

York Legal Record

A Record of Cases Argued and Determined in the Various Courts of York County

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No. 38

CASES REPORTED

COMMONWEALTH OF PENNSYLVANIA VS. BRENDAN WARD

CP-67-CR-0002371-2015

DUI - Discovery Violation - Suppression - Video Evidence

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Dated Material Do Not Delay

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Commonwealth of Pennsylvania vs. Brendan Ward

CP-67-CR-0002371-2015

DUI - Discovery Violation - Suppression –Video Evidence

1. Defendant filed an omnibus pretrial motion arguing that that the stop of his vehicle was unlawful, and therefore, the evidence that flowed from that unlawful stop should be suppressed. The Defendant also argued, in the alternative, that if the stop was lawful, his statements should be suppressed because he was not Mirandized despite being in custody. Finally, the Defendant sought to compel the Commonwealth to turn over the dash-cam video from the night of the incident.
2. The Court concluded that the Defendant was under arrest at the time the Officer transported him to the DUI checkpoint, however, that the Officer did have probable cause to effectuate that arrest. The Court finally concluded that the Commonwealth committed a Brady violation, and prohibited the Officer from testifying at the Defendant's trial.

**In the Court of Common Pleas of York County, Pennsylvania,
Criminal Division; Commonwealth of Pennsylvania vs. Brendan
Ward; CP-67-CR-0002371-2015; DUI - Discovery Violation -
Suppression –Video Evidence**

APPEARANCES:

ALISON GLUNT, ESQUIRE
For the Commonwealth

JOSEPH N. GOTHIE, ESQUIRE
For the Defendant

**OPINION IN SUPPORT OF ORDER GRANTING, IN PART,
DEFENDANT'S OMNIBUS PRE-TRIAL MOTION**

The Defendant, Brendan Ward, was charged with Count 1, Driving Under the Influence of Alcohol or Controlled Substance¹; and Count 2, DUI: Highest Rate of Alcohol (BAC .16+) 2nd Offense.² On June 8, 2015,³ the Defendant, through counsel, filed an omnibus pre-trial motion. In that motion, the Defendant argued that the stop of his vehicle was unlawful, and therefore, the evidence that flowed from that unlawful stop should be suppressed. The Defendant also argued, in the alternative, that if the stop was lawful, his statements should be suppressed because he was not *Mirandized* despite being in custody. Finally, the Defendant sought to compel the Commonwealth to turn over the dash-cam video from the night of the incident. The Defendant filed another pre-trial motion on September 18, 2015, wherein he requested that this Court preclude Officer Reimers from testifying at trial.

Factual and Procedural History:

On March 17, 2015, Officer Joshua Reimers of Northern York County Regional Police Department was assisting Springettsbury Township Police with a DUI checkpoint. N.T. 10/2/2015 at 4-5. During that patrol, Officer Reimers observed a Toyota Corolla stop in the middle of the road, reverse, and then turn down another road. *Id.* at 7. At that time, Officer Reimers was able to see the car had an inoperable rear brake light as well as an inoperable front marker light. *Id.* at 7-8. Officer Reimers initiated a traffic stop at which point he observed the Defendant had bloodshot and glassy eyes along with slurred speech and an odor of alcoholic beverage emanating from his person. *Id.* at 8, 10.

Officer Reimers asked the Defendant to step out of his vehicle and if he would consent to the HGN test, and the Defendant agreed. N.T. 10/2/2015 at 10-11. Officer Reimers observed that the Defendant was unsteady and needed to brace himself while stepping out of the vehicle. *Id.* at 10. Officer Reimers held a pen approximately 6 inches from the Defendant's face and judged his response. *Id.* at 11-12. In Officer Reimers's opinion, the Defendant performed poorly on the test, so he made the decision to handcuff the Defendant and transport him to the DUI checkpoint for more field sobriety tests.⁴ *Id.* at 11.

Officer Jennifer Kennedy was the officer that conducted the field sobriety tests with the Defendant at the scene of the checkpoint. N.T. 10/2/2015

at 32. She indicated that the weather was chilly, but otherwise there were no adverse weather conditions. *Id.* at 33. Officer Kennedy asked the Defendant if he had any medical conditions that would affect his ability to perform the tests, and he replied that he did not. *Id.* at 35. Officer Kennedy administered the HGN test first, and she testified that the Defendant exhibited all 6 clues.⁵ *Id.* at 35-36. Next, the Defendant performed the walk and turn test. *Id.* at 36. He exhibited four of the eight clues of impairment. *Id.* at 37. Finally, the Defendant was asked to perform the one leg stand. *Id.* Officer Kennedy observed the Defendant had three of the four clues of impairment. *Id.* at 38.

Based on her observations and the Defendant's performance on the field sobriety tests, Officer Kennedy believed the Defendant was impaired to the point where he could not safely operate a motor vehicle. N.T. 10/2/2015 at 38-39. She arrested him and took him for a blood draw. *Id.* at 39. The Defendant was read his implied consent warnings and he agreed to submit to the blood draw. *Id.* The Defendant's BAC was 0.235%. *Id.* at 40.

Issues:

- I. When was the Defendant placed under arrest – at the time Officer Reimers transported him to the DUI checkpoint, or at the conclusion of Officer Kennedy's field sobriety testing? --At whatever point an arrest occurred, was there probable cause to arrest at that point?
- II. Should the Commonwealth be sanctioned under Brady v. Maryland for Officer Reimers's failure to preserve the dash-cam video after an express request for such by defense counsel?

Discussion:*Arrest:*

The Defendant argues that he was under arrest at the time Officer Reimers placed him in handcuffs, put him in the back of the patrol car, and transported him to the DUI checkpoint. The Commonwealth, on the other hand, argues that at this point the Defendant was merely subject to an investigative detention, and therefore, the Defendant was not under arrest.

Our appellate courts have determined there are three levels of police/citizen encounters:

‘The first of these is a “mere encounter” (or request for information) which need not be supported by any level of suspicion, but carries no official compulsion to stop or respond. The second, an “investigative detention” must be supported by reasonable suspicion; it subjects a suspect to a stop and period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.’

Commonwealth v. Lyles, 54 A.3d 76, 79 (2012) *aff'd*, 626 Pa. 343, 97 A.3d 298 (Pa. Super. Ct. 2014) (quoting *Commonwealth v. Phinn*, 761 A.2d 176, 181 (Pa. Super. Ct. 2000)).

The evidence clearly supports the stop made by the officer as being lawful. Officer Reimers testified that the rear brake light, as well as the front marker light, of the Defendant's vehicle were inoperable. These were Motor Vehicle Code violations which needed no further investigation and therefore, Officer Reimers had probable cause to stop the Defendant.

However, for the following reasons we agree with the Defendant that he was under arrest at the time Officer Reimers handcuffed him and transported him to the DUI checkpoint.

In order to assist us in determining whether the detention of the Defendant “became so coercive as to constitute the functional equivalent of a formal arrest,” we are permitted to consider the following factors:

the basis for the detention; the duration; the location; whether the suspect was transferred against [her] will, how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicions”; fact that defendant was focus of investigation is relevant for determination of whether defendant was in “custody” but does not require per se Miranda warnings.

Commonwealth v. Williams, 941 A.2d 14, 31 (Pa. Super. Ct. 2008). We will discuss each factor.

First, the Defendant was detained in order to confirm Officer Reimers's suspicion that the Defendant was intoxicated. N.T. 10/2/2015 at 13, 27. Second, Officer Reimers testified that the car ride to the DUI checkpoint took less than five minutes. *Id.* Third, the Defendant was detained in a residential area outside of the City of York. *Id.* at 13-14. In our opinion,

the fourth and fifth factors go hand in hand, so we will discuss them together. Officer Reimers testified that he placed the Defendant in handcuffs, and on cross-examination, he further indicated that the Defendant was not free to leave if he did not wish to be subjected to further testing. *Id.* at 13, 16. Furthermore, Officer Reimers took the Defendant's keys. *Id.* at 17. Sixth, Officer Reimers was in full uniform with his duty belt equipped with "handcuffs, firearm, extra magazines, pepper spray, and an expandable baton." *Id.* at 14. Although Officer Reimers did not remove any of those items, there was also another officer present. *Id.* at 14-15. Finally, Officer Reimers testified that he made the decision to handcuff the Defendant and transport him to the DUI checkpoint because it was not his jurisdiction and Springettsbury Township Police had requested they do any and all field sobriety testing. *Id.* at 11.

Despite the Commonwealth's argument that the Defendant was only subject to an investigative detention, we conclude that, based on the totality of the circumstances, the Defendant was under arrest at the time Officer Reimers placed him in handcuffs and transported him to the DUI checkpoint. Placed in the same situation, any reasonable person would not have felt that they were free to leave. Since Defendant's *Miranda* rights were not read at that time, anything Defendant said until such time as he was later read his rights would have to be excluded from evidence.

Was there probable cause to arrest?

The next question we must ask ourselves is whether Officer Reimers had the requisite probable cause to arrest the Defendant.

An officer needs probable cause in order to affect a constitutionally valid arrest. *Commonwealth v. Smith*, 979 A.2d 913, 916 (Pa. Super. Ct. 2009). Our courts have defined "probable cause" as follows:

The existence or non-existence of probable cause is determined by the totality of the circumstances. The totality of the circumstances test requires a Court to determine whether the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.

Id. at 916-917 (quoting *Commonwealth v. Dunlap*, 941 A.2d 671, 674-75 (Pa. 2007)).

Officer Reimers first noticed the Defendant's car, not for swerving, excessive speed, or erratic driving, but for turning around and driving away from the DUI checkpoint, an action which is not unlawful in itself. N.T. 10/2/2015 at 7. There could be many reasons for one to avoid a checkpoint, including that one believes he is under the influence, or that one simply wants to avoid the apparent traffic delay. There was no evidence that the Defendant knew he came upon a DUI checkpoint.

Upon approaching the Defendant's vehicle, Officer Reimers noted the Defendant had bloodshot/glassy eyes, slurred speech, and an odor of alcoholic beverage emanating from his person. *Id.* at 10. The Defendant also admitted to having five beers while playing pool. *Id.* However, on cross examination, Officer Reimers testified that he had no idea of the time frame in which the Defendant consumed alcohol, nor the size of the beers. *Id.* at 24. He also testified that when the Defendant turned around in the middle of the road, he did not endanger himself or anyone else. *Id.* at 18. Finally, the Defendant was non-confrontational and cooperative during his encounter with Officer Reimers. *Id.* at 24.

Based on those observations, Officer Reimers asked the Defendant to submit to one field sobriety test – the horizontal gaze nystagmus (HGN) test. N.T. 10/2/2015 at 11. According to Officer Reimers, the Defendant was unsteady while getting out of his vehicle and needed to use the car to brace himself. *Id.* at 10-11. Officer Reimers testified that he instructed the Defendant on how to perform the HGN test, and that he held the pen approximately 6 inches from the Defendant's face. *Id.* at 11-13. Officer Reimers opined that the Defendant had all six clues of impairment. *Id.* at 12.

The HGN test relies on "the automatic tracking mechanisms of the eyes [being] affected by alcohol." See generally Busloff, Stephanie E., *Can Your Eyes be Used Against You? The Use of the Horizontal Gaze Nystagmus Test in the Courtroom*, 84 J. CRIM. L. & CRIMINOLOGY 203, 203 (Spring 1993) (analyzing the pros and cons of the HGN testing methods and its reliability in everyday use). According to the research, "[a]lcohol slows down the eyes' ability to rapidly track objects and causes the eyes to oscillate, or 'jerk,' before they normally would in a sober person." *Id.* at 204. Because of the nature of the test, Pennsylvania courts, along with several other jurisdictions, have concluded that the results of the HGN test are scientific, and therefore, only admissible if the proper foundation

is laid. *Commonwealth v. Stringer*, 678 A.2d 1200, 1201-02 (Pa. Super. Ct. 1996). However, our appellate courts have held that we can consider the results of the HGN test in order to determine whether an officer had probable cause to arrest. *Commonwealth v. Weaver*, 76 A.3d 562, 567 (Pa. Super. Ct. 2013).

In the present case, on cross-examination, Officer Reimers admitted that he incorrectly administered the HGN test, and he further agreed with defense counsel that that would invalidate the results. N.T. 10/2/2015 at 23. Because the HGN test is scientific in nature and Officer Reimers admitted to incorrectly administering the test, we give the HGN results little weight in our analysis.

The other factors observed by Officer Reimers are as follows: the Defendant's admission to drinking, an odor of alcoholic beverage, bloodshot and glassy eyes, slurred speech, the Defendant's alleged act of bracing himself against his vehicle as he got out to perform the HGN test, and the results of the HGN test.⁶ *Id.* at 10-12. Aside from the light violation, the Defendant committed no other traffic infractions and his driving was normal. *Id.* at 20-21.

We conclude that, especially given Defendant's admission, Officer Reimers had probable cause to arrest the defendant.

Brady Violation:

Lastly, we must consider whether the Commonwealth has committed a violation under *Brady v. Maryland*, 373 U.S. 83 (1963) for its failure to preserve the dash-cam video from Officer Reimers's patrol car.

Our Supreme Court has held that,

in order to establish a *Brady* violation, a defendant must show that: (1) evidence was suppressed by the state, either willfully or inadvertently; (2) the evidence was favorable to the defendant, either because it was exculpatory or because it could have been used for impeachment; and (3) the evidence was material, in that its omission resulted in prejudice to the defendant.

Commonwealth v. Willis, 46 A.3d 648, 656 (Pa. 2012). This rule applies even if the Commonwealth's failure to disclose was neither intentional or in bad faith. *Commonwealth v. Santiago*, 822 A.2d 716, 731-32 (Pa. Super. Ct. 2003). Furthermore, the rule applies even to those pieces of evidence that are not in the possession of the attorney for the Commonwealth; the rule "extends to exculpatory evidence in the files of police agencies of the same government bringing the prosecution." *Commonwealth v. Burke*, 781 A.2d 1136, 1142 (Pa. 2001).

The Commonwealth concedes that the first factor of the *Brady* test has been proven since Officer Reimers testified that he simply did not preserve the dash-cam, even after it had been requested. See *Com. Mem.* 10/9/2015. The Commonwealth agrees with defense counsel that bad faith does not have to be shown; inadvertently failing to preserve the dash-cam is sufficient for the first factor.

The crux of the Commonwealth's argument is that the Defendant has failed to show that the dash cam video is favorable and material to the Defendant's position. The Commonwealth argues that the Defendant only argues that the dash-cam *could* reveal information that would be inconsistent with Officer Reimers's testimony. For the following reasons we disagree with the Commonwealth, and under the circumstances we conclude that we can presume the dash-cam is exculpatory.

We note the practical difficulty that one seeking to raise a *Brady* to demonstrate that the evidence is exculpatory or favorable to a defendant when the very evidence is, in fact, missing. In this case, we have a specific request made of the police to preserve the evidence, made within the time during which it could be preserved. Therefore, we conclude that we can presume the dash-cam is exculpatory because of Officer Reimers's failure to preserve the video after an explicit request. At the August 21, 2015, hearing, Officer Reimers was asked if he remembered defense counsel requesting the dash-cam video at the preliminary hearing. N.T. 8/21/2015 at 17-18. Officer Reimers indicated that he did not specifically remember, so defense counsel provided him with a page of the preliminary hearing transcript. *Id.* Officer Reimers acknowledged that defense counsel did ask him to preserve the dash-cam video at the preliminary hearing, which was held on April 14, 2015. *Id.* at 18. The following exchange then occurred:

Attorney Gothie: Did you preserve the video after that?

Officer Reimers: I was not currently on duty that day. I had

come in specifically for that hearing. I don't recall when I would have returned to duty to submit that form.

Attorney Gothie: Well, my question is, did you take any attempt – make any attempts to preserve that video after I asked you to do it?

Officer Reimers: I don't believe I did.

Attorney Gothie: And did you have any question at all about what I asked you to do when I said I will be asking you to preserve that video?

Officer Reimers: No.

Attorney Gothie: No doubt in your mind I wanted you to preserve it and save it for later use at trial, right?

Officer Reimers: I would assume, yes.

Attorney Gothie: And you will agree with me that the April 14th preliminary hearing was 27 days after the March 13 – strike that – the March 18 vehicle stop, correct?

Officer Reimers: That is correct.

Attorney Gothie: And you did not make any reports about this vehicle or MVR not working after your checkpoint shift?

Officer Reimers: I previously answered that, but yes.

Attorney Gothie: There were no reports about it failing, correct?

Officer Reimers: None that were made to me. If it – if you are specifically asking me if that specific camera failed, I was not aware of any failures. I was not made aware of any failures.

Attorney Gothie: And you did your pre-patrol check, right?

Officer Reimers: Yes.

Attorney Gothie: And you are not aware of any work orders related to that MVR subsequently, correct?

Officer Reimers: To be honest, we as officers don't handle those incidents. Those are handled by our supervisors.

Attorney Gothie: Understood.

Officer Reimers: I would not be aware of any specific camera that would have been taken in or out of service because of issues.

Attorney Gothie: And just one last question. Why didn't you take any steps to preserve that video even after I requested it when it was still available after 27 days?

Officer Reimers: I have no answer for that, sir.

the Defendant was also there. However, the Commonwealth seems to forget that it bears the burden of proving its case beyond a reasonable doubt at the trial. It is the Defendant's constitutional right not to take the stand and testify in his own defense, which is why having the dash-cam video is helpful to all involved; it is an unbiased observer.

Finally, we believe we can presume the dash-cam is exculpatory because Officer Reimers has provided conflicting testimony about what he observed on the night of the incident. Despite defense counsel specifically asking what factors led him to believe the Defendant was impaired, at the preliminary hearing Officer Reimers made no mention of the Defendant having to lean on his car to steady himself. See Def. Mot. 10/9/2015, Ex. A. The transcript indicates Officer Reimers paused to look at his report and then stated, "I noted in my report that Mr. Ward did have slurred speech while I was speaking to him." *Id.* When asked if there was anything else, Officer Reimers replied "Nothing else that I noted in my report, sir." *Id.* However, at the October 2nd hearing, Officer Reimers was adamant that he noted in his report the Defendant having to brace himself while getting out of his vehicle. N.T. 10/2/2015 at 10, 21-22.

We find Officer Reimers's conflicting testimony about his fact rather curious in light of the fact that on October 9, 2015, days after the October 2nd hearing, we received a Motion to Supplement Record from defense counsel. It appears Officer Reimers had written a police report on the night of the Defendant's arrest, but it was not turned over to either the attorney for the Commonwealth or defense counsel until October 8, 2015. Had the dash-cam been preserved it could have been used to either corroborate Officer Reimers's version of events or impeach them.

Since the Defendant has shown all three prongs of the *Brady* test, we must next decide to what extent we must sanction the Commonwealth for Officer Reimers's failure to preserve the dash-cam video.

Rule 573 of the Pennsylvania Rules of Criminal Procedure gives the trial court broad discretion in determining the proper remedy for a discovery violation. PA. R. CRIM. P. 573(E). Remedies range from an adverse inference jury instruction all the way to outright dismissal of the charges. However, dismissal of the charges should be reserved for only the most egregious cases. *Commonwealth v. Woodell*, 496 A.2d 1210, 1213 (Pa. Super. Ct. 1985). We note that in the Defendant's September 18th motion he suggests that we sanction the Commonwealth by prohibiting Officer Reimers from testifying at the Defendant's trial.

We agree with the Defendant that an adverse inference instruction to the jury would do little to remedy the situation. The testimony of Officer Reimers shows a blatant disregard for defense counsel's request to have the dash-cam preserved. Not only did Officer Reimers acknowledge that he completely understood defense counsel's request, but he offered absolutely no explanation as to why he did not preserve the dash-cam. As previously mentioned, this effectively forces the Defendant to testify in his own defense, which flies in the face of his constitutional rights. Therefore, we think the proper middle ground is to prohibit Officer Reimers from testifying at the Defendant's trial.

Conclusion:

For the abovementioned reasons, we hereby conclude that the Defendant was under arrest at the time Officer Reimers transported him to the DUI checkpoint. But, Officer Reimers did have probable cause to effectuate that arrest. We further conclude that the Commonwealth has committed a *Brady* violation, and we therefore prohibit Officer Reimers from testifying at the Defendant's trial.

BY THE COURT

Richard K. Renn, Judge, Judge

Date: October 26, 2015

Id. at 18-20.

Frankly, we disagree with the Commonwealth's argument that Officer Reimers simply forgot to put in the request to preserve the dash-cam video. The above exchange not only shows that Officer Reimers understood defense counsel's request, but also shows that Officer Reimers had no explanation for not submitting the request. Had he simply forgot, he could have said as much.

Second, because the dash-cam was not preserved there is no practical way for the Defendant to prove that it is exculpatory since he has not seen the video. We understand the Commonwealth's argument that Officer Reimers was not the only person present at the time this incident occurred;

FOOTNOTES

¹ 75 PA. C.S.A. § 3802(A)(1).

² 75 PA. C.S.A. § 3802(C).

³ THE DEFENDANT ALSO FILED AN OMNIBUS PRE-TRIAL MOTION ON SEPTEMBER 18, 2015.

⁴ OFFICER REIMERS TESTIFIED THAT HE DECIDED TO TRANSPORT THE DEFENDANT BACK TO THE DUI CHECKPOINT BECAUSE IT WAS NOT HIS JURISDICTION AND “SPRINGETTSBURY TOWNSHIP REQUESTED THAT ANY TESTING FOR FIELD SOBRIETY AND ANY ARRESTS WOULD TAKE PLACE BY A MEMBER OF THEIR DEPARTMENT.” N.T. 10/2/2015 AT 11.

⁵ THERE ARE A TOTAL OF 6 CLUES, THREE FOR EACH EYE: LACK OF SMOOTH PURSUIT, DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION, AND NYSTAGMUS PRIOR TO 45 DEGREES. N.T. 10/2/2015 AT 35.

⁶ THIS SEEMS TO BE A NEW FACTOR THAT OFFICER REIMERS NOTED FOR THE FIRST TIME AT PRE-TRIAL HEARING. AS STRENUOUSLY ARGUED BY DEFENSE COUNSEL, THIS FACT WAS NEVER MENTIONED AT THE DEFENDANT’S PRELIMINARY HEARING. WE FURTHER NOTE THAT THE OFFICER INDICATES THIS WAS INCLUDED IN HIS POLICE REPORT. THIS REPORT WAS NOT PROVIDED TO THE COMMONWEALTH OR DEFENSE COUNSEL UNTIL OCTOBER 8, 2015.

Attention members:

We support our military and our thoughts and prayers go with Judge Trebilcock as he heads to Afghanistan. Due to changes on the bench as a result of Judge Trebilcock's deployment, please note that Call of the Audits time will be changed to 11:00 am with the **exception January 6, 2016 at 9:00 am**. We regret any inconvenience caused by this change. See schedule below.

ORPHANS' COURT DIVISION

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March 16, 2016	April 13, 2016
April 20, 2016	May 18, 2016
May 18, 2016	June 15, 2016
July 6, 2016	August 3, 2016
August 10, 2016	September 7, 2016
September 14, 2016	October 12, 2016
October 19, 2016	November 16, 2016
December 7, 2016	January 4, 2017

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FIRST PUBLICATION

ESTATE OF KATHRYN L. GARRETT,
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Late of Spring Garden Twp., York County, PA.
Executrix: Dianne L. Frizzie, c/o 135 North
George Street, York, PA 17401
Attorney: Timothy Bupp, Esquire, CGA Law
Firm, PC, 135 North George Street, York,
PA 17401 12.23-3t

ESTATE OF MIRIAM E. GODFREY,
DECEASED

Late of York Twp., York County, PA.
Executrix: Isabel E. Rohrbaugh, c/o 135
North George Street, York, PA 17401
Attorney: Jeffrey L. Rehmyer II, Esquire,
CGA Law Firm, PC, 135 North George
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ESTATE OF JOANN E. HOFFMAN,
DECEASED

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Administrator: Bryan E. Hoffman, c/o Gettle
& Veltri, 13 East Market Street, York, PA
17401
Attorney: Jeffrey A. Gettle, Esquire, Gettle
& Veltri, 13 East Market Street, York, PA
17401 12.23-3t

ESTATE OF LEONA J. MARKEL,
DECEASED

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Firm of Robert Clofine, 340 Pine Grove
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ESTATE OF DALE EUGENE MCCLEARY
a/k/a DALE E. MCCLEARY, DECEASED

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York, PA 17402
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12.23-3t

ESTATE OF GLORIA G. MEADS,
DECEASED

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DECEASED

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DECEASED

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17011 12.23-3t

ESTATE OF WAYNE M. SLOTHOWER,
DECEASED

Late of Dover Twp., York County, PA.
Executrix: Lois Y. Slothower, c/o 129 E.
Market St., York, PA 17401
Attorney: John C. Herrold, Esquire, Griest,
Himes, Herrold, Reynosa LLP, 129 East
Market Street, York, PA 17401 12.23-3t

ESTATE OF SHIRLEY A. SMITH,
DECEASED

Late of Dover Twp., York County, PA.
Executor: Todd A. Smith, c/o John R. Elliott,
Esquire, Anstine & Sparler, 117 E. Market
St., York, PA 17401
Attorney: John R. Elliott, Esquire, Anstine &
Sparler, 117 E. Market St., York, PA 17401
12.23-3t

ESTATE OF DONALD J. SPANG,
DECEASED

Late of Washington Twp., York County, PA.
Co-Executors: John M. Spang and Amy K.
Lashbrook, c/o James D. Bogar, Esq., One
West Main Street, Shiremanstown, PA
17011
Attorney: James D. Bogar, Esquire, One West
Main Street, Shiremanstown, PA 17011
12.23-3t

ESTATE OF GAIL M. WYNN, DECEASED
Late of West Manchester Twp., York County, PA.

Executor: Randall A. Wynn, c/o 129 E.
Market St., York, PA 17401
Attorney: John C. Herrold, Esquire, Griest,
Himes, Herrold, Reynosa LLP, 129 East

Market Street, York, PA 17401 12.23-3t

SECOND PUBLICATION

ESTATE OF PAUL E. ALDINGER, SR. a/k/a
PAUL E. ALDINGER, DECEASED

Late of North Codorus Twp., York County, PA.
Administrator-Executors: Paul E. Aldinger,
Jr., Darlene M. Rutters, Nancy L. Lint and
Dean R. Aldinger, c/o 3198 East Market
Street, York, PA 17402
Attorney: Jeffrey R. Bellomo, Esquire, 3198
East Market Street, York, PA 17402
12.17-3t

ESTATE OF CLIFTON HELMAR BENDER
a/k/a CLIFTON H. BENDER, DECEASED

Late of Spring Garden Twp., York County, PA.
Administrator-Executor: Nancy Susan Heard
a/k/a Susan Heard, c/o 3198 East Market
Street, York, PA 17402
Attorney: Jeffrey R. Bellomo, Esquire, 3198
East Market Street, York, PA 17402
12.17-3t

ESTATE OF BARBARA A. BIUNDO,
DECEASED

Late of West Manheim Twp., York County, PA.
Executrix: Mary E. Holzer, 395 Burkholder
Road, Red Lion, PA 17356
Attorney: Stonesifer and Kelley, P.C., 209
Broadway, Hanover, PA 17331 12.17-3t

ESTATE OF GERALDINE M. BOWERSOX,
DECEASED

Late of Penn Twp., York County, PA.
Executrix: Sharon E. Sell, 5443 Arnold Rd.,
Glenville, PA 17329
Attorney: Keith R. Nonemaker, Esquire,
Guthrie, Nonemaker, Yungst & Hart, LLP,
40 York Street, Hanover, PA 17331
12.17-3t

ESTATE OF JOHN H. BRADBURY,
DECEASED

Late of Shrewsbury Twp., York County, PA.
Executrices: Jane E. Carr and Bonnie J.
Wagner, c/o 340 Pine Grove Commons,
York, PA 17403
Attorney: Erik D. Spurlin, Esquire, Elder
Law Firm of Robert Clofine, 340 Pine
Grove Commons, York, PA 17403 12.17-3t

ESTATE OF JAMES HOWARD CONLEY,
DECEASED

Late of Newberry Twp., York County, PA.
Administrator-Executor: Larry E. Conley,
229 Cragmoor Road, York Haven, PA
17370
Attorney: Dale K. Ketner, Esquire 12.17-3t

ESTATE OF RICHARD C. DENNIS,
DECEASED

Late of Jackson Twp., York County, PA.
Executrix: Kathy A. Wise, 1364 Village Dr.,
Spring Grove, PA 17362
Attorney: John W. Stitt, Esquire, 1434 W.
Market Street, York, PA 17404 12.17-3t

ESTATE OF RICHARD M. DIETZ,
DECEASED

Late of West Manchester Twp., York County,
PA.
Executor: Michael A. Dietz, c/o Kenneth
L. Eckard, Esquire, 180 Darlene Street,
York, PA 17402-5053

- Attorney: Kenneth L. Eckard, Esquire, 180 Darlene Street, York, PA 17402-5053 12.17-3t
- ESTATE OF KEARY E. EISENHART, DECEASED
Late of West Manchester Twp., York County, PA.
Co-Executors: Alan R. Eisenhart, 1312 Canterbury Lane, York, PA 17406 and Craig L. Eisenhart, 2304 West Market St., Apt. B, York, PA 17404
Attorney: D. Michael Craley, Esquire, 246 West Broadway, Lower Level, Red Lion, PA 17356 12.17-3t
- ESTATE OF KEVIN E. GREIMAN, DECEASED
Late of Windsor Twp., York County, PA.
Executrix: Sandra J. Greiman, c/o John R. Elliott, Anstine & Sparler, 117 E. Market St., York, PA 17401
Attorney: John R. Elliott, Esquire, Anstine & Sparler, 117 E. Market St., York, PA 17401 12.17-3t
- ESTATE OF JAMES E. HACKETT, DECEASED
Late of West Manchester Twp., York County, PA.
Executor: Kathy A. Chronister, c/o Robert M. Strickler, Esquire, 110 South Northern Way, York, PA 17402
Attorney: Robert M. Strickler, Esquire, 110 South Northern Way, York, PA 17402 12.17-3t
- ESTATE OF WILLIAM O. HICKOK V, DECEASED
Late of Dillsburg, Carroll Twp., York County, PA.
Co-Executors: Ashley Cureton Hickok Smith and Judd E. Hickok, c/o Law Office of Wm. D. Schrack, III, 124 West Harrisburg Street, Dillsburg, PA 17019-1268
Attorney: Wm. D. Schrack, III, Esquire, 124 West Harrisburg Street, Dillsburg, PA 17019-1268 12.17-3t
- ESTATE OF FRANCIS X. HOFMANN, DECEASED
Late of Manheim Twp., York County, PA.
Executrices: Denise Bankert and Carol J. Miller, c/o 340 Pine Grove Commons, York, PA 17403
Attorney: Robert Clofine, Esquire, Elder Law Firm of Robert Clofine, 340 Pine Grove Commons, York, PA 17403 12.17-3t
- ESTATE OF RONALD E. HONTZ a/k/a RONALD EDWARD HONTZ, DECEASED
Late of Shrewsbury Borough, York County, PA.
Executor: James L. Zartman, 301 East Elm Avenue, Hanover, PA 17331
Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331 12.17-3t
- ESTATE OF GEORGE FRANKLIN JONES, DECEASED
Late of York Twp., York County, PA.
Administrator-Executor: Judy R. Dobromilski, 963 David Drive, Red Lion, PA 17356 12.17-3t
- ESTATE OF GLORIA M. KAUFFMAN, DECEASED
Late of West Manchester Twp., York County, PA.
Executrix: Cynthia R. Lundy, c/o 2025 E. Market Street, York, PA 17402
- Attorney: Richard H. Mylin, III, Esquire, 2025 E. Market Street, York, PA 17402 12.17-3t
- ESTATE OF EDNA E. KITZMILLER, DECEASED
Late of West Manchester Twp., York County, PA.
Executrix: Nancy E. Stambaugh, 1651 Bannister St, York, PA 17404
Attorney: John W. Stitt, Esquire, 1434 W. Market Street, York, PA 17404 12.17-3t
- ESTATE OF SHANITA K. LITTLE, a/k/a SHANITA KAYE LITTLE, DECEASED
Late of York New Salem, York County, PA.
Executors: Eric J. Hewitt and Shawn P. Little, c/o Blake Law Firm, LLC, 29 East Philadelphia Street, York, PA 17401
Attorney: Kurt A. Blake, Esquire, Blake Law Firm, LLC, 29 East Philadelphia Street, York, PA 17401 12.17-3t
- ESTATE OF ROBERT W. LUTHMANN, PH.D., DECEASED
Late of Franklin Twp., York County, PA.
Executrix: Holly Jo Luthmann, c/o Jennifer B. Hipp, Esq., One West Main Street, Shiremanstown, PA 17011
Attorney: Jennifer B. Hipp, Esquire, One West Main Street, Shiremanstown, PA 17011 12.17-3t
- ESTATE OF ROY E. NASH, SR., DECEASED
Late of Newberry Twp., York County, PA.
Administrator-Executor: Roy E. Nash, Jr., c/o Salzmann Hughes, P.C., 354 Alexander Spring Road, Suite 1, Carlisle, PA 17015
Attorney: Kurt E. Williams, Esquire, Salzmann Hughes, P.C., 354 Alexander Spring Rd., Suite 1, Carlisle, PA 17015 12.17-3t
- ESTATE OF GEORGE H. ROHRBAUGH, DECEASED
Late of West York Borough, York County, PA.
Executor: Jeffrey L. Rohrbaugh, 4570 S. Salem Church Rd., Dover PA 17315
Attorney: John W. Stitt, Esquire, 1434 W. Market Street, York, PA 17404 12.17-3t
- ESTATE OF DONALD E. RUSSELL, DECEASED
Late of York Twp., York County, PA.
Executor: Greg Russell, 2090 Seaks Run Rd., Glen Rock, PA 17327
Attorney: L. C. Heim, Esquire, Katherman, Heim & Perry, 345 East Market Street, York, PA 17403 12.17-3t
- ESTATE OF FLORENCE H. SMITH, DECEASED
Late of York City, York County, PA.
Executor: Kirby M. Smith, 2381 Brandywine Lane, York, PA 17404 12.17-3t
- ESTATE OF ARLENE M. UPDEGRAFF, DECEASED
Late of Manchester Twp., York County, PA.
Executrix: Kay L. Kutz, c/o Richard R. Reilly, Esquire, 54 N. Duke Street, York, PA 17401-1402
Attorney: Richard R. Reilly, Esquire, 54 N. Duke Street, York, PA 17401-1402 12.17-3t
- ESTATE OF JANE G. BEHR, a/k/a JANE FRANCIS GLAVIN BEHR, DECEASED
Late of Dover Twp., York County, PA.
Administrator-Executor: Kevin Michael Behr, 118 Delwood Drive, Dover, PA 17315
Attorney: Lynnore K. Seaton, Esquire, 153 E. Canal Street, Dover, PA 17315 12.10-3t
- ESTATE OF BEATRICE E. BLEILER, DECEASED
Late of Spring Garden Twp., York County, PA.
Executrix: Eileen S. Brillhart, 2000 W. Market St., York, PA 17404
Attorney: John W. Stitt, Esquire, 1434 W. Market Street, York, PA 17404 12.10-3t
- ESTATE OF MILDRED A. BRICKER, DECEASED
Late of Codorus Twp., York County, PA.
Co-Executors: Michael W. Bricker and Karen S. Sullivan, c/o 48 South Duke Street, York, PA 17401
Attorney: Bruce C. Bankenstein, Esquire, 48 South Duke Street, York, PA 17401 12.10-3t
- ESTATE OF FRANCES M. CAMALLERI, DECEASED
Late of Springettsbury Twp., York County, PA.
Executors: Jerry J. Camalleri (a/k/a Gerlando J. Camalleri) and Josephine F. Casey, c/o Stock and Leader, Susquehanna Commerce Center East, 221 W. Philadelphia Street, Suite 600, York, PA 17401-2994
Attorney: Thomas M. Shorb, Esquire, STOCK AND LEADER, Susquehanna Commerce Center East, 221 West Philadelphia Street, Suite E600, York, PA 17401-2994 12.10-3t
- ESTATE OF PATRICIA M. CARTER a/k/a PATRICIA MARIE CARTER, DECEASED
Late of Springfield Twp., York County, PA.
Administrator-Executor: Louis R. Carter, Jr., c/o 3198 East Market Street, York, PA 17402
Attorney: Jeffrey R. Bellomo, Esquire, 3198 East Market Street, York, PA 17402 12.10-3t
- ESTATE OF BETTY R. CODRINGTON, DECEASED
Late of Dover Twp., York County, PA.
Administrator-Executor: Peggy Griffin, 2510 Carriage Lane, Dover PA 17315
Attorney: David Turocy, Esquire, Ream, Carr, Markey & Woloshin LLP., 53 East Canal St., Dover, PA 17315 12.10-3t
- ESTATE OF JAMES T. HARP, SR. a/k/a JAMES TRAVER HARP, SR., DECEASED
Late of York Twp., York County, PA.
Administrator-Executor: Marie B. Harp, c/o 3198 East Market Street, York, PA 17402
Attorney: Jeffrey R. Bellomo, Esquire, 3198 East Market Street, York, PA 17402 12.10-3t
- ESTATE OF JEFFREY W. KROUT, DECEASED
Late of Glen Rock Borough, York County, PA.
Executor: Kevin C. Krout, c/o Eveler & DeArment LLP, 2997 Cape Horn Rd., Suite A-6, Red Lion, PA 17356

Attorney: Eveler & DeArment LLP, 2997
Cape Horn Rd., Suite A-6, Red Lion, PA
17356 12.10-3t

ESTATE OF DORIS J. POLITES, DECEASED
Late of Springettsbury Twp., York County, PA.
Administrator dbncta: William F. Polites,
3610 Springetts Drive, York, PA 17406
Attorney: John W. Stitt, Esquire, 1434 W.
Market Street, York, PA 17404 12.10-3t

ESTATE OF RONALD LEE RUDINSKI,
DECEASED
Late of Dillsburg Borough, York County, PA.
Attorney: Wm. D. Schrack, III, Esquire,
Law Office of Wm. D. Schrack, III,
124 West Harrisburg Street,
Dillsburg, PA 17019-1268 12.10-3t

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CIVIL NOTICES

ACTION IN MORTGAGE FORECLOSURE

IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW
NO.: 2015-SU-001520-06

NOTICE OF ACTION IN MORTGAGE FORECLOSURE

LSF9 Master Participation Trust, Plaintiff,

vs.

Tracy Rouscher, AKA Tracy L. Rouscher,
Defendant.

TO: Graciela C. Brown

PRESENTLY OR FORMERLY of 179 S
Highland Avenue, York, Pennsylvania, 17404.
A lawsuit has been filed against you in mortgage
foreclosure and against your real estate at 179
S Highland Avenue, York, Pennsylvania, 17404
because you have failed to make the regular
monthly payments on your mortgage loan and
the loan is in default. The lawsuit is an attempt
to collect a debt from you owed to the plaintiff,
LSF9 Master Participation Trust. A detailed
notice to you of your rights under the Fair Debt
Collection Practices Act (15 U.S.C. §1692, et.
seq.) is included in the Complaint filed in the
lawsuit. The lawsuit is filed in the York County
Court of Common Pleas, at the above term and
number.

A copy of the Complaint filed in the lawsuit
will be sent to you upon request to the Attorney
for the Plaintiff, Kimberly A. Bonner, Esquire,
P.O. Box 165028, Columbus, OH 43216. Phone
(614) 222-4921.

IF YOU WISH TO DEFEND, YOU MUST
ENTER A WRITTEN APPEARANCE
PERSONALLY OR BY AN 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 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
OUR WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
York County
137 East Market Street
York, PA 17401
Phone (717) 854-8755

12.23-1t

Solicitor

York County
Court of Common Pleas
Number: 2015-SU-003728-06
Notice of Action in Mortgage Foreclosure

CIT Bank, N.A., Plaintiff v. John Wilson,
Known Surviving Heir of Romona P. Smith and
Unknown Surviving Heirs of Romona P. Smith,
Defendants

**TO: Unknown Surviving Heirs of Romona
P. Smith.** Premises subject to foreclosure:
3540 Holly Road, Dover, Pennsylvania 17315.
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. **Lawyer
Referral Service, 137 East Market Street,
York, Pennsylvania 17401, (717) 854-8755.**
McCabe, Weisberg & Conway, P.C., Attorneys
for Plaintiff, 123 S. Broad St., Ste. 1400, Phila.,
PA 19109, 215-790-1010

12.23-1t

Solicitor

ARTICLES OF INCORPORATION

NOTICE IS HEREBY GIVEN that articles of
incorporation were filed with the Department of
State of the Commonwealth of Pennsylvania for
CLEAN CUT BARBERSHOP, INC., formed
pursuant to the provisions of the Pennsylvania
Business Corporation Law of 1988.

Clifton R. Guise, Esq.
HALBRUNER, HATCH & GUISE, LLP
2109 Market Street
Camp Hill, PA 17011

12.23-1t

Solicitor

Notice is hereby given that FIRST MAJESTIC
INC. has been organized under the Business
Corporation Law of 1988, as amended,
and has filed Articles of Incorporation with
the Pennsylvania Department of State on
11/18/2015.

12.23-1t

Solicitor

CERTIFICATE OF CANCELLATION

NOTICE is hereby given that all persons interested or who may be affected that 7022 Susquehanna Trail South, LP, a Pennsylvania limited partnership, having a registered address at 470 S. Ogontz Street, York, PA 17403, is about to file a Certificate of Cancellation with the Department of State of the Commonwealth of Pennsylvania and that its Limited Partners are now engaged in winding up and settling the affairs of the limited partnership so that its existence shall be ended by the Issuance of a Certificate of Cancellation under the Pennsylvania Business Corporation Law of 1988.

Ronald Perry, Esq.
Katherman, Heim & Perry
345 East Market Street
York, PA 17403

12.23-3t Solicitor

NOTICE is hereby given that all persons interested or who may be affected that South Road, LP, a Pennsylvania limited partnership, having a registered address at 470 S. Ogontz Street, York, PA 17403, is about to file a Certificate of Cancellation with the Department of State of the Commonwealth of Pennsylvania and that its Limited Partners are now engaged in winding up and settling the affairs of the limited partnership so that its existence shall be ended by the Issuance of a Certificate of Cancellation under the Pennsylvania Business Corporation Law of 1988.

Ronald Perry, Esq.
Katherman, Heim & Perry
345 East Market Street
York, PA 17403

12.23-3t Solicitor

NOTICE

**PUBLIC NOTICE TO
CINDY LEE QUEEN**
**In Re: Adoption of Jayden Monroe Poust,
A Minor**

A petition has been filed asking the Court to put an end to all rights you have as a parent to your child, Jayden Monroe Poust. A Termination of Parental Rights Hearing has been scheduled for January 21, 2016, at 9:00 a.m., in Court Room No. 6001, of the York County Judicial Center, 45 North George Street, York, Pennsylvania, to terminate your parental rights to Jayden Mon-

roe Poust (DOB: October 7, 2007), whose Father is Harry Monroe Poust and whose Mother is Cindy Lee Queen. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the Court without your being present. You have a right to be represented at the hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Jane Madison
Family Court Administrator
York County Court of Common Pleas
York County Judicial Center
45 North George Street
York, Pennsylvania 17401
Telephone No. (717) 771-9360

Martin Miller, Esquire
Solicitor for York County Offices of
Children, Youth & Families

A prospective adoptive parent of a child may enter into an agreement with a birth relative of the child to permit continuing contact or communication between the child and the birth relative or between the adoptive parent and the birth relative. An agency or anyone representing the parties in an adoption shall provide notification to a prospective adoptive parent, a birth parent and a child who can be reasonably expected to understand that a prospective adoptive parent and a birth relative of a child have the option to enter into a voluntary agreement for the continuing contact or communication. See 23 Pa.C.S.A Section 2731, et seq.

12.10-3t Solicitor

IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 2014 CV 004272 74

PROGRESSIVE SPECIALTY
INSURANCE COMPANY
5920 LANDERBROOK DR
MAYFIELD HEIGHTS, OH 44124 Plaintiff

v.

MARCUS PHILLIPS
315 CARLISLE AVE
YORK, PA 17404 Defendant

NOTICE OF CIVIL ACTION
COMPLAINT IN CIVIL ACTION

NOTICE TO: MARCUS PHILLIPS
315 CARLISLE AVE
YORK, PA 17404

YOU HAVE BEEN SUED IN COURT. NOTICE IS HEREBY GIVEN THAT PROGRESSIVE SPECIALTY INSURANCE COMPANY.. filed a Complaint in Civil Action against you in the Court of Common Pleas of York County, Pennsylvania, Case No.2014 CV 004272 74If 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 PAPER 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.

Lawyer Referral Service of the
York County Bar Association
York County Bar Center
137 East Market Street
York, PA 17401
Telephone (717) 854-8755

Further inquiry can be directed to counsel for Plaintiff as follows:

Michael J Dougherty, Esq.
PA ID No. 76046
Weltman, Weinberg & Reis Co., L.P.A.
325 Chestnut Street, Suite 501
Philadelphia, PA 19106 Tel. (215) 599-1500

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