

# Lebanon County Legal Journal

The official legal periodical for Lebanon County  
containing the decisions rendered in the 52nd Judicial District

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**Paul W. Kilgore, Esq., Chair  
Stephanie Axarlis, Esq., Editor  
Jennifer Wentzel, Esq., Editor**

**DECEDENTS' ESTATES**

**NOTICE IS HEREBY GIVEN** that Letters Testamentary or of Administration have been granted in the following estates. All persons indebted to the said estate are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

**FIRST PUBLICATION**

**ESTATE OF SUZANNE D. BOYER**, late of the City of Lebanon, Lebanon County, PA. Letters Testamentary have been granted to the undersigned Executor.

Jeffrey M. Boyer, Executor  
c/o Reilly Wolfson Law Office  
1601 Cornwall Road  
Lebanon, PA 17042

**SECOND PUBLICATION**

**ESTATE OF HARRY W. ARNDT**, a/k/a Harry Woods Arndt, late of the Township of Annville, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Susan Durham, Executrix  
2475 Enola Road  
Carlisle PA 17013

Or to:

Theresa L. Shade Wix, Esq.  
Wix, Wenger & Weidner  
4705 Duke Street  
Harrisburg PA 17109-3041

**ESTATE OF JOYCE L. DONMOYER**, late of the County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Todd D. Donmoyer, Executor  
458 N. Lancaster St.  
Jonestown, PA 17038

Daryl J. Gerber, Esquire,  
The Law Office of Daryl J. Gerber  
46 E. Main Street  
Palmyra, PA 17078

**ESTATE OF EUGENE L. DUKE**, late of South Lebanon Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Michael S. Duke, Executor  
c/o Reilly Wolfson Law Office  
1601 Cornwall Road  
Lebanon, PA 17042

**ESTATE OF GEORGE T. EVANS**, late of Millcreek Township, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Tammy L. Sutch, Administrator  
Kevin M. Richards, Esquire  
P.O. Box 1140  
Lebanon, PA 17042-1140

**ESTATE OF WILBURR. SATTASAHN**, late of North Annville Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Ronald D. Miller, Executor  
c/o Keith D. Wagner  
P. O. Box 323  
Palmyra, PA 17078  
Attorney

**ESTATE OF FERN L. SHUE**, late of Palmyra Borough, Lebanon County, PA, deceased. Letters Testamentary on said estate have been granted to the undersigned Executor.

Eugene H. Shue, Executor  
c/o Laucks & Laucks, PC  
105 West Broadway  
Red Lion, PA 17356

Attorney: David M. Laucks, Esq.  
LAUCKS & LAUCKS, PC  
105 West Broadway  
Red Lion, PA 17356

**ESTATE OF GORDON JOSEPH STOLL, JR.**, a/k/a Gordon Joseph Stoll, late of Lebanon, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Elaine G. Stoll, Executrix  
c/o Patrick M. Reb, Esq.  
547 South Tenth Street  
Lebanon PA 17042  
717-274-6620

### THIRD PUBLICATION

**ESTATE OF LUCILLE M. BRUBAKER**, late of Jackson Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Jeffrey R. Brubaker, Co-Executor  
Lisa B. Henry, Co-Executor  
Kelly J. Fox, Co-Executor  
c/o Zimmerman Law Office  
466 Jonestown Road  
Jonestown PA 17038

John M. Zimmerman, Esq.  
Attorney for the Estate

**ESTATE OF JOHN R. FORDYCE**, late of Lebanon City, Lebanon County, Pennsylvania, deceased. Letters of Administration have been granted to the undersigned Administrator.

Scott R. Fordyce, Administrator  
c/o Jon F. Arnold, Esquire  
410 Chestnut Street  
Lebanon, PA 17042

**ESTATE OF JEAN L. HAIN**, late of the Borough of Myerstown, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executors.

John E. Hain, Executor  
545 Stracks Dam Road  
Myerstown, PA 17067

Nickolas Hain, Executor  
541 Stracks Dam Road  
Myerstown, PA 17067

William H. Sturm, Jr., Esquire  
Steiner & Sandoe, Attorneys

**ESTATE OF WALTER A. HERR**, late of the County of Lebanon, PA, deceased. Letters Testamentary have been granted to the undersigned Executrices.

Larry L. Herr, Executor  
2007 Birch Road  
Lebanon, PA 17042

Priscilla H. Swanger, Executrix  
2003 Birch Road  
Lebanon, PA 17042

Paul W. Kilgore, Esquire  
Spitler, Kilgore & Enck, PC  
522 South 8th Street  
Lebanon, PA 17042  
Attorney

**ESTATE OF EARL B. HIGLEY**, late of Jackson Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Jerry E. Higley, Executor  
c/o Gerald J. Brinser, Esq.  
P. O. Box 323  
Palmyra, PA 17078  
Attorney

**ESTATE OF ANNA MAE LUCIOTTI**, late of Annville Township, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Richard F. Luciotti, Executor

John E. Feather, Jr., Esquire  
Feather and Feather, P.C.  
22 West Main Street  
Annville, PA 17003  
Attorney

**ESTATE OF JOHN D. REINBOLD**, late of North Cornwall Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Co-Executors.

Thomas K. Reinbold, Co-Executor  
John D. Reinbold, Jr., Co-Executor

Kevin M. Richards, Esquire  
P.O. Box 1140  
Lebanon, PA 17042-1140

**ESTATE OF JENNIFER A. SANDERS**, late of North Londonderry Township, Lebanon County, Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Devan S. Waibel, Executor  
c/o Keith D. Wagner  
P. O. Box 323  
Palmyra, PA 17078  
Attorney

**ESTATE OF JEAN B. SCHWAB**, late of the Township of Jackson, County of Lebanon and Commonwealth of Pennsylvania, deceased. Letters Testamentary have been granted to the undersigned Executor.

Janette Lebo, Executor  
43 Rehrersburg Road  
Richland, PA 17087

Timothy T. Engler, Esquire  
Steiner & Sandoe, Attorneys

**ESTATE OF SANDRA C. WOOD**, late of Myerstown Borough, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executor.

Diane M. Brewer, Executor  
9 E. Richland Avenue  
Myerstown, PA 17067  
Thomas S. Long, Attorney

**ESTATE OF MIRIAM A. YEAGLEY**, late of Cleona, Lebanon County, PA, deceased. Letters Testamentary have been granted to the undersigned Executrix.

Beth Ann Hostetter, Executrix

John E. Feather, Jr., Esquire  
Feather and Feather, P.C.  
22 West Main Street  
Annville, PA 17003  
Attorney

**ORPHANS' COURT DIVISION  
NOTICES**

Court of Common Pleas of Lebanon  
County

Notice is hereby given that the following accounts in decedents estates, Guardianships and trusts have been filed in the Office of the Register of Wills and Clerk of Orphans' Court of Lebanon County, and that the same will be presented to the Court of Common Pleas-Orphans' Court Division of said County for Confirmation NISI on Tuesday, January 2, 2018 at 10:00 A.M. in Courtroom No. 1, Municipal Building, City of Lebanon.

**FIRST AND FINAL ACCOUNTS  
WITH PROPOSED SCHEDULE  
OF DISTRIBUTION FILED BY  
EXECUTORS OR ADMINISTRATORS**

1. Seltzer, Lorraine M., dec'd., Rodney A. Seltzer, Exr., Timothy T. Engler, Atty.

All of the aforesaid accounts and statements of Proposed Distribution will be confirmed ABSOLUTELY as of course by the said Orphans' Court except those to which exemptions are filed within twenty (20) days after the same are confirmed NISI.

DAWN L. RESANOVICH  
REGISTER OF WILLS AND CLERK OF  
ORPHANS' COURT  
LEBANON COUNTY, PENNSYLVANIA

**NOTICE OF VEHICLE TITLE  
TRANSFER**

Billy J. Davis. You are hereby notified that you are required to appear for a Title Transfer of a Vehicle-2001 Ford Truck-VIN # 1FMZU77E61UA41535. Case # CI-17-09948 Carrion, Jr, Angelo vs. Davis, Billy J. on December 27th, 2017 at 9:30 AM in Lancaster County Courthouse, Courtroom #1, 50 North Duke Street, Lancaster, PA 17605-3480.

**NOTICE OF NAME CHANGE**

IN THE COURT OF COMMON  
PLEAS OF LEBANON COUNTY,  
PENNSYLVANIA CIVIL ACTION –  
LAW NO. 2017 – 01839

In Re: Petition for Change of Name of  
ARMANDO RODRIGUEZ

**NOTICE**

Nature of action: This is a court proceeding requesting that the court enter an order declaring that the name of the above-named individual be changed from ARMANDO RODRIGUEZ to ARMANDO RODRIGUEZ VEGA. The hearing in this Petition has been scheduled to take place on January 9, 2018, at 3:00 o'clock P.M. in Courtroom 4 of the Lebanon County Court of Common Pleas, located at 400 South Eighth Street, Lebanon, Pennsylvania 17042.

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 within twenty (20) days of this Notice. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered 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, OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

MidPenn Legal Services  
513 Chestnut Street  
Lebanon, Pennsylvania 17042  
(717) 274-2834





**ESTATE OF DAWN M. BORTNER AND ESTATE OF RALPH V. CHEVALIER  
V. ANDRE D. KENNEDY AND MAY FURNITURE, INC. NO. 2016-01227**

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*Civil Action-Law-Motor Vehicle Accident-Wrongful Death-Survival Action-Negligence-Preliminary Objections-Specificity of Pleading- "Catch All" Allegations-Fitness of Driver-Fitness of Vehicle-Violation of Statute*

Plaintiffs filed a Complaint alleging that Dawn M. Bortner and Ralph Chevalier died in a motor vehicle accident on November 20, 2015 when their vehicle was rear-ended by a tractor trailer operated by Defendant Andre D. Kennedy ("Kennedy") acting within the scope of his employment with Defendant May Furniture, Inc. ("May Furniture"). May Furniture filed Preliminary Objections to Plaintiffs' Complaint on the basis that it lacked of specificity, asserting that the allegations of negligence were overly broad and failed to set forth factual allegations in support of allegations that Kennedy was inexperienced or unfit to drive and the tractor and/or trailer involved in the accident was unsafe and/or mechanically unfit and Kennedy violated various unspecified laws and regulations.

1. A complaint must apprise the defendant of the plaintiff's claim and the grounds upon which it rests and formulate the issues by summarizing those facts essential to support the claim.
2. It is the responsibility of plaintiffs to use all reasonable diligence properly to inform themselves of the facts and circumstances upon which their right to recovery is based and concisely to state in their complaint the material facts and the basis for the cause of action.
3. General and "catch all" allegations in a complaint are unacceptable.
4. The averments of Kennedy's inexperience or lack of fitness to drive and the unsafe and/or mechanical unfitness of the tractor and/or trailer are insufficiently specific, as they fail to set forth any facts as to Kennedy's inexperience or unfitness to drive or any specific mechanical defect that caused or contributed to the accident.
5. In a civil action, where the facts pled constitute the cause of action, the plaintiff need not specify a statute that the plaintiff contends the defendant violated. Rather, the plaintiff must allege only the material facts that form the basis of the cause of action that raise a violation of the statute.
6. The portion of the Complaint indicating that Kennedy violated the "Rules of the Road" in Chapter 33 of the Vehicle Code and stating numerous facts raising violations of traffic laws including allegations suggesting careless driving, driving at an excessive speed, following too closely and using a cellphone while driving are sufficient to set forth set forth a claim

**ESTATE OF DAWN M. BORTNER AND ESTATE OF RALPH V. CHEVALIER  
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with regard to May Furniture's vicarious liability for Kennedy's negligence.

L.C.C.C.P. No. 2016-01227, Opinion by John C. Tylwalk, President Judge, June 28, 2017.

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY  
PENNSYLVANIA CIVIL DIVISION No. 2016-01227

J

ODIE L. BORTNER, as Administratrix of The Estate of Dawn M. Bortner, deceased,  
And DAVID M. HOLLAR, ESQUIRE as Administrator of the Estate of Ralph V.  
Chevalier, deceased

v.

ANDRE D. KENNEDY and MAY FURNITURE, INC.

ORDER OF COURT

AND NOW, this 28th day of June, 2017, upon consideration of the Preliminary Objections of Defendant May Furniture, Inc., Plaintiff's response thereto, the Briefs submitted by the parties, and after Oral Argument, it is hereby Ordered that the Preliminary Objections are SUSTAINED, in part, and OVERRULED, in part. In accordance with the accompanying Opinion, Paragraphs 33(a), (b), (c), (d), (e), and (f) are stricken from the Complaint. The Preliminary Objections to Paragraphs 33(g) are OVERRULED. Plaintiffs are granted twenty days to file an amended pleading setting forth specific facts to sufficiently support these claims.

BY THE COURT:

JOHN C. TYLWALK, P.J.

**ESTATE OF DAWN M. BORTNER AND ESTATE OF RALPH V. CHEVALIER  
V. ANDRE D. KENNEDY AND MAY FURNITURE, INC. NO. 2016-01227**

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APPEARANCES:

BRIAN WRIGHT, ESQUIRE FOR PLAINTIFF  
VILLARI, BRANDES & GIANNONE, P.C.

MICHAEL SOCHA, ESQUIRE FOR MAY FURNITURE, INC.  
FOWLER HIRTZEL MCNULTY AND SPAULDING, LLP

DEAN F. MURTAUGH, ESQUIRE FOR ANDRE D. KENNEDY

OPINION, TYLWALK, P.J., JUNE 28, 2017.

The Complaint in this wrongful death/survival action alleges that Decedents Dawn Bortner and Ralph Chevalier lost their lives in a motor vehicle accident on November 20, 2015 on Route 78 near the Route 72 exit in Union Township when their vehicle was rear-ended by a tractor-trailer operated by Defendant Andre D. Kennedy (“Kennedy”) who was acting within the scope of his employment/agency with Defendant May Furniture, Inc. (“May Furniture”). It is alleged that the tractor was owned or leased by Kennedy and that the trailer was owned or leased by May Furniture. This action was originally filed in Dauphin County. After May Furniture filed Preliminary Objections alleging improper venue and complaining of lack of specificity of the Complaint, Plaintiffs consented to the transfer of the case to Lebanon County. The remaining Preliminary Objections are now before us for resolution.

Plaintiffs set forth numerous allegations of negligence on the part of Kennedy in Paragraph 30 of Count 1 and against May Furniture in Paragraph 33 of Count 2 of the Complaint. May Furniture objects to the allegations of Paragraph 33 charging negligence on the part of May Furniture for the following:

- a. Failing to establish procedures or programs to determine whether their employees, agents and/or servants were and/or are fit and capable of properly performing the requirements of their respective employment, agency and/or duties;
- b. Failing to properly maintain their Trailer in a safe and/or mechanically fit condition;
- c. Allowing defendant, Andre D. Kennedy, to operate their Trailer when they knew or reasonably should have known it was unsafe, mechanically unfit and/or hazardous;

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- d. Allowing defendant, Andre D. Kennedy, to operate the Tractor/Trailer when they knew or reasonably should have known he was an unsafe, unfit, inexperienced and/or hazardous driver;
- e. Entrusting the Tractor/Trailer to defendant, Andre D. Kennedy, even though they knew or reasonably should have known that he was an unsafe, unfit, inexperienced and/or hazardous driver;
- f. Allowing defendant, Andre D. Kennedy, to operate the Tractor/Trailer when they knew or reasonably should have known that the Tractor/Trailer was not equipped with proper and/or properly operating signals, safety devices, warning devices, tires and/or brake systems.
- g. Being vicariously liable for the acts and omissions of defendant, Andre F. Kennedy, who at all times material hereto, was acting as their employee, agent and/or servant and/or was otherwise acting on their behalf, at their direction and/or under their control, and in that regard, Plaintiffs incorporate by reference paragraph 30 and its subparts as if set forth fully herein.

May Furniture complains that these are “general” or “catchall” allegations which are overly broad and violate the holding of *Connor v. Allegheny Hospital*, 461 A.2d 600 (Pa. 1983)<sup>1</sup> and the Rules of Civil Procedure and should be stricken. In particular, May Furniture argues that the Complaint sets forth no factual allegations to support the allegations of Paragraphs (a), (d), and (e) that Kennedy was inexperienced and/or unfit to drive and that the truck involved in the accident was unsafe/mechanically unfit to drive as alleged in Paragraphs 33(b), (c), and (f). In addition, May Furniture notes that Paragraph 33(g) alleges May Furniture’s vicarious liability for Kennedy’s negligence and incorporates by reference Kennedy’s violation of various unspecified laws and regulations. It argues that this allegation, without citation to any specific law or regulation, is also impermissibly vague.

<sup>1</sup> In *Connor v. Allegheny General Hospital*, 461 A.2d 600, 602 (Pa. 1983), the plaintiff claimed the trial court erred in refusing to allow her to amend her complaint to allege the hospital defendant was negligent in its undue delay in providing care, when her original pleading alleged only affirmative acts of negligence. The Supreme Court found that a plaintiff’s amendment should have been allowed because it amplified the original general complaint which alleged the defendant hospital was negligent in “otherwise failing to use due care and caution under the circumstances.” *Id.* at 602.

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Plaintiffs counter that they have pled the material facts upon which their cause of action is based. They argue that it is not necessary to plead every precise detail since the defendant may use discovery proceedings to prepare his defense and that each paragraph must be read in context with the remainder of the Complaint. Plaintiffs claim that when taken in their entirety, all the allegations of negligence sufficiently inform Defendants of the claims against them. Plaintiffs argue that they are not required to set forth the specific statutes alleged to have been violated and that, with regard to the allegations in Paragraphs 33 (a)(d) and (e), the allegation in Paragraph 22 that Kennedy was negligent in the care, control and/or operation of the truck supports these averments.

In Pennsylvania, a complaint must apprise the defendant of the plaintiff's claim, the grounds upon which it rests, and must formulate the issues by summarizing those facts essential to support the claim. *Cassell v. Shellenberger*, 514 A.2d 163 (Pa. Super. 1986), appeal denied 529 A.2d 1078 (Pa. 1987). It is the responsibility of the plaintiff to use all reasonable diligence to properly inform themselves of the facts and circumstances upon which their right to recovery is based, and to concisely state in their complaint the material facts and the basis for their cause of action. *Shaffer v. Larzelere*, 189 A.2d 267, 269 (Pa. 1963). As per Connor, "general" and "Catchall" allegations in a complain are unacceptable.

In civil actions, where the facts pled constitute the cause of action, the plaintiff need not specify a statute the plaintiff contends the defendant violated. *City of New Castle v. Uzamere*, 829 A.2d 763 (Pa. Commw. 2003). Rather, the plaintiff must only allege the material facts which form the basis of the cause of action which raise a violation of the statute. *Id.* "Although a party need not specifically plead the Act of Assembly ostensibly violated, sufficient facts must be pleaded to bring the case within the appropriate statute." *Dept. of Transportation v. Shipley Humble Oil Co.*, 370 A.2d 438, 440 (Pa. Commw. 1977)

Paragraph 30(e) specifically refers to Kennedy being in violation of the "Rules of the Road" in Chapter 33 of the Vehicle Code<sup>2</sup> and states numerous facts to raise violations of the traffic laws which are applicable. For example, the allegations suggest careless driving, driving at an excessive speed, following too closely, and use of a cellphone while driving. We believe that Plaintiffs' allegations of Kennedy's traffic violations are sufficient and will overrule the Preliminary Objections to those allegations.

We will sustain the remainder of May Furniture's Preliminary Objections. With

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regard to averments of Kennedy's driving unfitness and/or inexperience in Paragraphs (a), (d), and (e), it is at least incumbent upon Plaintiffs to plead facts to support those assertions, e.g., that Kennedy was overly tired, had driven in excess of the allowable time for truck drivers, and/or had not had experience driving loads of this weight and to specify what investigative procedures May Furniture might have used to obtain knowledge of such facts. As the Complaint stands, there is simply nothing factual of this nature. Paragraphs 33(b), (c), and (f) allege that May Furniture failed to maintain the trailer and/or that the trailer was somehow mechanically unfit. Plaintiffs are also required to plead supporting facts to support these allegations, e.g., that the brakes were inadequate, the tires were worn, or the horn did not work. However, there is simply nothing in the Complaint to suggest any specific mechanical defect which caused or contributed to the accident.

For these reasons, we will strike Paragraphs 33(a), (b), (c), (d), (e), and (f) of the Complaint and grant Plaintiffs twenty days to file an amended pleading setting forth specific factual support for their causes of action.