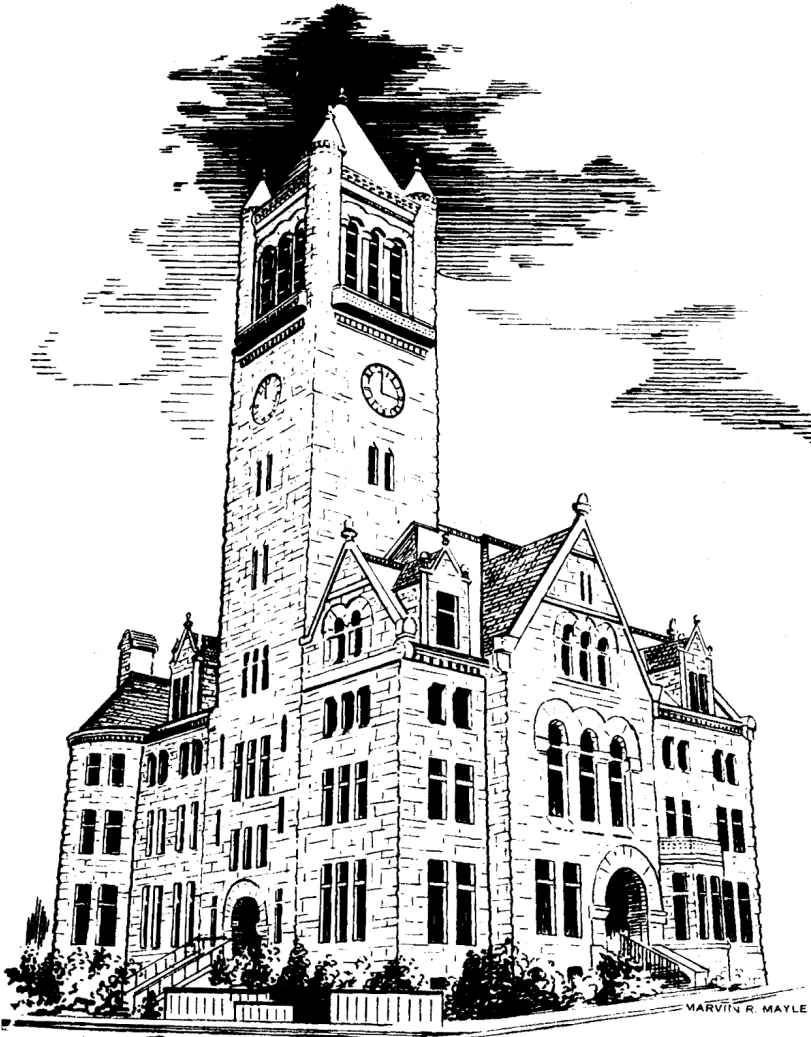


# FAYETTE LEGAL JOURNAL

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## FAYETTE LEGAL JOURNAL

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## ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

### Third Publication

**MARIE BUDINSKY, A/K/A MARIE A. BUDINSKY**, late of Georges Township, Fayette County, PA (3)

*Personal Representatives:* Joseph P. Budinsky and Anthony M. Budinsky  
c/o George, Port & George  
92 East Main Street  
Uniontown, PA 15401  
*Attorney:* Joseph M. George

**JUDY A. CONTEEN**, late of North Union Township, Fayette County, PA (3)

*Personal Representative:* Cecil Fisher  
c/o 2 West Main Street, Suite 110  
Uniontown, PA 15401  
*Attorney:* Ricardo J. Cicconi

**STEPHEN R. HAKY, JR.**, late of South Union Township, Fayette County, PA (3)

*Co-Executors:* Stephanie H. Georgiana & Kristan J. Hafer Fazenbaker  
c/o 9 Court Street  
Uniontown, PA 15401  
*Attorney:* Vincent J. Roskovensky, II

**MARY E. HINEBAUGH**, late of Henry Clay Township, Fayette County, PA (3)

*Executrix:* Barbara Neratka  
c/o Hayduk & Associates  
POB 1206  
Uniontown, PA 15401  
*Attorney:* Mary L. Hajduk

**VIVIAN JUNE KING, A/K/A JUNE PARKER KING**, late of Upper Tyrone Township, Fayette County, PA (3)

*Co-Executors:*  
Amy Allegra and Joseph Allegra  
420 King Street  
Scottdale, PA 15683  
c/o Suite 310 Keystone Commons  
35 West Pittsburgh Street  
Greensburg, PA 15601  
*Attorney:* Henry Lee Moore

**JOSEPH E. MANGELLO**, late of Perryopolis Borough, Fayette County, PA (3)

*Personal Representative:*  
Romane Yandura  
c/o PUZAK LAW OFFICES  
101 South Third St.  
Youngwood, PA 15697  
*Attorney:* David J. Puzak

**VELMA PRICE, A/K/A VELMA ELAINE PRICE, AKA VELMA E. PRICE**, late of Georges Township, Fayette County, PA (3)

*Co-Executors:* Terry Scott Price and Gary Price  
c/o John A. Kopas III, Esquire  
556 Morgantown Road  
Uniontown, PA 15401  
*Attorney:* John A. Kopas III

**ELIZABETH TAYLOR**, late of Luzerne Township, Fayette County, PA (3)

*Executor:* Kenneth H. Taylor  
c/o Davis and Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

### Second Publication

**FRANK BASINGER, A/K/A FRANK WILLIAM BASINGER, A/K/A FRANK W. BASINGER**, late of Connellsville, Fayette County, PA (2)

*Personal Representative:* Kathy Basinger  
c/o Riverfront Professional Center  
308 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

---

**THELMA COCCIARDI, A/K/A THELMA JEAN COCCIARDI, A/K/A THELMA J. COCCIARDI**, late of Wharton Township, Fayette County, PA (2)

*Executrix:* Angela Myers  
c/o Warman Terry Law Offices  
50 East Main Street  
Uniontown, PA 15401  
*Attorney:* Mary Warman Terry

---

**EUGENE R. GREEN**, late of Washington Township, Fayette County, PA (2)

*Executor:* Larry E. Green  
9341 Doral Drive  
Pittsburgh, PA 15237  
c/o 231 South Main Street, Suite 205  
Greensburg, PA 15601  
*Attorney:* William J. Wiker

---

**GLEN R. HENSEL**, late of Saltlick Township, Fayette County, PA (2)

*Executrix:* Robin Donaldson  
343 Hopewell Road  
White, PA 15490  
c/o 450 West Main Street  
Mount Pleasant, PA 15666  
*Attorney:* Milton V. Munk, Jr.

---

**WILLIAM J. HOLCHIN**, late of Dunbar Township, Fayette County, PA (2)

*Executrix:* Patricia A. Holchin  
c/o Fitzsimmons and Barclay  
55 East Main Church Street, Suite 102  
Uniontown, PA 15401  
*Attorney:* James N. Fitzsimmons

---

**STURGE W. HUGHES, A/K/A STURGE HUGHES**, late of Dunbar, Fayette County, PA (2)

*Personal Representative:* Regina C. Hughes  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* Gary J. Frankhouser

---

**BETTY J. LOWRY**, late of Dunbar Township, Fayette County, PA (2)

*Co-Executrices:* Bonnie L. Zurick and  
Tammy M. Renzi  
c/o Webster & Webster  
51 East South Street  
Uniontown, PA 15401  
*Attorney:* Webster & Webster

---

**MICHAEL MAZZA**, late of Connellsville, Fayette County, PA (2)

*Personal Representative:* Michael A. Mazza  
c/o Riverfront Professional Center  
208 South Arch Street, Suite 2  
Connellsville, PA 15425  
*Attorney:* Richard A. Husband

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## First Publication

**EMERSON BURNSWORTH**, late of German Township, Fayette County, PA (1)

*Administratrix:* Lisa Burnsworth  
c/o PO Box 622  
Smithfield, PA 15478  
*Attorney:* Charity Grimm Krupa

---

**JAMES FIELDS, A/K/A JAMES RAYMOND FIELDS**, late of North Union Township, Fayette County, PA (1)

*Personal Representative:* Susan Fields  
c/o 99 East Main Street  
Uniontown, PA 15401  
*Attorney:* Robert A. Gordon

---

**CHARLES L. NEWCOMER**, late of Vanderbilt, Fayette County, PA (1)

*Personal Representative:* David T. Newcomer  
c/o Davis & Davis  
107 East Main Street  
Uniontown, PA 15401  
*Attorney:* James T. Davis

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**JOYCE NEWCOMER, A/K/A HELEN J. NEWCOMER, A/K/A HELEN JOYCE NEWCOMER**, late of Vanderbilt, Fayette County, PA (1)

*Personal Representative:* Karen Newcomer  
c/o Davis & Davis

107 East Main Street  
 Uniontown, PA 15401  
*Attorney:* James T. Davis

**PATRICIA SHAFFER, A/K/A PATRICIA C. SHAFFER**, late of Point Marion, Fayette County, PA (1)

*Executor:* Joseph Bernard Shaffer  
 c/o 556 Morgantown Road  
 Uniontown, PA 15401  
*Attorney:* John A. Kopas III

**LEGAL NOTICES**

**NOTICE**

Notice is hereby given that Articles of Amendment for the Fayette County Industrial Development Authority, 2 West Main St., Suite 700, Uniontown, Pa., to extend the term of existence of the Authority for an additional period which ends on July 2 I , 2066, were authorized to be filed with the Department of State of the Commonwealth of Pennsylvania pursuant to the provisions of the Economic Development Financing Law, 73 P.S. §375, on or after September 19, 2016.

Ernest P. DeHaas, III, Esquire  
**RADCLIFFE & DeHAAS, L.L.P.**  
 2 West Main Street, Suite 700  
 Uniontown, PA 15401  
 (724) 439-3900

IN THE COURT OF COMMON PLEAS OF  
 FAYETTE COUNTY, PENNSYLVANIA  
 ORPHANS' COURT DIVISION  
 NO. 40 ADOPT 2016

IN RE: ADOPTION OF  
 CHARLEE LEICHLITER

**NOTICE**

TO: Unknown Unknown

A petition has been filed asking the Court to put an end to all rights you have to your child, Charlee Leichliter. The court has set a

hearing to consider ending your rights to your child. That hearing will be held in Courtroom No. 3 of the Fayette County Courthouse, Uniontown, Fayette County, Pennsylvania, on Monday, November 21, 2016 at 1:30 p.m. 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 there.

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. 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.

PENNSYLVANIA BAR ASSOCIATION  
 100 SOUTH STREET  
 PO BOX 186  
 HARRISBURG, PA 17108  
 (800) 932-0313

ACTION TO QUIET TITLE  
 IN THE COURT OF COMMON PLEAS  
 OF FAYETTE COUNTY, PENNSYLVANIA  
 CIVIL ACTION – LAW  
 NO. 1764 of 2016 GD

**LITTLE REDSTONE METHODIST CHURCH,**  
**Plaintiff,**  
**vs.**  
**WASHINGTON COAL AND COKE**  
**COMPANY,**  
**Defendant.**

TO: WASHINGTON COAL AND COKE COMPANY, its heirs, personal representatives, executors, administrators, successors and assigns and all persons having or claiming to have any right, lien, title, interest in or claim against 108 & 112 Church Street in Perry Township, Fayette

County, Pennsylvania, 15824, also known as Fayette County Assessment Numbers 27-15-001801T00 and 27-15-001801X00.

TAKE NOTICE THAT THE LITTLE REDSTONE METHODIST CHURCH has filed a Complaint and Amended Complaint in Action to Quiet Title in the aforesaid Court as of the above term and number, averring its interest based on purchase and deed and praying the Court to adjudicate and decree its title and right of possession to said premises, more particularly described in the said Complaint, indefeasible as against all rights and claims whatsoever, and you are hereby notified to file an Answer within twenty (20) days following the date of this publication, in default of which an Order may be entered as prayed for against you, requiring you to take such action as may be ordered by the Court within thirty days after the entry of such Order in default of which final judgment shall be entered. 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 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 AND WISH TO RETAIN ONE, PLEASE CALL THE NUMBER LISTED BELOW:

SOUTHWESTERN PA LEGAL AID SOCIETY  
45 E. Main St #200  
Uniontown, PA 15401  
Phone: 724-439-3591

EDWARD J. KRUG & ASSOCIATES  
Attorneys for Plaintiff  
300 Corporate Center Drive, Suite 130  
Moon Township, PA 15108

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## SHERIFF'S SALE

Date of Sale: November 10, 2016

By virtue of the below stated writs out of the Court of Common Pleas of Fayette County, Pennsylvania, the following described properties will be exposed to sale by James Custer, Sheriff of Fayette County, Pennsylvania on Thursday, November 10, 2016, at 10:30 a.m. in the Hallway outside the Sheriff's Office at the Fayette County Courthouse, Uniontown, Pennsylvania.

The terms of sale are as follows:

Ten percent of the purchase price, or a sufficient amount to pay all costs if the ten percent is not enough for that purpose. Same must be paid to the Sheriff at the time the property is struck off and the balance of the purchase money is due before twelve o'clock noon on the fourth day thereafter. Otherwise, the property may be resold without further notice at the risk and expense of the person to whom it is struck off at this sale who in case of deficiency in the price bid at any resale will be required to make good the same. Should the bidder fail to comply with conditions of sale money deposited by him at the time the property is struck off shall be forfeited and applied to the cost and judgments. All payments must be made in cash or by certified check. The schedule of distribution will be filed the third Tuesday after date of sale. If no petition has been filed to set aside the sale within 10 days, the Sheriff will execute and acknowledge before the Prothonotary a deed to the property sold. (3 of 3)

James Custer  
Sheriff Of Fayette County

No. 376 of 2016 GD  
No. 209 of 2016 ED

**The Bank of New York Mellon f/k/a The Bank of New York, as Trustee, and BNY Western Trust Company, as Co-Trustee, for CWABS, Inc., Asset-Backed Certificates, Series 2002-BC1,**

**Plaintiff,**

**vs.**

**Robert G. Young and Veronica L. Young,  
Defendants.**

ALL that certain piece, parcel or lot of land situate in Bullskin Township, Fayette County, Pennsylvania, being more particularly bounded and described as follows:

BEGINNING at an iron pin at the intersection of the Southerly side of an unopened forty (40) foot stream known as Oakland Avenue and the Easterly side of Pennsylvania State Highway known and designated as L. R. 26149; said iron pin being on the Easterly side of a 24" wild cherry trees and said point of beginning being the initial point of call reading South 24 degrees West, 54.4 perches as set forth in Deed from Clark Collins and Alice Collins, his wife, to Florence Reid dated March 21, 1923 and recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania, in Deed Book Volume 436, page 90; thence along the Southerly side of said Oakland Avenue, South 71 degrees 23 minutes East, a distance of 198.88 feet to an iron pin corner; thence through land now or formerly of Florence C. Reid, South 24 degrees 00 minutes West, a distance of 210 feet to a point along line of lands now or formerly of James E. Bartlett and Debrah E. Bartlett, his wife, conveyed to the latter by Deed of Kenneth G. Showman dated July 15, 1986, and recorded in the Recorder of Deeds Office of Fayette County, Pennsylvania, in Record Book Volume 175, page 221 thence along line of lands now or formerly of the said James E. Bartlett, et ux., North 64 degrees 10 minutes West, a distance of 198.10 feet to a point on the Easterly side of L. R. 26149; thence leaving line of land now or formerly of James E. Bartlett, et ux., and along the Easterly side of L. R. 26149, North 24 degrees 00 minutes East; a distance of 185 feet to an iron pin corner, the place of beginning.

Also known as 1805 Kentucky Avenue,  
Connellsville, PA 15425

Parcel No. 4-31-8

COMMONLY KNOWN AS: 1805  
Kentucky Avenue, Connellsville, PA 15425  
TAX PARCEL NO. 04-31-0008

---

KML Law Group, P.C.  
Suite 5000 - BNY Independence Center 701  
Market Street  
Philadelphia, PA 19106  
215-627-1322

No. 646 of 2016 GD  
No. 176 of 2016 ED

**DITECH FINANCIAL LLC F/K/A GREEN  
TREE SERVICING LLC  
3000 Bayport Drive, Suite 880  
Tampa, FL 33607,  
Plaintiff,  
vs.  
GLADYS E. ZGELA  
Mortgagor(s) and Record Owner(s)  
R.D. 1 Box 245B  
Grindstone, PA 15442,  
Defendant.**

ALL THAT CERTAIN piece, parcel or  
tract of land situate in the, County of Fayette and  
Commonwealth of Pennsylvania.

TAX PARCEL # \_\_\_\_\_

PROPERTY ADDRESS: R.D. 1 Box 245B  
Grindstone, PA 15442

IMPROVEMENTS: A residential  
dwelling.

SOLD AS THE PROPERTY OF:  
GLADYS E. ZGELA

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## MALPRACTICE AVOIDANCE SEMINAR

The annual PBA Malpractice Avoidance Seminar will be held at the Penn State Fayette Campus Eberly Building on **October 25, 2016 at 2:00 p.m.**

With the Pennsylvania Bar Association Insurance Program, advised and administered by USI Affinity, you have the ability to gain valuable malpractice avoidance information and earn up to a 7.5% discount on your malpractice insurance. The Malpractice Avoidance Seminar, sponsored by the Pennsylvania Bar Association Insurance Program and the Pennsylvania Bar Institute, has been approved by the Pennsylvania Continuing Legal Education Board for 1.5 hours of ethics, professionalism, or substance abuse CLE credit. The 7.5% credit will be pro-rated based on the number of attorneys in the firm who attend the seminar. The discount does not apply to part-time policies.

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For more information call  
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REGISTRATION FEE IS \$30 PER ATTORNEY

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## CONTINUING LEGAL EDUCATION

### Advocating for Victims of Human Trafficking

October 21, 2016

4 Substantive CLE credits

2 Ethics CLE credits

9:00 a.m. to 4:15 p.m.

Cost: \$40.00 (if receiving CLE credits)

\$20.00 (if not receiving CLE credits)

Park Inn by Radisson

Uniontown - Route 40 West

This training is offered by the Crime Victims' Center of Fayette and the PA CLE Board has authorized the FCBA to offer 6 CLE credits.

Presentations include speakers from:

Office of Homeland Security, FBI, and U.S. Attorney General's Office

Attorneys receiving CLE credit must register with Cindy

724-437-7994/cindy@fcbar.org

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Participants will learn how to identify victims' health care and social service needs and approaches to effectively treat victims. A federal criminal overview of prosecuting cases will be presented and the successes and challenges of working with survivors will also be part of the discussion for the day.

Human trafficking is a modern day form of slavery and includes labor and sexual exploitation. The Crime Victims' Center of Fayette County and the Soroptimists of Fayette continue their collaboration with their efforts to educate members of the community and professionals so to increase the awareness of this heinous crime and to develop the required skills to effectively assist victims.

The speakers for this training are experts in the area of human trafficking and will share their extensive knowledge and first hand experiences with participants. They represent the medical and social services fields, U. S. Attorney General's Office, Homeland Security and the F.B.I. Cases and situations of human trafficking within southwestern Pennsylvania will be cited and discussed.

Agenda content will include, Survivor's Health Care and Social Service Needs, Victim Centered / Trauma Informed Services, How to Utilize Trauma informed Approaches, Human Trafficking Prosecutions/Federal Criminal Overview, Strategies for Prosecution and Law Enforcement, Techniques and Tactics for Interviewing Victims and Successes and Challenges of Working with Victims.

**CONTINUING LEGAL EDUCATION****Pennsylvania's New Expungement Law**

November 2, 2016

1 substantive CLE credit

Noon to 1:00 p.m.

Cost: \$30.00

First Niagara Bank Building  
Corporate Training Center

Presenters:

Samuel J. Davis, Esq.

and

Richard Bower, Esq.

Fayette County District Attorney

Please email or call Cindy to register  
724-437-7994 / [cindy@fcbare.org](mailto:cindy@fcbare.org)

**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,  
PENNSYLVANIA  
CIVIL ACTION

SOUTHWEST PENNSYLVANIA	:	
RAILROAD COMPANY,	:	
Plaintiff,	:	
	:	
v.	:	
KERRY KAYLOR, INDIVIDUALLY	:	
AND D/B/A E-Z AUTO KLEEN,	:	NO. 1309 OF 2016, G.D.
Defendant.	:	JUDGE JOSEPH M. GEORGE, JR.

ATTORNEYS AND LAW FIRMS

*Irving S. Firman, Esquire*, Tucker Arensberg, P.C., For the Plaintiff  
*Jeffrey S. Proden, Esquire*, Proden & O’Brien, For the Defendant

OPINION AND ORDER

GEORGE, J.

October 6, 2016

This matter comes before the Court on a Motion for Preliminary Injunction filed by Plaintiff on July 15, 2016. Upon consideration of the evidence presented at the hearing before the Court on September 14, 2016, as well as the briefs filed by each party subsequent to the hearing, we will GRANT the Motion for a Preliminary Injunction.

FACTS

On July 22, 2010, Defendant acquired real property with a physical address of 65 E. Penn Street in Uniontown, Fayette County, Pennsylvania. (Plaintiff’s Exhibit “F”). Defendant immediately began operating a car wash and tire shop at that location. On February 23, 2012, Plaintiff acquired the relevant portion of the railroad from Laurel Hill Development via a quitclaim deed as well as a right-of-way adjacent to Defendant’s parcel. (Plaintiff’s Exhibits “C” and “D”).

At the time of the hearing, Terold E. McMillen, Jr., a registered land surveyor with McMillen Engineering, testified before the Court. He testified that Defendant’s property comes to the edge of Plaintiff’s right-of-way but that Defendant’s business was interfering with said right-of-way. Specifically, McMillen testified that a shed and several parked vehicles were fully inside the right-of-way while another shed and the metal building was partly in the right-of-way. {1} (Plaintiff’s Exhibits “A” and “B”). {2}

{1} The sheds were removed by Defendant prior to the hearing.

{2} McMillen testified the cars were not drawn on the survey because they were movable objects.

Adam Zweig, the Right of Way Manager for Plaintiff, also testified at the hearing. Zweig testified that he became aware of Defendant's alleged encroachment on the railroad's right-of-way in January 2015, when a train derailed in close proximity to Defendant's property. (Plaintiff's Exhibits "J", "K", "L", "M" and "N"). As a result, on October 6, 2015, Plaintiff contacted Defendant for the first time to inform him of the alleged encroachments. (Defendant's Exhibit "13"). After nothing came from this, eight months later Plaintiff informed Defendant that he was going to erect concrete barriers along the edge of the right-of-way to prevent vehicles from parking in that area. (Defendant's Exhibit "14"). Subsequently, Zweig had a crew attempt to put up the barriers; however, the police were called and informed Zweig the matter should be pursued civilly.

Defendant also testified at the hearing. He disputes that his business is interfering with Plaintiff's right-of-way. He testified that none of his customers have interfered with the railroad, trains have never had to stop due to Defendant's business, and the derailment in January 2015 had nothing to do with his property. Furthermore, Defendant believes he is being unfairly targeted by Plaintiff because other properties are encroaching on Plaintiff's right-of-way but Plaintiff has not taken any action against those property owners. {3} Finally, Defendant testified that granting Plaintiff's preliminary injunction would cut off his parking, which he states is a necessity for the operation of his business. {4}

#### DISCUSSION

To prevail in a claim for a preliminary injunction, Plaintiff must establish the following six prerequisites: (1) the injunction is necessary to prevent immediate and irreparable harm that cannot be adequately compensated by damages; (2) greater injury would result from refusing an injunction than from granting it, and, concomitantly, issuance of an injunction will not substantially harm other interested parties in the proceedings; (3) a preliminary injunction will properly restore the parties to their status immediately prior to the alleged wrongful conduct; (4) the activity to be restrained is actionable, the right to relief is clear, and the wrong is manifest, or, in other words, the party seeking the injunction is likely to prevail on the merits; (5) the injunction is reasonably suited to abate the offending activity; and (6) a preliminary injunction will not adversely affect the public interest. *Overland Enterprise, Inc. v. Gladstone Partners, LP*, 950 A.2d 1015, 1020 (Pa. Super. 2008). A trial court has reasonable grounds for granting injunctive relief where it properly finds that the prerequisites for a preliminary injunction have been satisfied. *Lee Publications, Inc. v. Dickinson School of Law*, 848 A.2d 178, 189 (Pa. Cmwlth. 2004). Finally, the prerequisites are cumulative; if one element is lacking, then relief may not be granted. *Summit Town Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 646, 828 A.2d 995, 1001 (2003).

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{3} We gave Defendant leeway in introducing evidence supporting this theory but reserved ruling on its relevancy. (Defendant's Exhibits "2" through "12"). After careful consideration, we find this theory to be irrelevant to whether Defendant's encroachment poses immediate and irreparable harm.

{4} The only relief Plaintiff is requesting is to erect concrete barriers along the right-of-way. Plaintiff is not requesting anything be done with the metal building.

As stated above, a party seeking a preliminary injunction must show that an injunction is necessary to prevent immediate and irreparable harm that cannot be compensated adequately by money damages. *Summit Towne Centre, supra*. The claimed irreparable harm cannot be based solely on speculation and hypothesis and the party must present concrete evidence demonstrating actual proof of irreparable harm. *Kessler v. Broder*, 851 A.2d 944, 951 (Pa. Super. 2004).

Plaintiff argues that Defendant's interference with their right-of-way creates a significant public safety issue to the general public that could result in a train collision or derailment due to the close proximity of the parked vehicles to the railroad tracks. Defendant argues Plaintiff offered no testimony of any injuries or potential accidents due to Defendant's operations and therefore Plaintiff failed to meet the standard of immediate and irreparable harm. We agree with Plaintiff.

Plaintiff provided concrete evidence demonstrating the need to prevent immediate and irreparable harm. Plaintiff provided photographs and testimony of a train derailment accident that occurred in January 2015 at the same location as Defendant's property. Plaintiff also established testimonial evidence from a registered land surveyor and Plaintiff's Right of Way Manager that Defendant, in the course of his business, has encroached on Plaintiff's right-of-way. Defendant failed to adequately respond to this evidence and we therefore found Plaintiff's witnesses to be credible.

Furthermore, Defendant's encroachment on Plaintiff's right-of-way is a significant interference due to the close proximity of Defendant's business, specifically the parking for his customers, to the railroad tracks. See *Big Bass Lake Community Ass'n v. Warren*, 950 A.2d 1137, 1147 (Pa. Cmwlth. 2008) (the mere existence of an encroachment is not adequate to justify equitable relief; the encroachment must significantly interfere with the use of the right-of-way). In this case, the interference is not merely about the idea of Defendant's business encroaching on Plaintiff's right-of-way. Rather, the interference constitutes a safety issue for the general public.

Defendant is correct that no evidence was presented of any injuries or accidents due to Defendant's actions. But, in this specific case, it would be irrational that in order for Plaintiff to obtain a preliminary injunction, an accident, such as a train collision or a train derailment resulting in injury or death, would first have to occur. It is enough for an injunction that the potential for such an accident exists, a possibility that is not based on speculation because of the recent train derailment that occurred in that area.

Defendant also argues Plaintiff is not entitled to injunctive relief because it "delay[ed] in invoking the aid of equity..." *Id.* at 1145. Defendant specifically argues that since the train derailment in January 2015, Plaintiff waited until October 2015 to first contact Defendant about his alleged encroachment on Plaintiff's right-of-way and then took no further action until June 2016, when Plaintiff attempted to place concrete barriers as a measure to prevent Defendant from encroaching on the railroad's right-of-way. See Defendant's Exhibits 13-16.

Based on this evidence, it does appear that Plaintiff did not act swiftly in attempting to rectify this problem with Defendant. Nevertheless, *Big Bass* held that the "delay in

invoking the aid of equity ... can deny [a party] injunctive relief.” Id. (emphasis mine). Thus, this Court has the discretion and will not automatically deny Plaintiff injunctive relief based on its delay in seeking a remedy.

Plaintiff’s delay does not discount the serious nature of the problem before this Court. It is obvious to a reasonable person that the closer someone or something gets to a railroad track, the more immediate the harm becomes and the more irreparable the harm may be. Therefore, placing concrete barriers just inside the right-of-way in order to prevent an encroachment ensures the welfare and safety of not only the general public but also Defendant and his employees. {5}

Wherefore, we will enter the following Order:

### ORDER

AND NOW, this 6th day of October, 2016, upon consideration of the Motion for Preliminary Injunction and after hearing thereon, it is hereby ORDERED and DECREED that the Request for a Preliminary Injunction is GRANTED.

It is further ORDERED and DIRECTED:

- a) Plaintiff, Southwest Pennsylvania Railroad Company, is permitted to erect concrete barriers along the railroad’s right-of-way thirty (30) days after the date of this Order and upon forty-eight (48) hours’ notice to opposing counsel; and
- b) This Order shall remain in full force and effect until such time as this Court specifically orders otherwise.

BY THE COURT:

JOSEPH M. GEORGE JR., JUDGE

ATTEST:

PROTHONOTARY

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{5} Plaintiff also established the remaining prerequisites:

Greater Injury: greater harm could result from refusing rather than granting the injunction for the reasons mentioned above. Defendant also failed to present specific evidence as to how the injunction would substantially harm his business.

Status Quo: the purpose of a preliminary injunction is to maintain the status quo until the case is adjudicated. Erecting concrete barriers will restore the parties to their status as written in their deeds and explained through McMillen’s testimony.

Clear Right to Relief: to establish this element, the movant party only needs to show that substantial legal questions must be resolved to determine the rights of the parties. *Fischer v. Dep’t of Pub. Welfare*, 497 Pa. 267, 271, 439 A.2d 1172, 1174 (1982). Without inquiring into the merits of the underlying action, there exist reasonable grounds of Defendant’s encroachment on the railroad’s right-of-way in close proximity to the railroad tracks.

Abating the Offending Activity: erecting concrete barriers along the edge of the right-of-way is reasonably suited to prevent vehicles from moving around and parking inside the railroad’s right-of-way.

Public Interest: the injunction will prevent persons from moving and parking too close to the railroad tracks, thus ensuring the safety of the general public.

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