend the officer's instructions for submitting to field sobriety testing. Id. at 32. The arresting officer also had testified that he "got the impression that Licensee knew and understood every word he was saying from the vehicle stop to the chemical test." Id. at 33.

Although a language barrier often is insufficient to establish that a Petitioner's refusal was not knowing or conscious, certain factual circumstances may substantiate a finding that a licensee's language barrier was so significant that it resulted in a refusal which was *not knowing and conscious*. This case is one of those exceptional circumstances. Such a finding will be justified where a licensee's inability to comprehend English is indubitable, and there are no alternative facts to suggest that the licensee understood the *consequences* of refusal. In such a case, an appellate court has found it to be apt to defer to a trial court's factual finding that a licensee's refusal was not knowing and conscious.

In Yi, for instance, a police officer stopped a driver, Kyong Rok Yi, for traveling the wrong way on a one-way street, and the officer testified that Yi exhibited multiple signs of intoxication including a strong odor of alcohol, bloodshot eyes, and difficulty with balance. 562 A.2d at 1009. Yi was transported to the police station for a breathalyzer test, but he refused to submit to said test. Id. In appealing the suspension that resulted from his refusal to submit to breathalyzer testing, Yi did not dispute that PennDOT has met its

initial burden of proving that the motorist (1) was arrested for driving while intoxicated, (2) was requested to submit to chemical testing, (3) he refused to do so, and (4) was informed that such a refusal would result in a suspension of his license. Id. Despite conceding that PennDOT has met its initial burden under the Implied Consent Law, Yi contended that he did not understand the ramifications of his refusal and, therefore, that his refusal was not knowing and conscious. Id.

Following a hearing on Yi's license suspension appeal, and upon consideration of the facts presented, a trial court concluded that Yi was unable to understand the English language and that based on said lack of understanding, Yi's refusal of the breathalyzer test was not knowing and conscious. Id. PennDOT appealed the trial court's decision to the Commonwealth Court, which affirmed, finding that "substantial evidence" supported the trial court's factual finding that Yi's inability to understand the English language precluded him from making a knowing and conscious refusal. Id. Specifically, the Commonwealth Court pointed out that: (1) Yi had testified through an interpreter that he had no understanding of the English language and that he did not understand the ramifications of his refusal; (2) Yi never answered any questions without an interpreter's assistance; and (3) the arresting officers testified that although they thought Yi *might* have understood them, they could not be certain. Id.

We find that the instant matter is more analogous to a case like Yi than some of the other cases discussed above. Petitioner's lack of understanding of the English language is undeniable; and, here, there are no additional facts or evidence to suggest to the Court that Petitioner may have understood the *consequences* of refusal in spite of his language barrier. Petitioner required the assistance of a Court-Certified Interpreter at all times during the November 25, 2019 Hearing—all of his testimony was given in Spanish, and all of the English testimony and questioning that occurred during the Hearing were translated to Spanish by Petitioner's interpreter. Petitioner testified that he was born in Puerto Rico and that he does not speak English. Petitioner relayed that he is currently employed at a warehouse where he requires that all of his work-related instructions be provided in Spanish. As for Officer O'Connor's traffic stop, Petitioner testified that he did not provide a blood sample upon Officer O'Connor's request because he didn't know what the Officer was saying to him.

Moreover, Petitioner's severe limitations regarding the English language and his inability to comprehend the consequences of his chemical test refusal are palpably demonstrated by Officer O'Connor's candid testimony regarding his interactions with Petitioner during the traffic stop. The Officer's testimony established that during the traffic stop, he provided multiple commands to Petitioner and that it was only

when the Officer utilized hand signals that Petitioner appeared to be able to understand and comport with any of the commands spoken in English. On the other hand, there were certain commands with which Petitioner was entirely unable to comport; in particular, Officer O'Connor asked Petitioner to engage in various field sobriety tests, but such tests could not be accomplished because Petitioner could not comprehend the Officer's instructions for completing the tests.

Petitioner's language barrier was so evident that Officer O'Connor radioed for a Spanish-speaking officer before transporting Petitioner to the booking center for a blood draw. The Officer unfortunately was unable to locate a Spanish-speaking officer and when he and Petitioner arrived at the booking center for the blood draw, the Officer again found it necessary to utilize various hand signals to attempt to convey his blood-draw requests to Petitioner. It was only after the utilization of these hand signals that Officer O'Connor *thought* that Petitioner understood the request for a blood draw. However, while he *thought* Petitioner understood the request for a blood draw, the Officer acknowledged during his testimony that "[i]t's hard to say fully whether [Petitioner] was understanding or not understanding." As for the reading of the DL-26 Form to Petitioner, the Officer only read this form to Petitioner **in English** and acknowledged that despite having to use hand signals in most all of his other communications with Petitioner, he did **not** attempt to use any hand signals or gestures to communicate to Petitioner the consequences of his refusal to submit to a blood test. Viewing this situation with a modicum of common sense, we can certainly appreciate Officer Conner's daunting task of attempting, through the very limited resources available to him (O'Connor) at the time, the request for the Petitioner to provide a blood sample. However, it is quite another matter to speculate that the Petitioner even remotely *understood the consequences* of a refusal to provide the blood sample upon his (Petitioner's) driver's license, where no effective communications had been established via the English language. When questioned by Petitioner's counsel as to whether Petitioner understood that his license would be suspended if he refused to submit to a blood test, Officer O'Connor frankly admitted that he was absolutely uncertain, stating "I wouldn't be able to answer that. I don't know." Officer O'Connor's testimony, in conjunction with Petitioner's testimony, clearly establishes that Petitioner's language barrier in this case served as a detrimental impediment to his ability to comprehend the consequences of his chemical test refusal, and, therefore, we find that Petitioner could not have knowingly and consciously refused Officer O'Connor's request for chemical testing.

The Court is not unmindful that factual circumstances such as those presented in this case are rife with significant logistical challenges for an arresting officer. Very, very few jurisdictions in our Commonwealth presently have multi-lingual resources available to enable an arresting officer to

meaningfully communicate with a fully non-English speaking motorist. Although recent technological inventions appear to have produced a hand-held multi-language translating device, which, if properly programed, may begin to bridge this chasm between the verbal directives of an English-speaking officer and a non-English speaking motorist, no such technology is presently being utilized in Dauphin County to our knowledge.

Underpinning all of this discussion, is the bedrock pronouncement of the Supreme Court of our Commonwealth over 30 years ago in the case of Com., Dep't of Transp., Bureau of Traffic Safety v. O'Connell, 555 A.2d 873 (Pa. 1989). There, the Supreme Court adopted, with approval, the 4-part warnings previously set forth by the Commonwealth Court in Everhart v. Commonwealth, 420 A.2d 13 (Pa. Commw. Ct. 1980). The Court in O'Connell went on to unequivocally affirm that the “[t]he law has always required that the police must tell the arrestee of the *consequences* of a refusal to take the test so that he can make a *knowing and conscious choice*.” 555 A.2d at 877. The Court also stated that “An arrestee is entitled to this information so that his choice to take a ... test can be *knowing and conscious*....” Indeed, the very warnings listed on the DL-26B Form utilized to impart this critical information to a motorist, are universally referred to in this Commonwealth is the “**O’Connell Warnings**.” Thus, it is abundantly clear and the established law in our Commonwealth that any decision by a motorist after receiving the O’Connell Warnings must be *knowing and conscious*. See O'Connell, 555 A.2d 873; Everhart v. Commonwealth, 420 A.2d 13 (Pa. Commw. Ct. 1980); Ford v. Dep't of Transp., Bureau of Traffic Safety, 406 A.2d 240 (Pa. Commw. Ct. 1979). That required level of determination by a motorist cannot be made if the motorist cannot understand the English language, and no translation or other bridging endeavor is employed to assure, to a certainty, the *consequence* of refusal is understood.

III. Conclusion.

In conclusion, this Court is bound by the dictate that a refusal of chemical testing must be knowing and conscious in order for a license suspension to be upheld. We acknowledge that the mere proclamation of a language barrier alone is insufficient for a licensee to meet his burden of establishing that his refusal was not knowing or conscious and that additional facts or evidence can infer a knowing or conscious refusal in spite of a licensee’s purported language barrier. However, no such additional facts or evidence have been set forth in this matter to contradict Petitioner’s clear lack of understanding of the English

language, and, therefore, we find that Petitioner's appeal must be **SUSTAINED**, and the suspension of his driving privileges must be **RESCINDED**.⁴

ISSUED AT HARRISBURG, the date first above written.

ORDER

AND NOW, to wit, this 6th day of April, 2020, upon consideration of the evidence admitted at the Hearing in this matter as well as the parties' Memoranda of Law, together with the Court's Memorandum Opinion of even date herewith, the appeal filed in the above-captioned matter is hereby **SUSTAINED** and the suspension of Petitioner Isak Vazquez-Santiago's driving privileges shall be **RESCINDED**.⁵

ISSUED AT HARRISBURG, the date first above written.

BY THE COURT:

/s/ Lawrence F. Clark, Jr., S.J.

⁴ Although we find, upon consideration of the foregoing discussion, that Petitioner did not knowingly and consciously refuse Officer O'Connor's request for chemical testing, we find it suitable to emphasize that this Opinion in no way is intended to be a criticism of the Officer's actions during the traffic stop and the events that occurred immediately subsequent thereto. In fact, Officer O'Connor did all that was required of him under the circumstances. Martinovic, 881 A.2d at 35 (noting that while the implied consent law imposes a duty on the police officer to apprise a motorist of the consequences of chemical test refusal, the officer has no duty to make certain that the motorist understands said consequences). Likewise, we recognize the dictate of our courts that it is not an officer's duty to enlist the assistance of an interpreter to make sure a motorist understands implied consent warnings (O'Connell Warnings), nor is it feasible to do so. Id. (citing Commonwealth v. Robinson, 834 A.2d 1160, 1164 (Pa. Super. Ct. 2003)). However, this Court is bound by the concomitant principle that a refusal of chemical testing must be knowing and conscious in order for a license suspension to be upheld. There being no scintilla of evidence to infer that Petitioner understood the consequences of his chemical test refusal in light of his complete inability to understand the English language, this Court finds that it is bound to rescind Petitioner's license suspension regardless of the appropriateness of Officer O'Connor's actions surrounding the traffic stop and attempted blood draw.

⁵ In issuing this Order, we merely rescind the license suspension that was imposed upon Petitioner pursuant to 75 Pa.C.S. § 1547(b)(1)(i) for his failure to consent to chemical testing. Ancillary license suspensions (if any) that were imposed upon Petitioner in connection with any criminal DUI dockets shall remain in effect and shall not be impacted by this Order.

FIRST PUBLICATION

ESTATE NOTICES

ESTATE OF JOSEPH M. KLEHA, late of 378 Barnett Circle, Harrisburg, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Personal Representative: Joseph D. Kleha c/o R. Nicholas Nanovic, Esquire, Gross McGinley, LLP, 33 South 7th Street, PO Box 4060, Allentown, PA 18105-4060

Attorney: R. Nicholas Nanovic, Esquire, Gross McGinley, LLP, 33 South 7th Street, PO Box 4060, Allentown, PA 18105-4060 a17-m1

ESTATE OF A. ELIZABETH BINNER, late of Derry Township, Dauphin County, PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Personal Representative: Theodore J. Sopko, c/o Megan C. Huff, Esquire, Nestico Druby, P.C., 1135 East Chocolate Avenue, Suite 300, Hershey, PA 17033 a17-m1

ESTATE OF THERESA ANN HARRIS, late of Swatara Township, Dauphin County, PA (died: 11/20/2019)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Administratrix: She'Quiera Harris, 8301 President's Drive, Apt. 233, Hummelstown, PA 17036

Attorney: Robin J. Marzella, Esquire, R.J. Marzella & Associates, 3513 North Front Street Harrisburg, PA 17110 a17-m1

ESTATE OF ANTHONY J. MAY a/k/a ANTHONY JOSEPH MAY, late of Harrisburg, Dauphin County, PA (died: January 20, 2020)

The Register of Wills has granted Letters on

the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Elizabeth L. Payne, 2955 Green Street, Harrisburg, PA 17110

Attorney: Linda C Plum, Attorney at Law, 4617 Walnut Street, McKeesport, PA 15132

a17-m1

SECOND PUBLICATION

ESTATE OF ELIZABETH J. NOON, a/k/a ELIZABETH JANE NOON, late of the City of Harrisburg, Dauphin County, PA (died: December 29, 2019)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Carol Lynn Noon

Attorney: Timothy M. Finnerty, Esq., McNeese Wallace & Nurick LLC, 100 Pine Street, P. O. Box 1166, Harrisburg, PA 17108-1166, (717) 232-8000 a10-24

ESTATE OF JAMES WILLARD LINDBERG, late of the County of Dauphin and Commonwealth of PA

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: Joshua A. Reed, 4303 Derry Street Harrisburg, PA 17111 a10-24

ESTATE OF JOSEPH E. REAGAN, late of Paxtang Township, Dauphin County, PA (died: February 9, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Administratrix: Cecilia Johnson

Attorney: Aviv S. Bliwas, Esq., Family First Law, LLC, 3514 Trindle Road, 2nd Floor, Camp Hill, PA 17011 a10-24

ESTATE OF DORIS V. CLAY late of the Borough of Lykens, County of Dauphin, PA (died: January 23, 2020).

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Donna L. Donaldson, 4072 Rufus King Court, Enola, Pennsylvania 17025

Attorney: Joseph D. Kerwin, Kerwin & Kerwin, LLP, 4245 State Route 209, Elizabethtown, Pennsylvania 17023. a10-24

ESTATE OF BARBARA K. SCHINDLER, late of Lower Paxton, Dauphin County, PA (died: August 27, 2019)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: Michael Schindler, 203 Francis L Cadden Parkway, Apt. T2, Harrisburg, PA 17111

Attorney: Michael C. Giordano, Attorney & Counselor at Law, 221 W. Main Street, Mechanicsburg, PA 17055 a10-24

THIRD PUBLICATION

ESTATE OF KAREN ANN KARAPANDZA TOWNSEND, late of City of Harrisburg, Dauphin County, PA (died: February 15, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executrix: Kristine Ann Townsend, 708 Yankee Lane, Harrisburg, PA 17112

Attorney: KRISTEN SNYDER, 1215 Manor Drive, Ste. 202, Mechanicsburg, PA 17055

a3-17

ESTATE OF MICHELLE FAULL MARTZ, a/k/a MICHELLE F. MARTZ, a/k/a MICHELLE MARTZ, late of Lower Paxton Township, Dauphin County, Pennsylvania, (died: February 26, 2020)

The Register of Wills has granted Letters on

the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Administratrix: Cambria Krovic, 6161 Somerset Street, Harrisburg, PA 17111

Attorney: Kara M. Eshenaur, Mette, Evans & Woodside, 3401 N. Front Street, Harrisburg PA 17110; Telephone: (717) 232-5000 a3-17

ESTATE OF HENDRIK JONGSMA late of Susquehanna Township, Dauphin County, Pennsylvania, (died: March 10, 2020)

The Register of Wills has granted Letters on the Estate of the Decedent. Notice is hereby given to request all persons having claims against the decedent to make known the same to the Executor or attorney, and all persons indebted to the decedent to make payment to the Executor without delay.

Executor: Ronald Jongsma, 2001 N. Union Street, Spencerport, NY 14559

Attorney: Mark D. Hipp, Mette, Evans & Woodside, 3401 N. Front Street, Harrisburg PA 17110; Telephone: (717) 232-5000 a3-17

FIRST PUBLICATION

CORPORATE NOTICES

NOTICE IS HEREBY GIVEN by, **CUH2A, Architects Engineers Planners, P.C.**, a Pennsylvania business corporation, that said corporation is winding up its affairs in the manner prescribed by section 1975 of the Business Corporation Law of 1988, so that its corporate existence shall cease upon the filing of Articles of Dissolution on 3/17/20, in the Department of State of the Commonwealth of Pennsylvania. a17

NOTICE IS HEREBY GIVEN **Neotech Solutions, Inc.**, a foreign corporation formed under the laws of the State of Florida where its principal office is located at 22929 E. Commercial Blvd, #506, Ft. Lauderdale, FL 33308 will register to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, 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. a17

NOTICE IS HEREBY GIVEN that **Marine Layer, Inc.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located 1572 California St, San Francisco, CA 94109, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 3/17/20, 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. a17

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 3/23/2020 under the Domestic Business Corporation Law, for **Delaware Charter Guarantee & Trust Company**, and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. a17

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 3/23/2020 under the Domestic Business Corporation Law, for **Principal Global Investors Trust Company**, and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. a17

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 3/23/2020 under the Domestic Business Corporation Law, for **Advanced Electronic Services, Inc.**, and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. a17

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 3/20/2020 under the Domestic Business Corporation Law, for **Natures Trading Group, Inc.**, and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. a17

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 3/19/2020 under the Domestic Business Corporation Law, for **GN**

Transportation Corp., and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. a17

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on or before 3/18/2020, with respect to a proposed nonprofit corporation, **Life for Relief and Development, Inc.**, which has been incorporated under the Nonprofit Corporation Law of 1988. The name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. a17

NOTICE IS HEREBY GIVEN that Articles of Incorporation have been filed with the Department of the Commonwealth of Pennsylvania on 3/18/2020 under the Domestic Business Corporation Law, for **Spectrum Asset Management, Inc.**, and the name and county of the commercial registered office provider is c/o Corporation Service Co., Dauphin County. a17

NOTICE IS HEREBY GIVEN THAT Articles of Incorporation were filed with and approved by the Department of State of the Commonwealth of Pennsylvania on the 21st day of January 2020, for the purpose of creating a business corporation which has been incorporated under the provisions of the Business Corporation Law of 1988. The name of the corporation is **TK Consulting Limited**. a17

NOTICE IS HEREBY GIVEN that **Orphazyme US, Inc.**, a foreign corporation formed under the laws of the State of Delaware and with its principal office located 275 Grove St, Ste 2-400, Auburndale, MA 02466, has registered on 3/17/20, to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, 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. a17

NOTICE IS HEREBY GIVEN **Compu-Fix, Inc.** with a current registered office provider in care of Cogency Global Inc. in Dauphin County does hereby give notice of its intention to dissolve from doing business in this Commonwealth. Any proceedings directly

affecting this company shall be sent to 920 Thompson Run Rd., West Mifflin, PA 15122. This shall serve as official notice to creditors and taxing authorities. a17

NOTICE IS HEREBY GIVEN that **Advantmed Provider Network, P.C.**, a foreign business corporation, has applied for a Statement of Registration to do business in the Commonwealth of Pennsylvania under the provisions of Chapter 4 of the Pennsylvania Association Transactions Act (15 Pa. C.S. § 6124). The corporation is incorporated under the laws of the State of California. The address of its principal office under the laws of said jurisdiction is 1751 E. Garry Ave., Santa Ana, CA 92705, and the name of its commercial registered office provider in Pennsylvania is Corporation Service Company. a17

MISCELLANEOUS NOTICES

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

NO. 2020-CV-03118-MF

CIVIL ACTION – LAW

**NOTICE OF ACTION
IN MORTGAGE FORECLOSURE**

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, NOT IN ITS
INDIVIDUAL OR BANKING CAPACITY,
BUT SOLELY AS TRUSTEE ON BEHALF
OF THE GREEN TREE MORTGAGE
LOAN TRUST 2005-HE1, PLAINTIFF
VS.
UNKNOWN HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS, FIRMS,
OR ASSOCIATIONS CLAIMING RIGHT,
TITLE OR INTEREST FROM OR UNDER
DRUCILLA WATTS, DECEASED,
DEFENDANT**

NOTICE

To: UNKNOWN HEIRS, SUCCESSORS,
ASSIGNS, AND ALL PERSONS, FIRMS, OR
ASSOCIATIONS CLAIMING RIGHT, TITLE
OR INTEREST FROM OR UNDER
DRUCILLA WATTS, DECEASED

You are hereby notified that on March 18,
2020, Plaintiff, WELLS FARGO BANK,

NATIONAL ASSOCIATION, NOT IN ITS
INDIVIDUAL OR BANKING CAPACITY,
BUT SOLELY AS TRUSTEE ON BEHALF
OF THE GREEN TREE MORTGAGE LOAN
TRUST 2005-HE1, 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. 2020-CV-03118-MF. Wherein
Plaintiff seeks to foreclose on the mortgage
secured on your property located at 320 SOUTH
15th STREET, HARRISBURG, PA 17104-3341
whereupon your property would be sold by the
Sheriff of DAUPHIN County.

You are hereby notified to plead to the above
referenced Complaint on or before 20 days from
the date of this publication or a Judgment will be
entered against you.

NOTICE

If you wish to defend, you must enter a written
appearance personally or by attorney and file
your defenses or objections in writing with the
court. You are warned that if you fail to do so
the case may proceed without you and a
judgment may be entered against you without
further notice for the relief requested by the
plaintiff. You may lose money or property or
other rights important to you.

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

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

DAUPHIN COUNTY
LAWYER REFERRAL SERVICE
213 NORTH FRONT STREET
HARRISBURG, PA 17101
Telephone: (717) 232-7536

a17

IN RE: DECLARATION OF JUDICIAL
EMERGENCY IN 12TH JUDICIAL DISTRICT
AND CLOSING OF COURTS TO THE
PUBLIC THROUGH APRIL 30, 2020

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

: AO 2020 CV 178 AO

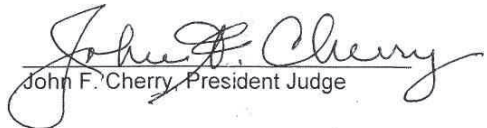
FOURTH SUPPLEMENTAL ADMINISTRATIVE ORDER

AND NOW THIS 8th day of April 2020, in order to safeguard the health and safety of court personnel, court users and members of the public due to the COVID-19 virus, in accordance with the Second Supplemental Order issued by the Pennsylvania Supreme Court on April 1, 2020, it is hereby ORDERED as follows:

The administrative orders entered on March 16, 2020, March 30, 2020, and April 1, 2020 are hereby supplemented as follows:

1. All Dauphin County Domestic Relations Office child support bench warrants are hereby suspended temporarily and shall not be enforced until the Dauphin County Courthouse and County Offices are open to the public.
2. All other provisions contained in the Administrative Order dated March 16, 2020, the Supplemental Administrative Order dated March 30, 2020 and the Third Supplemental Administrative Order dated April 1, 2020 that are not in conflict with the above shall remain in full force and effect.

BY THE COURT:


John F. Cherry, President Judge

APR 08 2020

I hereby certify that the foregoing is a
true and correct copy of the original
filed.


Matthew R. Kuyp
Clerk of Court

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BAR ASSOCIATION PAGE
Dauphin County Bar Association
213 North Front Street, Harrisburg, PA 17101-1493
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The Board of Directors of the Bar Association meets on the third Thursday of the month at the Bar Association headquarters. Anyone wishing to attend or have matters brought before the Board should contact the Bar Association office in advance.

REPORTING OF ERRORS IN ADVANCE SHEET

The Bench and Bar will contribute to the accuracy in matters of detail of the permanent edition of the Dauphin County Reporter by sending to the editor promptly, notice of all errors appearing in this advance sheet. Inasmuch as corrections are made on a continuous basis, there can be no assurance that corrections can be made later than thirty (30) days from the date of this issue but this should not discourage the submission of notice of errors after thirty (30) days since they will be handled in some way if at all possible. Please send such notice of errors to: Dauphin County Reporter, Dauphin County Bar Association, 213 North Front Street, Harrisburg, PA 17101-1493.

DAUPHIN COUNTY COURT SECTION
Opinions Not Yet Reported

BAR ASSOCIATION PAGE
Dauphin County Bar Association
213 North Front Street, Harrisburg, PA 17101-1493
www.dcba-pa.org
Phone: (717) 232-7536 Fax: (717) 234-4582

PROJECT ATTORNEY: The YWCA Greater Harrisburg's Legal Center, a non-profit law office, is seeking a full-time attorney to provide legal assistance and representation in family law matters to victims of sexual violence, domestic violence, dating violence, stalking, and human trafficking. This position will function as part of a mobile response unit (MRU) providing services at multiple locations through Perry County. The ideal candidate will have at least 3 years family law experience and experience working with survivors/crime victims. Applicant must have a professional demeanor, excellent verbal and written communication skills, demonstrate an ability to function in a team environment, excellent time management skills, and be a self-starter requiring minimal supervision. Requires advanced-level computer skills, and the ability to multi-task. Must have valid driver's license, clean driving history, reliable transportation, proof of insurance, FBI, criminal, and child abuse clearances. Interested candidates should forward their resume along with a cover letter to mailto:resume@ywcahbg.org or fax to (717) 234-1779. a17-m1

ASSOCIATE ATTORNEY: The YWCA Greater Harrisburg's Legal Center, a non-profit law office, is seeking a full-time attorney to provide legal assistance and representation to victims of domestic violence, sexual assault, dating violence, stalking, and Human Trafficking in family law and immigration matters. This position will provide services at multiple locations throughout Dauphin County and Perry County and may be located at either our Harrisburg or Perry County office. The ideal candidate will have at least 3 years family law and immigration law experience and prior experience working with survivors/crime victims. Applicants must have a professional demeanor, excellent verbal and written communication skills, excellent time management skills, and be a self-starter requiring minimal supervision. Requires advanced-level computer skills and the ability to multi-task. Must have valid driver's license, clean driving history, reliable transportation, proof of insurance, FBI, criminal, and child abuse clearances. Interested candidates should forward their resume along with a cover letter to mailto:resume@ywcahbg.org or fax to (717) 234-1779. a17-m1

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The Honorable Thomas I. Vanaskie (Ret.)



- 24 years on the Federal bench (Third Circuit Court of Appeals and Middle District of Pennsylvania)
- Unmatched credentials and experience makes him uniquely qualified to assist parties resolve disputes with guidance that is informed, impartial, fair and objective
- Available to resolve disputes in business and commercial, class action and mass tort, employment, ERISA, insurance, antitrust, securities, intellectual property, civil rights and personal injury cases
- Serves as a Special Master in complex litigation and is highly experienced in the area of e-discovery and privilege review

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