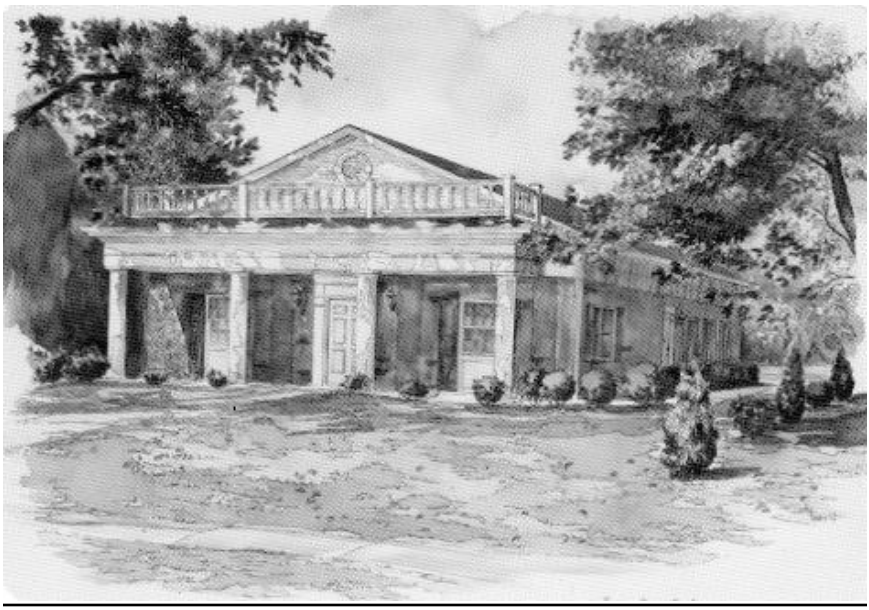
Beaver County Legal Journal

A Weekly Publication Containing Decisions of the 36th Judicial District of Pennsylvania.

Vol. 77 **August 26, 2023** **No. 34**



Established March 25, 1939

BEAVER COUNTY BAR ASSOCIATION

788 Turnpike Street, Beaver, Pennsylvania 15009

ANTHONY DEFELICE, individually and as Administrator of the Estate of SHIRLEY ANN DEFELICE, Deceased, Plaintiffs, vs. GUARDIAN ELDER CARE AT ALIQUIPPA, LLC D/B/A BEAVER HEALTHCARE AND REHABILITATION CENTER; Defendant. . . . . Page 86

BEAVER COUNTY LEGAL JOURNAL

BEAVER COUNTY BAR ASSOCIATION, PUBLISHER
788 Turnpike Street, Beaver, Pennsylvania 15009
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Suellen M. Verlihay, Editor
MerryBeth Sylvester, Publications/Subscriptions

DEADLINE FOR COPY

The Beaver County Legal Journal is published every Saturday.
Legal Notices must be received at 788 Turnpike Street, Beaver, PA 15009
by 12:00 Noon the preceding Tuesday.

The Beaver County Legal Journal
publishes all notices exactly as submitted.

SUBSCRIPTION

Yearly subscription . . . . . $ 60.00
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ANTHONY DEFELICE, individually and as Administrator of the Estate of SHIRLEY ANN DEFELICE, Deceased, Plaintiffs, vs. GUARDIAN ELDER CARE AT ALIQUIPPA, LLC D/B/A BEAVER HEALTHCARE AND REHABILITATION CENTER; Defendant. . . . . Page 86

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COURT CALENDAR

Criminal Judicial Pre-Trial Conferences [1st JPTC]	August 28
Criminal Judicial Pre-Trial Conferences (Track 4)	August 28
Judicial Juvenile Hearings	August 28
ARD Pleas, Sentence Court	August 30
Pre-Trial Conferences, Civil	August 30
Judicial Juvenile Hearings	August 31
PFA	September 1

NOTICES TO THE BAR

DEADLINE FOR COPY
Due to Vacation:
Deadline for all copy for the September 16, 2023 issue of the
Beaver County Legal Journal
will be **Wednesday, September 6, 2023 by Noon**
Thank you!

PBI CLE VIDEO SEMINARS IN BEAVER

The following PBI video seminars will be shown at the Beaver County Bar Association Building, 788 Turnpike Street, Beaver, PA. **Please register directly with PBI at 1-800-932-4637 or online at www.pbi.org**. For course descriptions & tuition, go to www.pbi.org. Visa and Mastercard are accepted. These seminars have been approved by the PA Supreme Court Continuing Legal Education Board for the stated hours of credit. Registrations received more than 3 days before the presentation qualify for an Early Registration discount.

***Commentators needed for these video seminars. Please call the Bar Association if you are interested in being the commentator for a particular seminar.*

"LIVE via SIMULCAST" PBI SEMINARS SCHEDULED AT BCBA

The following PBI Live via Simulcast seminars will be offered at the Beaver County Bar Association Building, 788 Turnpike Street, Beaver, PA. **Please register directly with PBI at 1-800-932-4637 or online at www.pbi.org**. For course descriptions & tuition, go to www.pbi.org. Visa and Mastercard are accepted. These seminars have been approved by the PA Supreme Court Continuing Legal Education Board for the stated hours of credit. Registrations received more than 3 days before the presentation qualify for an Early Registration discount.

Wednesday, August 30, 2023 **"Child and Spousal Support - Back to the Basics 2023"**
Registration: 8:30 a.m.
Live Groupcast Seminar: 9:00 a.m. - 12:15 p.m. 3 substantive 0 ethics

Friday, September 8, 2023 **"The Intersection of Medical Marijuana and Employment Law 2023"**
Registration: 8:30 a.m.
Live Groupcast Seminar: 9:00 a.m. - 11:00 a.m. 2 substantive 0 ethics

Thursday, September 14, 2023 **"Title Insurance 101 2023"**
Registration: 8:30 a.m.
Live Groupcase Seminar: 9:00 a.m. - 12:15 p.m. 3 substantive 0 ethics

Wednesday, October 25, 2023 **"Family Law Update 2023"**
Registration: 8:30 a.m.
Live Groupcast Seminar: 9:00 a.m. - 12:15 p.m. 3 substantive 0 ethics

Thursday, November 9, 2023 **"Sheriff's Sales in Pennsylvania 2023"**
Registration: 8:30 a.m.
Live Groupcast Seminar: 9:00 a.m. - 1:15 p.m. 4 substantive 0 ethics

Wednesday, December 13, 2023 **"Year in Review for the General Practitioner 2023"**
Registration: 8:30 a.m.
Live Groupcast Seminar: 9:00 a.m. - 12:20 p.m. 3 substantive 0 ethics

BEAVER COUNTY BAR ASSOCIATION
Continuing Legal Education Committee
Seminar Series:

The Beaver County Bar Association will present the following CLE seminars at the Beaver County Bar Association, 788 Turnpike Street, Beaver, PA. Each seminar has been or will be approved by the Pennsylvania Supreme Court Continuing Legal Education Board for one (1) hour of substantive or (1) hour of ethics credit. Please register with the Bar Association at 724-728-3769.

Registration . . . . . 11:30 a.m.
Seminar . . . . . 12:00 p.m. - 1:00 p.m.
Tuition/Seminar Only. . . . . Member - $10/Non-Member - $20
Tuition/Seminar and Lunch . . . . . Member - $20/Non-Member - $30

Monday, August 28, 2023

"Help for the Helper: *Compassion for the Lawyer Who Cares*"
Presenter: Brian Quinn, Esquire
1 ethics credit

Tuesday, October 10, 2023
9:00 a.m. - 1:00 p.m.
Registration: 8:30 a.m.

"Bridge the Gap"
Presenter: Tim Finn, Esquire
4 ethics credits

Newly admitted attorneys who are BCBA Members . . . .NO CHARGE
Newly admitted attorneys who are NOT BCBA Members. $25.00*
Non- newly admitted attorneys who are BCBA Members $25.00
Non-newly admitted attorneys that are NOT BCBA Members . .$50.00*

Thursday, October 12, 2023

"Gambling - The Secret Addiction: The Impact of Internet and Sports Betting in the Post-COVID World"
Presenter: Brian Quinn, Esquire
1 ethics credit

NEW LEGAL NOTICES

NOTICE OF ACTION IN MORTGAGE FORECLOSURE
IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO.: 2023-10774
WELLS FARGO BANK, N.A., Plaintiff,
vs.
Eric Johnson, as believed Heir and/or Administrator to the Estate of Susan M. Johnson; Unknown Heirs, and/or Administrators to the Estate of Susan M. Johnson, Defendants
TO: Unknown Heirs, and/or Administrators to the Estate of Susan M. Johnson, Unknown Heirs, and/or Administrators to the Estate of Susan M. Johnson
You are hereby notified that Plaintiff, Wells Fargo Bank, N.A., filed an Action in Mortgage Foreclosure endorsed with a Notice to Defend, in the Court of Common Pleas of Beaver County, Pennsylvania, docketed to No. 2023-10774, seeking to foreclose the mortgage secured by the real estate located at 2528 Beaver Street, AKA 2528 Beaver Avenue, Monaca, PA 15061.
A copy of the Action in Mortgage Foreclosure will be sent to you upon request to the Attorney for the Plaintiff, Manley Deas Kochalski LLC, P. O. Box 165028, Columbus, OH 43216-5028. Phone 614-220-5611.
You have been sued in court. If you wish to defend against the claims in this notice, you must take action within twenty (20) days after this publication, 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 LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
Lawyers Referral Services of the
Beaver County Bar Assn.
788 Turnpike Street
Beaver, PA 15009
(724) 728-4888
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aug. 26

ESTATE NOTICES

Letters Testamentary or of Administration having been granted in the following Estates of decedents domiciled in Beaver County, Pennsylvania, unless otherwise indicated, all persons having claims or demands against the estates of the said decedents are requested to make known the same and all persons indebted to the said decedents are requested to make payment without delay to the respective executors, administrators or counsel.

1st Publication

ROBERT C. BOORD, JR., late of Conway Borough. Sandra Elaine Southwick, Administratrix, 2109 Clayton Road, Beaver Falls, PA 15010.

DANIEL C. CONTENTA, SR., a/k/a DANIEL COLLIN CONTENTA, SR., late of East Rochester Borough. Daniel C. Contenta, Jr., Executor, c/o James R. Fenchel, II, Esquire, 472 Constitution Boulevard, New Brighton, PA 15066. James R. Fenchel, II, Atty.

DOROTHY W. DININNO, a/k/a DOROTHY W. DININNO, late of Ambridge Borough. Kim Barnes, Executrix, 882 Meadowcrest Way, Lebanon, TN 37090. Jessica Madden Briggs, Atty.

NANCY A. GOLDBACH, late of Monaca Boro. Ferdinand J. Goldbach, Executor, c/o A. Todd Wilson, Esquire, 82 Firethorn Road, Baden, PA 15005. A. Todd Wilson, Atty.

JOSEPH D. HEISER, late of Harmony Township. Hazel A. Sopko, Administratrix, c/o McHenry Law Firm, 650 Corporation Street, Suite 300, Beaver, PA 15009. Collin R. McHenry, Atty.

ROY F. HOUSEHOLDER, a/k/a ROY HOUSEHOLDER, late of the Borough of Beaver. Paul C. Householder, Executor, c/o Nalli, Elias & Associates, PC, 150 Pleasant Drive, Suite 101, Aliquippa, PA 15001. Michael W. Nalli, Atty.

WILLIAM O. PARKER, JR., a/k/a WILLIAM O. PARKER, late of the Borough of Conway. Pamela Brojer, Executrix, c/o Nalli, Elias & Associates, PC, 150 Pleasant Drive, Suite 101, Aliquippa, PA 15001. Ashley M. Elias, Atty.

ALANNA I. PLUTKO, late of Rochester. Michael G. Plutko, Executor, 6 Via Milano, Smock, PA 15480. Albert A. Torrence, Atty.

BARBARA R. SCHMIDT, a/k/a BARBARA R. SHAFFER, late of Hanover Township. Annette L. Shaffer, Administratrix, c/o Timothy M. Carland, Esquire, 1176 Third Street, Beaver, PA 15009. Timothy M. Carland, Atty.

ELEANOR M. TRESS, late of Chippewa Township. James F. Tress, II, Executor, c/o James J. Loll, Esquire, 1122 Third Street, Beaver, PA 15009. James J. Loll, Atty.

MARGARET M. TRITT, late of North Sewickley Township. Mary E. Hudson, Administratrix, 516 Orchard Avenue, Ellwood City, PA 16117. Jason A. Medure, Atty.

2nd Publication

DONALD J. DESPINES, late of the Borough of Baden. Donald J. Despines, Jr., Executor, 985 Connell Street, Mechanicsburg, PA 17055. Jessica Madden Briggs, Atty.

ALICE JOAN ECK, a/k/a JOAN ECK, late of Ohioville Borough. Nancy Barsic Tress, Executrix, c/o Alfred L. Steff, Jr., Esquire, 664 Fourth Street, Beaver, PA 15009. Alfred L. Steff, Jr., Atty.

ROSEMARIE FURDAK, late of Brighton Township. Francine Reger, Executrix, c/o James J. Loll, Esquire, 1122 Third Street, Beaver, PA 15009. James J. Loll, Atty.

ELLEN GAVITA, late of the Township of Hopewell. John Casey Prentice, Administrator, c/o Nalli, Elias & Associates, PC, 150 Pleasant Drive, Suite 101, Aliquippa, PA 15001. Michael W. Nalli, Atty, CELA.

SHERRYL L. HINES, late of New Brighton Borough. Joseph D. Hines, Executor, c/o Allen Andrascik, Esquire, 2777 Darlington Road, Suite 1010, Beaver Falls, PA 15010. Allen Andrascik, Atty.

MARGARET A. MILLER, a/k/a MARGARET MILLER, late of the Township of North Sewickley. Dennis W. Miller and Terry D. Miller, Co-Executors, c/o Douglass Law Office, PC, 1220 Seventh Avenue, Suite 2, Beaver Falls, PA 15010. Gregory K. Douglass, Atty.

RICHARD M. VANUS, SR., late of Brighton Township. Luanne W. Wallace, Executrix, c/o James J. Loll, Esquire, 1122 Third Street, Beaver, PA 15009. James J. Loll, Atty.

CAMERON WICKLINE, a/k/a CAMERON D. WICKLINE, late of the Township od Daugherty. Chong Wickline, Executor, c/o Douglass Law Office, P.C., 1220 Seventh Avenue, Suite 2, Beaver Falls, PA 15010. Gregory K. Douglass, Atty.

RICHARD YOPE, a/k/a RICHARD JOSEPH YOPE, late of Ambridge. Christopher R. Yope, Executor, 2717 Beaver Road, Ambridge, PA 15003. Kassie R. Gusarenko, Atty.

3rd Publication

NORA JEAN BARBER, late of the Township of Center. Phyllis Mae Chirichetti, Administratrix, c/o Chad F. McMillen, Esquire, 2131 Brodhead Road, Aliquippa, PA 15001. Chad F. McMillen, Atty.

EDWARD J. HEDZIK, late of the Borough of Economy. Steven M. Hedzik, Executor, c/o Steven Kocherzat, Esquire, 763 Merchant Street, Ambridge, PA 15003. Steven Kocherzat, Atty.

JANICE HODGKINSON, a/k/a JANICE L. HODGKINSON, late of Aliquippa. Robert Russell Hodgkinson and Jeffrey Wayne Hodgkinson, Co-Executors, 829 Clearview Road, Aliquippa, PA 15001. Glenn A. Smith, Atty.

MARY DONNA HOGUE, late of Darlington Township. Karen S. Conaway and Wendy K. Hutchinson, Co-Executrices, c/o James R. Fenchel, II, Esquire, 472 Constitution Boulevard, New Brighton, PA 15066. James R. Fenchel, II, Atty.

ROBERT E. JONES, late of Raccoon Township. Susan M. Bird, Executrix, c/o James R. Fenchel, II, Esquire, 472 Constitution Boulevard, New Brighton, PA 15066. James R. Fenchel, II, Atty.

RUTH ANN RADISH, late of Economy Borough. Sarah Lynn Hebert, Executor, c/o Robert J. Campbell, Esquire, 650 Corporation Street, Suite 201, Beaver, PA 15009. Robert J. Campbell, Atty.

ROBERT A. STENGER, late of Darlington. Gene P. Stenger, Executor, 1158 Pennsbury Boulevard, Pittsburgh, PA 15205. Philip D. Luciano, Atty.

RICHARD F. STUART, late of Darlington Township. Susan Annette Stuart, Executrix, 153 Shadow Ridge Drive, Pittsburgh, PA 15238. Sarah G. Hancher, Atty.

EDWARD J. TRN, late of Big Beaver Borough. Edward J. Trn, II, Executor, c/o James R. Fenchel, II, Esquire, 472 Constitution Boulevard, New Brighton, PA 15066. James R. Fenchel, II, Atty.

DOCKET ENTRIES

From The Office Of
The Prothonotary

It is understood that the accuracy of these entries is not guaranteed and no responsibility attaches for any errors or omissions in this report.

DIVORCES GRANTED

JORDAN RICHARD CERCONE from Mackenzie Lynn Cercone, 20028-23

SCOTT ANTHONY CERILLI from Rebecca Jo Cerilli, 20112-23

DAVID SHAFER from Jennifer Shafer, 20033-23

MICHAEL BLAIR from Anastacia Blair, 20322-21

BARRY HERR from Sherri L. Herr, 20080-23

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M.F. ZALINSKI to D.A. Hazlett, Harmony Twp. $35
B.K. HERR ux to S.L. Herr, No. Sew. Twp.
D.L. ASKEW ux to EG MacPhee Co., Aliq. $300
M.C. DITTMAN to LFG 2022, Roch. Twp.
K.A. CANNON to J.J. Traficante, Center Twp. $2,300
R.A. NOVAK ux to W. McCoy Jr. ux, New Sew. Twp. $2,250
K.E. FRYE to D.M. Divittis, Ohioville $2,200
M.W. DOUGLASS al to M.W. Douglass ux, Hope. Twp.
J. ROSSON ux to J.W. Plevel, Hanover Twp. $2,050

E.T. MAULDIN al to C.J. Pikulski, Baden $1,500
Z. MARSHALL to Z. Marshall al, Koppel
N. COURTNEY to Divot Acq., Greene Twp. $41.74
M.W. PRESTON JR. to M.D. Hicks al, Indep. Twp. $3,800
M.G. STUMPF al to K.W. Lawrence al, New Sew. Twp. $1,600
D.J. MILLER al to C. Dinsmore ux, So. Beaver Twp.
FOXLANE HOMES AT THE LANDINGS to A. Bonacci ux, Economy $6,779.76
K.C. GAREIS to K.L. Fedor al, Hanover Twp. $3,150
CJCKM LLC al to Bil-919 Penn, Monaca $3,250
A. BRANDUZZI al to S.R. Russo al, Hope. Twp. $1,700
M.A. TRUNICK al to D. Smith ux, Roch. $150
L. STRIFFOLINO al to P. Striffolino al, Conway
N.L. BING al to C.D. Howland, New Sew. Twp.
M.J. MACON JR. al to R.G. Bauer ux, New Sew. Twp. $6,000
R. URSITTI ux to Z.A. Thompson ux, Center Twp. $3,500
A.L. BLAIK al to E.P. Falwell, Brigh. Twp. $3,052
K.W. CAMERON ux to L. Horne, Aliq. $250
US BANK al to Hilton Land Devel., Ellwood City $120
R.G. JONES JR. ux to R.H. Smith ux, Center Twp. $3,500
R.D. MCCRACKEN ux to Reed Invest. Prop., Amb. $500
S.A. STAHL to Agarwal Investments, Amb. $900
S. LANCE to E.J. Lance al, No. Sew. Twp. $716
J.M. MULCAHY ux to J.M. Mulcahy ux, Chip. Twp.
L.L. KNIGHT al to J.A. Tobolski ux, Frank. Twp. $2,550
C.A. SOLTIS to D.A. Gentile al, Hope. Twp.
AMB. AREA SCHOOL DISTR. to J. St. George ux, Economy $1,000
D.L. STEIN ux to B.J. Kinkade ux, Economy $4,224.12
M.L. FIRKALY to M.L. Firkaly, Economy
C. DRIESENGA ux to D. Wood ux, So. Beaver Twp. $870
B.L. BALMER ux to R. Gallagher ux, Big Beaver $945
T.N. BARKER al to T.M. Holmes, Economy
G.I. GIGER ux to D.E. Corsi al, Greene Twp. $2,500
KINS TRUST al to J.H. Cunnard al, Economy $1,750
AGUDATH ACHIM CONGR. al to Jewish Cemetery and Burial Assn., B.F.
D. DURHAM to T.J. Abercrombie, Aliq. $125
C. MARATTA to J. Maratta, Hope. Twp.
K.L. FREDERICK to Cartus Fin. Corp., B.F. $1,750
S.A. TARASSOV to A. Grattan, Freedom
S.T. COX ux to M.R. Schriver ux, Chip. Twp. $3,350
S. BRADEN to Divot Acq., Greene Twp. $41.74
R.J. BLANCHARD to N.J. Vescio, Hope. Twp. $1,700
NVR INC. to C.A. Wood ux, Center Twp. $3,889.20
F.R. BARTOLO to L.R. Stotka ux, Brigh. Twp. $3,350
SFR3-020 to JD Invest. al, Aliq. $325.55
J.L. CREPP BY SHERIFF al to Huntington Na. Bank, B.F.
A.J. BONZO to J. Thomas, B.F. $530
I.M. PALKO to C.K. Mariotti, Pat. Heights $1,300
J.R. TORRENCE ux to J. Hottel al, Beaver $3,150
RES. CREDIT OPPOR. TRUST al to Z. Adams ux, Brigh. Twp. $2,799
D.P. KIELBOWICK ux to Kielbowick Trust al, Amb.
D.P. KIELBOWICK ux to Kielbowick Trust al, Amb.
D.P. KIELBOWICK ux to Kielbowich Trust al, Harmony Twp.
C. MARTUCCI to R.J. Jaber, West Mayfield $450
J. BARNES ux to N.L. Irwin, Roch. $1,460
D. CERVONE to Garnaco Prop. Holdings, Monaca $450
P. WISE to 3-Rivers Mech., Midland $2,290
T.J. PETTNER al to T.J. Pettner al, No. Sew. Twp.
B.R. RUE al to M.J. Schaub al, Frank. Twp. $1,799
L.R. STOTKA ux to E.P. Resto al, Center Twp. $3,550
HFP PROP. MANAG. al to Arc Human Serv. Inc., Roch. $4,500
WESTERN PA ANNUAL CONF. to Concord B.F. United Meth. Church, No. Sew. Twp.
CONCORD UNITED METH. CHURCH to Concord Church, No. Sew. Twp.
J. MARZANO to J.L. Kroll al, Pat. Twp. $1,800
M.D. ALAM al to G. Carry, Aliq. $1,036.17
HELI PROP. al to J.D. Narad Sr., Chip. Twp.
C.E. DAVIS to Racine Prop. Manag., Homewood $267.02
C.E. DAVIS to Racine Prop. Manag., Homewood $135.20
C.E. DAVIS to Racine Prop. Manag., Homewood $118.30
WILMINGTON SAV. FUND SOCIETY al to T. Parfitt ux, B.F. $315

M. SZUMANSKI to Pgh. Luxe, Aliq. $980
TRINITY VILLAS REAL ESTATE al to B.P. Smeltz, Ohioville $24.66
M.A. FRICK al to A.L. Williams al, Aliq. $1,650
H. CRAWFORD ESTATE al to B.C. House Buyers, White Twp. $500
S.L. KOWAL al to J.M. Kowal, Economy
US BANK TRUST al to M. Stimmel, Economy $1,089
D. LUCCHESI to M. Olander al, No. Sew. Twp. $3,150
C.L. SIMMONS III ux to D. Ropon, Ohioville $2,330
J. OTT to P. Newkirk, Amb. $875
BCW PROP. INVEST. al to T.P. Mitchell, N.B. $1,360
P. HUYNH al to T.G. McLaren al, Hope. Twp. $2,350
S. HEIZLER to B.W. Heizler Jr., Hanover Twp.
C.J. THOMAS al to C.J. Thomas, Aliq.
B. LANGER SR. al to B. Conway al, N.B. $350
W. PA ANNUAL CONF. OF THE UNITED METH. CHURCH to Baden United Meth. Church, Baden
H. WAXLER to A.J. Cipolla ux, Roch. Twp. $1,300
D.E. AULT al to J.C. Johnson, B.F. $272
B.A. ROHRMANN to E.A. Rohrmann, Darl. Twp.
J.M. BERNARD to B.R. Brychell, Industry $890
ZOKAITES PROP. to NVR Inc., Center Twp. $795.68
E.M. KANTZ ESTATE al to S. Komer al, Economy $2,110

MORTGAGES

D.L. KELOSKY ux to Dollar Bank, Frank. Twp. $665,200
M. VALENTIN to Citizens Bank, Chip. Twp. $68,700
L. JOHNSON JR. al to First Na. Bank of PA, Hope. Twp. $120,378.50
J.L. BORCHERT al to Allegent Comm. FCU, Hope. Twp. $57,600
J.D. REID ux to West-Aircomm FCU, Brigh. Twp. $25,000
J.L. FEEZLE ux to Huntington Na. Bank, Darl. Twp. $60,000
LIME ROCK RES. IV-A al to Bank of America, Frankfort Springs $800,000,000
C.R. BIASUCCI to West-Aircomm FCU, Brigh. Twp. $30,250
LIME ROCK RES. IV-C al to D.B. Pinzon al, Frankfort Springs $800,000,000
J.J. TRAFICANTE to United Wholesale Mtg., Center Twp. $225,834
A. MCCOY al to Provident Funding Assoc., New Sew. Twp. $202,500
D.M. DIVITTIS to Mtg. Electr. Reg. Systems, Ohioville $152,000
J.W. PLEVEL to Howard Hanna Mtg. Serv., Hanover Twp. $174,250
R. KIRKLAND al to Citizens Bank, Aliq. $20,000
C.J. PIKULSKI to USA, Baden $157,200
F.X. DELUCEY al to A&S FCU, Hope. Twp. $45,000
T.W. PELUSO ux to Brentwood Bank, Pat. Twp. $10,000
M.A. MATHEWS al to Holland Mtg. Advisors, Indep. Twp. $368,600
K.W. LAWRENCE al to Farmers B&S Bank, New Sew. Twp. $132,000
S.R. RUBINO to Brentwood Bank, Roch. $50,000
L.M. GREEN al to New Alliance FCU, Amb. $10,000
GARNACO PROP. HOLDINGS to New Keys Trust, Amb. $60,500
B.F. COONEY ux to First Cmwlth. Bank, N.B. $329,300
M.J. PASWELL to First Na. Bank of PA, So. Beaver Twp. $64,000
D.C. ANDREWS ux to First Choice FCU, Chip. Twp. $50,000
BIL-919 PENN to Pazzanita Prop., Monaca $325,000
S.R. RUSSO al to Guaranteed Rate Inc., Hope. Twp. $161,500
J.D. ARDELLITZ JR. to R-S Bellco FCU, N.B. $43,370.15
C.R. MATTHEWS al to R-S Bellco FCU, Monaca $30,273.55
ST. ESPRIT HOLDING GROUP al to Nextier Bank, B.F. $50,000
S.J. SPRIGGS to Secr. of HUD, Center Twp. $34,954.42
O.P. THOMPSON al to Provident Funding Assoc., Center Twp. $332,500
E.P. FALWELL to Holland Mtg. Advisors, Brigh. Twp. $244,160
R.H. SMITH ux to Mtg. Research Cntr., Center Twp. $350,000
REED INVEST. PROP. to R.D. Lutz, Amb. $50,000
B.J. KINKADE al to Clearview FCU, Economy $337,929.60
J. BRIERLEY to Dollar Bank, Harmony Twp. $25,000
D. BREZNAI to Dollar Bank, Indep. Twp. $40,000
H.N. KRATZ al to River City Mtg., Frank. Twp. $195,360
R. SKABO al to Wesbanco Bank Inc., Daugh. Twp. $179,400
P.A. HALSTEAD ux to PNC Bank, Hanover Twp. $100,000
D.S. WATSON to First Na. Bank of PA, Baden $30,000

T.M. HOLMES to PNC Bank, Economy $144,000
D.E. CORSI al to West-Aircomm FCU, Greene Twp. $225,000
J.H. CUNNARD al to Howard Hanna Mtg. Serv., Economy $166,250
K.S. REESE ux to Huntington Na. Bank, Hope. Twp. $93,200
C.R. THORNE to Huntington Na. Bank, Chip. Twp. $136,500
M.R. SCHRIVER al to United Wholesale Mtg., Chip. Twp. $301,500
C.J. LOWRY to Mtg. Electr. Reg. Systems, Economy $50,000
M.O. MILLER al to Irent LLC, White Twp. $50,930.54
N.J. VESCIO to JLB Corp., Hope. Twp. $161,500
C.A. WOOD ux to NVR Mtg. Fin. Inc., Center Twp. $225,000
R.C. CARTER to Freedom United FCU, Pat. Twp. $35,000
R.L. HOGUE JR. to Freedom United FCU, Brigh. Twp. $115,862.22
J. THOMAS to C.L. Wagner, B.F. $52,000
E.L. HEASLEY JR. to Secr. of HUD, Conway $3,468.91
G.L. TROY to Citizens Bank, Harmony Twp. $42,800
R.P. WILSON to Citizens Bank, Darl. Twp. $59,000
C.K. MARIOTTI to Rocket Mtg., Pat. Heights $126,100
R. SCHRECENGOST ux to PNC Bank, Big Beaver $16,300
K. RAPE al to Mtg. Electr. Reg. Systems, Chip. Twp. $166,000
M. MADEYA al to Howard Hanna Mtg. Serv., Beaver $299,250
D.R. RIDGLEY JR. al to Wesbanco Bank Inc., Marion Twp. $300,000
J.E. STONE JR. to Secr. of HUD, Darl. Twp. $11,965.36
H. ADAMS al to Mtg. Electr. Reg. Systems, Brigh. Twp. $285,917
M.M. DAVIS ux to Farmers B&S Bank, Ohioville $300,000
N.L. IRWIN to Liberty FCU, Roch. $71,000
GARNACO PROP. HOLDINGS to Dennis Slavin Sep-3038031 al, Monaca $78,000
F. BOWEN SR. al to C.A. Chis, Midland $179,000
A.M. TIHANOVICH to Clearview FCU, Chip. Twp. $68,000
L.A. SMITH al to Clearview FCU, Hope. Twp. $75,000
M.J. SCHAUB al to Citizens Bank, Frank. Twp. $170,900
S.J. KRUT al to Clearview FCU, Darl. Twp. $20,000
NAZARIOS al to Navy FCU, Center Twp. $366,715
R.B. CRAIG ux to RS Bellco FCU, N.B. $75,000
A.M. TAYLOR al to Mtg. Electr. Reg. Systems, B.F. $127,085
J.P. WHITE ux to R-S Bellco FCU, N.B. $17,270.15
J.L. KROLL al to Union Home Mtg. Corp., Pat. Twp. $176,739
A.R. GOLLETTI al to Wesbanco Bank Inc., Brigh. Twp. $100,000
K. CRAWFORD al to Citizens Bank, So. Beaver Twp. $220,000
N.D. FIGUREL ux to Northwest Bank, Ellwood City $45,400
J. AYOTTE al to Huntington Na. Bank, Roch. Twp. $95,000
PGH. LUXE to RFLF 7, Aliq. $96,998
S.L. HAMNER al to Mtg. Electr. Reg. Systems, N.B. $131,054
J.M. BEHUN ux to PNC Bank, No. Sew. Twp. $42,000
T.R. MARAVICH to First Na. Bank of PA, Conway $50,000
B.E. SEEGER al to Huntington Na. Bank, No. Sew. Twp. $111,000
B.P. SMELTZ to Trinity Villas Real Estate, Ohioville $342,000
A.L. WILLIAMS al to Mtg. Electr. Reg. Systems, Aliq. $162,011
B.C. HOUSE BUYERS al to Woodland Rlty. Group, White Twp. $82,500
V.A. PANUCCI JR. ux to Citizens Bank, Economy $312,000
PANTARELLI HOMES INC. to V. Pantarelli, Big Beaver $40,000
M. DICICCO al to Victorian Fin., No. Sew. Twp. $299,250
D. ROPON to Mtg. Electr. Reg. Systems, Ohioville $228,779
P. NEWKIRK to Citizens Bank, Amb. $63,875
C. CORRADI to Victorian Fin., B.F. $42,400
T.P. MITCHELL to Bay Equity, N.B. $137,373
W. MCLAREN ux to Bay Equity, Hope. Twp. $223,250
J.S. SCHOENEWEIS ux to West-Aircomm FCU, Pat. Twp. $120,000
N.L. HOLIDAY al to Clearview FCU, Chip. Twp. $50,000
R.J. VENNERI SR. ux to Citizens Bank, Economy $109,500
N.L. RIEG al to First Cmwlth. Bank, Darl. Twp. $242,000
C.D. CIPOLLA al to Mtg. Electr. Reg. Systems, Roch. Twp. $40,700
E.A. ROHRMANN to United Wholesale Mtg., Darl. Twp. $158,000
S. KOMER al to Movement Mtg., Economy $200,450

ANTHONY DEFELICE, individually and as Administrator of the Estate of SHIRLEY ANN DEFELICE, Deceased, Plaintiffs,
vs.
GUARDIAN ELDER CARE AT ALIQUIPPA, LLC D/B/A BEAVER HEALTHCARE AND REHABILITATION CENTER; Defendant.

ANTHONY DEFELICE, individually and as Administrator of the Estate of SHIRLEY ANN DEFELICE, Deceased, Plaintiffs, vs. GUARDIAN ELDER CARE AT ALIQUIPPA, LLC D/B/A BEAVER HEALTHCARE AND REHABILITATION CENTER; Defendant. No. 10866 of 2022. In the Court of Common Pleas of Beaver County, Pennsylvania. Civil Division - Law. Filed July 18, 2023 by Judge Laura J. Tocci.

Attorney for Plaintiff: Robert F. Daley, Esquire

Attorney for Defendant: Sean Bollman, Esquire

TOCCI, J. July 18, 2023

MEMORANDUM OPINION

INTRODUCTION

This is a professional nursing home negligence claim filed by plaintiff, Anthony DeFelice (hereinafter "Plaintiffs" or "DeFelice"), against defendant Guardian Elder Care at Aliquippa, LLC d/b/a Beaver Healthcare and Rehabilitation Center (hereinafter "Defendant"). The claim was initiated by the filing of a Writ of Summons on July 18, 2022 and subsequently the filing of a Complaint on March 3, 2023. Defendant thereafter filed preliminary objections requesting the Court to dismiss Plaintiffs' Complaint with prejudice. For the reasons set forth below, the Court will deny the preliminary objections.

LEGAL ANALYSIS

As stated, this is a professional nursing home negligence claim. The main issue in the preliminary objections raised is whether this case should be dismissed because Defendant is immune from liability pursuant to the Public Readiness and Emergency Preparedness Act (hereinafter the "PREP Act").[1] Defendant also alleges that this Court lacks subject matter jurisdiction pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(1), (2), (3), and (4) for any claims concerning "willful conduct."[2] Lastly, Defendant argues that Plaintiffs' claims for punitive damages should be dismissed pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(2), (3), and (4).[3]

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[1] See Def.'s Br. p. 2 (citing 42 U.S.C.A. §§ 247d-6d, 247d-6e; Pa.R.C.P. 1028(a)(1); Pa.R.C.P. 1028(a)(4)).
[2] Id. at 2.
[3] Id.

ANTHONY DEFELICE, individually and as Administrator of the Estate of SHIRLEY ANN DEFELICE, Deceased, Plaintiffs, vs. GUARDIAN ELDER CARE AT ALIQUIPPA, LLC D/B/A BEAVER HEALTHCARE AND REHABILITATION CENTER; Defendant.

A. The PREP Act

In the present case, after reviewing the Declaration and its relevant amendments and Advisory Opinions, as well as the relevant case law on the matter, the Court finds that Plaintiffs' claims are not covered by the PREP Act, and therefore, Defendant is not immune from liability.

The PREP Act allows certain parties to invoke immunity with regards to specific situations:

> Subject to the other provisions of this section, a covered person shall be immune from suit and liability under Federal and State law with respect to all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure if a declaration under subsection (b) has been issued with respect to such countermeasure.[4]

The party must also show that "the countermeasure was administered or used during the effective period of the declaration that was issued under subsection (b) with respect to the countermeasure."[5]

While Plaintiffs concede that Defendant is a "covered person" under the PREP Act and that Plaintiffs suffered a "loss" under the Act, Plaintiffs aver that the "loss" does not have a "causal relationship with the administration or use of a covered countermeasure."[6] This Court agrees.

> The term "qualified countermeasure" means a drug ... biological product ... or device ... that the Secretary determines to be a priority – [1] to ... prevent ... any biological agent (including organisms that cause an infectious disease) ... that may cause a public health emergency affecting national security ...". 42 U.S.C.A. § 247d-6a(a)(2)(A). The term "infectious disease" means a disease potentially caused by a pathogenic organism (including a ... virus ...) that is acquired by a person and that reproduces in that person.[7]

---

[4] See 42 U.S.C.A. § 247d-6d.
[5] Id.
[6] See Plaintiffs' Br. p. 8.
[7] Sherod v. Comprehensive Healthcare Mgmt. Servs., LLC, No. 20CV1198, 2020 WL 6140474, at *6 (W.D. Pa. Oct. 16, 2020).

Plaintiffs do not allege that Defendant's administration or use of such covered countermeasures injured Plaintiffs, but instead alleges Plaintiffs were injured by Defendant's failure to use proper responsive measures at all.[8] After reviewing the Complaint and relevant precedent on the instant matter, the Court finds that Plaintiffs' claims fall outside the scope of the PREP Act.

First, courts have held that similar claims to Plaintiffs' claims concerning the general negligence of the facility are not covered under the PREP Act.[9] For instance, in Est. of Maglioli v. Andover Subacute Rehab. Ctr. I, the United States District Court for the District of New Jersey analyzed this issue and found that "[t]he Act, as extended by the declarations, therefore covers the administration and distribution of products meant to curb the spread of COVID -19. It does not, by its plain terms, cover more generally the care received by patients in healthcare facilities."[10] Specifically, the Court held that Plaintiffs' claims that concern Defendant's negligence in failing to take countermeasures, which resulted in "the quality of care they received [falling] short of what a nursing home facility should have done to protect them from infection by the coronavirus," does not fall under the PREP Act.[11]

Second, to the extent Defendant utilizes the Fourth Amendment to the Declaration and the January 8, 2021 Advisory Opinion to support the argument that the non-use of covered countermeasures is included in the PREP Act, this Court is not persuaded. In their brief, Plaintiffs cite a plethora of cases where the courts have already rejected the argument of non-use within the PREP Act generally as well as specifically related to the Fourth Amendment and the Advisory Opinion.

Concerning the non-use of covered countermeasures generally within the scope of the PREP Act, courts have held that the non-use of covered countermeasures is not protected by the PREP Act. In Sherod v. Comp. Healthcare Management Services, the United States District Court of the Western District of Pennsylvania provides a thorough analysis of the legal precedent concerning the distinction between use and non-use with regards to the application of the PREP Act that this Court finds instructive:

---

[8] See Plaintiffs' Br. p. 13.

[9] The Court notes that while the cases cited throughout this Opinion are not binding on this Court, the Court finds the cases persuasive.

[10] Est. of Maglioli v. Andover Subacute Rehab. Ctr. I, 478 F. Supp. 3d 518, 531 (D.N.J. 2020), aff'd sub nom. Maglioli v. All. HC Holdings LLC, 16 F.4th 393 (3d Cir. 2021).

[11] Id. at 532.

As noted above, the PREP Act creates immunity for all claims of loss causally connected to the use of covered countermeasures. The allegations asserted by Plaintiff in her Complaint directly suggest that the decedent died because Brighton failed to use countermeasures. Plaintiff further alleges that Brighton's failure to utilize countermeasures caused the death of the decedent. Simply stated, Plaintiff's negligence, misrepresentation, wrongful death and survivor claims are not causally connected to Brighton's use of covered countermeasures. Thus, Plaintiff's allegations do not fall within the purview of the PREP Act.

Just like the plaintiffs in *Jackson,* Plaintiff, here, alleges decedent died of COVID-19 because Defendants failed to take preventative measures and failed to utilize covered countermeasures to "stop the entry and spread of COVID-19 within the facility." 2020 WL 4815099, at *6. Defendants argument suggests that its failure to provide (and/or require its workers to use) adequate protection/countermeasures, invokes the PREP Act, removes this case to federal court, and ultimately renders Brighton immune from suit. This Court finds that because Plaintiff's Complaint alleges that Brighton failed to provide decedent with any protection/ countermeasures, Plaintiff's claims fall outside the purview of the PREP Act which purports to provide immunity to facilities like Brighton when a claim is brought against them for the countermeasures the facility actually utilized.

This Court is not alone in its interpretation of the PREP Act. In addition to *Jackson*, *supra*, the United States District Court for the District of New Jersey also determined that the PREP Act was "designed to protect those who employ countermeasures, not those who decline to employ them." *See*, *Estate of Maglioi v. Andover Subacute Rehab. Ctr.,* —— F.Supp.3d —— (D.N.J. 2020), 2020 WL 4671091, at *9 (D.N.J. August 12, 2020) ("an interpretation of the PREP Act is consistent with guidance from the Secretary of HHS, who declared that the Act precludes, for example, liability claims alleging negligence by a manufacturer in creating a vaccine, or negligence by a health care provider in prescribing the wrong dose, absent willful misconduct.") (internal citations omitted); *see also, Casablanca v. Mount Sinai Med.Ctr.,* 2014 WL 1043521 at *1 (N.Y. Sup. 2014) (While

> evaluating the PREP Act in the context of a hospital failing to administer a vaccine for the H1N1 flu to a patient who later contracted and died from the H1N1 flu, the court noted that the hospital's immunity was limited to claims resulting from the administration or use of a covered countermeasure and that "[n]othing is spoken of regarding a decision not to use the vaccine or of a failure to use it.").
>
> This Court concurs with these decisions' and their conclusions: the PREP Act applies to potentially immunize certain "covered persons" from their actions taken – not from their inactions – to prevent the spread of [COVID-19].[12]

Furthermore, as the Plaintiffs note in their brief, courts have specifically declined to adopt the Fourth Amendment's and the Advisory Opinion's interpretation that the PREP Act includes the non-use of covered countermeasures. For instance, in Testa v. Broomall Operating Company, L.P., the United States District Court of the Eastern District of Pennsylvania provides a list of several courts that have already rejected this broad interpretation:

> Broomall argues we should reject this line of case law and instead rely upon an Advisory Opinion issued by the Department of Health and Human Services Office of General Counsel. (Doc. No. 36-1 at 20.) The Advisory Opinion suggests the PREP Act provides immunity for non-use: "[D]ecision-making that leads to the non-use of covered countermeasures by certain individuals is the grist of program planning, and is expressly covered by the PREP Act." Dep't of Health & Human Servs., *Advisory Opinion 21-01 on the Public Readiness and Emergency Preparedness Act Scope of Preemption Provision*, at 4 (Jan. 8, 2021). We decline to adopt the Advisory Opinion's expansive interpretation of PREP Act immunity. It is inconsistent with the plain language of the PREP Act; agency advisory opinions are not binding on this Court; and a plethora of other courts have likewise rejected its expansive interpretation. *See, e.g.,*

[12]Sherod v. Comprehensive Healthcare Mgmt. Servs., LLC, No. 20CV1198, 2020 WL 6140474, at *7-8 (W.D. Pa. Oct. 16, 2020).

> *Beaty*, 2021 WL 4026373, at *2 (rejecting the defendant's invitation to follow the "HHS's advisory opinions and declarations, which purport to expand the PREP Act's scope"); *see also Jones v. Legacy Mgmt. Grp. of La. LLC*, CASE NO. 6:21-CV-00838, 2021 WL 3416993, at *3 (W.D. La. July 7, 2021) ("The opinion cites no supporting authority for its interpretation and explicitly states that it does not have the force or effect of law."); *Hatcher*, 515 F. Supp. 3d at 1161–62 ("Defendants also cite ... Advisory Opinion 21-01 to claim that non-use or non-administration of covered countermeasures may fall within the PREP Act's immunity provisions. The court is not convinced from this guidance that the PREP Act covers the failures described in the amended complaint....").
>
> This Court is persuaded by the approach of other courts in this Circuit and finds that the PREP Act provides immunity only for the *use* of covered countermeasures, not the *non-use.*[13]

As the Court held in Testa, this Court also finds the other cases persuasive and holds that the PREP Act does not apply to the non-use of covered countermeasures.[14]

Lastly, courts have held that where non-use is applicable to the PREP Act, it is limited to situations where one must prioritize certain covered countermeasures for some people but not others, and injuries result therefrom. In Estate of McCalebb v. AG Lynwood, LLC, the Court noted that "[t]he limitation on immunity for non-administration of a covered countermeasure thus depends on 'purposeful allocation' of scar[c]e resources."[15] As Plaintiffs correctly point out in their brief, the Court further noted:

> The gravamen of the Complaint is that Defendant was generally neglectful in operating the Facility. While Plaintiffs refer to the failure to provide adequate PPE (and training in its use), this allegation is one of 19 claims of negligence in a complaint that describes overall inattention rather than conscious decision-making about covered countermeasures while delivering care.[16]

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[13]Testa v. Broomall Operating Co., L.P., 622 F. Supp. 3d 4, 10–11 (E.D. Pa. 2022).

[14]It is important to note that both the Amendment and the Advisory Opinion are only persuasive authority for this Court to consider and are not binding on this Court.

[15]Est. of McCalebb v. AG Lynwood, LLC, No. 2:20-CV-09746-SB-PVC, 2021 WL 911951, at *5 (C.D. Cal. Mar. 1, 2021).

[16]See Plaintiffs' Br. p. 22 (citing Est. of McCalebb v. AG Lynwood, LLC, No. 2:20-CV-09746-SB-PVC, 2021 WL 911951, at *5 (C.D. Cal. Mar. 1, 2021)).

Here, nowhere in Plaintiffs' Complaint do they allege that there was a "purposeful allocation of scarce resources," which resulted in injuries to Ms. DeFelice.[17] Rather, Plaintiffs cite general allegations of negligence against Defendant in its failure to protect its residents, like Ms. DeFelice.[18] Accordingly, this Court finds that this limited scenario of the non-use of covered countermeasures, which is within the scope of the PREP Act, does not apply in the instant case.

B. "Willful Conduct"

Defendant argues that this Court lacks subject matter jurisdiction over any claims that may be interpreted as alleging willful conduct and must be dismissed pursuant to Pennsylvania Rules of Civil Procedure 1028(a)(1), (2), (3), and (4).[19] On the other hand, Plaintiffs claim that they are not alleging "willful misconduct" but instead use the term to prove punitive damages, and therefore, the allegations fall outside the scope of the PREP Act.[20] Pursuant to the PREP Act:

> Subject to subsection (f), the sole exception to the immunity from suit and liability of covered persons set forth in subsection (a) shall be for an exclusive Federal cause of action against a covered person for death or serious physical injury proximately caused by willful misconduct, as defined pursuant to subsection (c), by such covered person.[21]

Furthermore,

> The term "willful misconduct" denotes an act or omission that is taken – [1] intentionally to achieve a wrongful purpose; [2] knowingly without legal or factual justification; and [3] in disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.[22]

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[17] See generally Plaintiffs' Complaint.
[18] Id.
[19] See Def.'s Br. p. 2, 11-12.
[20] See Plaintiffs' Br. p. 27-28.
[21] Sherod v. Comprehensive Healthcare Mgmt. Servs., LLC, No. 20CV1198, 2020 WL 6140474, at *6 (W.D. Pa. Oct. 16, 2020) (citing 42 U.S.C.A. § 247d-6d(d)(1)).
[22] Id. (citing 42 U.S.C.A. § 247d-6d(c)(1)(a)).

ANTHONY DEFELICE, individually and as Administrator of the Estate of SHIRLEY ANN DEFELICE, Deceased, Plaintiffs, vs. GUARDIAN ELDER CARE AT ALIQUIPPA, LLC D/B/A BEAVER HEALTHCARE AND REHABILITATION CENTER; Defendant.

After reviewing the Complaint, this Court finds that Plaintiffs' Complaint lacks any detailed allegations that would prompt the specific "willful misconduct" claim as intended by the PREP Act.[23]

C. Punitive Damages

Defendant's preliminary objection, requesting the Court to dismiss any claims for punitive damages, is denied. The Court finds that Plaintiffs alleged sufficient facts with regards to punitive damages against Defendant for purposes of preliminary objections.[24]

TOCCI, J. July 18, 2023

ORDER

AND NOW, this 18th day of July, 2023, upon consideration of Defendant's preliminary objections requesting the Court to dismiss Plaintiffs' Complaint with prejudice, the Brief in Support of the same, Plaintiffs' Response and Brief in Opposition, and the arguments presented by counsel of both parties on July 5, 2023,

It is hereby ordered that Defendant's preliminary objections requesting the Court to dismiss Plaintiffs' Complaint with prejudice will be DENIED for the reasons stated in this Court's Memorandum Opinion filed this same date.

Defendant shall file its Answer within twenty (20) days from the date of this Order.

[23] See generally Plaintiffs' Complaint; see also Testa v. Broomall Operating Co., L.P., 622 F. Supp. 3d 4 (E.D. Pa. 2022) (holding "estate's claims did not constitute claims for willful misconduct and thus were not preempted by PREP Act").

[24] See generally Plaintiffs' Complaint.

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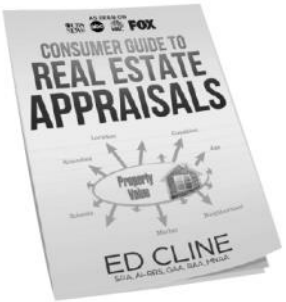

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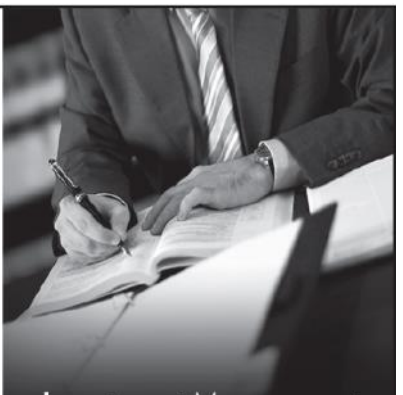

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