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COUNTY OF LAWRENCE, PENNSYLVANIA
CIVIL TRIAL LIST - GENERAL

City Trailer Mfg Inc. v. Marinelli Realty Inc. et al
10439 of 13 CA Lamancusa, A. Papa

Randolph Johnson v. CSX Transportation Inc
10180 of 13 CA Darby, Wall

Amy Burkes et al. v. Saber Healthcare Group et al
30012 of 14 CA Collis, Bass/Monico

Randy L. Kohnen v. CSX Transportation Inc 11183 of 14 CA Darby, Smith

Richard & Stephanie Randell v. Gregory Hardin et al
10162 of 15 CA Voelker, DeCaro

Teresa L. Adams v. Jennifer Savino DO 30013 of 16 CA Massa, Johnson

Nathan Kreitzer, Sr. and Joyce E. Kreitzer v. Madison Acquisitions, LLC
10767 of 17 CA Soom, Lazo

Vanessa White v. Walmart Stores East LP 10883 of 17 CA Simon, Izsak

Leanne Miller v. Jerry Kennedy, Kennedy Home Repair, LLC
11225 of 17 CA Saad, Bonner

Rosemary McIltrot v. William N Gilleland Jr MD
30006 of 17 CA Sullivan, Baum

Foulk Decorating Co. d/b/a Foulk's Flooring America v. Bio-Medical Applications of Pennsylvania, Inc. d/b/a Fresenius Medical Care New Castle
11049 of 18 CA Godnich, Passodelis

Michelle Cialella v. Allstate Property & Casualty
10469 of 18 CA Simon, Siegfried

Vista South & Sheridan Estates v. Kathaleen Wimer
10406 of 19 CA O'Leary, Anderson

Michael McMullen v. Castle Asphalt & Construction
10240 of 19 CA S. Papa, P. Lynch

Saab Tech LLC v. Zambelli Fireworks Manufacturing Co.
10318 of 19 CA C. Papa, Barron

Diane A Snyder v. Paul A Zarilla 10220 of 19 CA Mack, Martini

Daniel E. Bucci v. Michael A. Bucci 10334 of 20 CA S. Papa, Dimeo

Barbara J. Kunselman v. James A. Floyd 10291 of 20 CA Sensky, Bongivengo

CIVIL TRIAL LIST - MONTHLY
MAY 10 - 21, 2021

Randy L. Kohnen v. CSX Transportation, Inc. 11183 of 14 CA Mansell, Smith

JUNE 15 - 21, 2021

Vanessa White v. Walmart Stores East LP 10883 of 17 CA Simon, Izsak

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims against the estate of the decedent shall make known the same to the person(s) named or to his/her/their attorney and all persons indebted to the decedent shall make payment to the person(s) named without delay.

FIRST PUBLICATION

Brumbaugh, Craig M.
Late of Shenango Township, Lawrence County, Pennsylvania
Executor: Rick A. Brumbaugh
Attorney: Clark & Clark Law, P.C., Robert D. Clark, 201 N. Market St., New Wilmington, PA 16142

Buano, David
Late of Lawrence County, Pennsylvania
Executor: John D. Buano, 3511 Shadowcase Dr., Houston, TX 77082
Attorney: Gene G. Dimeo, Dimeo Law Group, PLLC, 120 Fourth St., Ellwood City, PA 16117, 724-752-9955

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Late of City of New Castle, Lawrence County, Pennsylvania
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Attorney: Michael S. Butler, Heritge Elder Law & Estate Planning, LLC, 318 S. Main St., Butler, PA 16001

DeStefano, Samuel
Late of Shenango Township, Lawrence County, Pennsylvania
Executrix: Shirley DeStefano, 2715 Forest Ave., New Castle, PA 16101
Attorney: John R. Seltzer, 713 Wilmington Ave., New Castle, PA 16101, 724-652-0821

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Late of Pulaski Township, Lawrence County, Pennsylvania
Executrix: Nicole Huffman, 4548 Hillsville Rd., Pulaski, PA 16143
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Popescu, Antoinette J.
a/k/a Popescu, Jennie L.
a/k/a Ezzo-Popescu, Antoinette
Late of Ellwood City, Lawrence County, Pennsylvania
Co-Executors: Carl N. Ezzo and Janis M. Ezzo, 142 Leeper Dr., New Castle, PA 16101
Attorney: Ryan C. Long, Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

Wagner, C. Wayne
a/k/a Wagner, Clare Wayne
Late of Wilmington Township, Lawrence County, Pennsylvania
Executor: Gary W. Wagner
Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

SECOND PUBLICATION

Caparoula, Robert
Late of the City of New Castle, Lawrence County, Pennsylvania
Executrix: Dorthenia Tuttle, 3537 Hunters Woods Blvd. #3, New Castle, PA 16105
Attorney: Anthony Piatek: 414 N. Jefferson St., New Castle, PA 16101

Caravella, Joseph Armond, Jr.
Late of Neshannock Township, Lawrence County, Pennsylvania
Administrator: Lisa M. Murphy, 565 North Lake Shore Dr., Panama City Beach, FL 32413
Attorney: James W. Manolis, Verterano & Manolis, 2622 Wilmington Rd., New Castle, PA 16105-1530

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Administrator: Lisa M. Murphy, 565 North Lake Shore Dr., Panama City Beach, FL 32413
Attorney: James W. Manolis, Verterano & Manolis, 2622 Wilmington Rd., New Castle, PA 16105-1530

Griffith, James C., Sr.
Late of New Castle, Lawrence County, Pennsylvania
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Attorney: Ryan C. Long, Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

Hartley, David A.
Late of Slippery Rock Township, Lawrence County, Pennsylvania
Executor: Zeke W. Hartley, 148 Spade Road, Rochester, Lawrence County, PA
Attorney: Kassie Gusarenko, Myers Law Group, LLC, 17025 Perry Hwy, Warrendale, PA 15086

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Executrix: Lu Ann Kelly, 914 Loraine Ave., New Castle, PA 16101
Attorney: Kathleen Fee-Baird, 113 Oakhill Dr., Slippery Rock, PA 16057, (724) 421-5706

Panella, Lois A.
Late of Lawrence County, Pennsylvania
Executor: Michael Wyant, 154 Mohawk School Rd., New Castle, PA 16102
Attorney: Gene G. Dimeo, Dimeo Law Group, PLLC, 120 Fourth St., Ellwood City, PA 16117, 724-752-9955

Perrotta, Constance Marie
a/k/a Alberico, Constance M.
Late of Neshannock Township, Lawrence County, Pennsylvania
Executrix: Angelo A. Perrotta, Jr., 3521 Hunters Woods Boulevard 1, New Castle, PA 16105
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Prokovich, Ronald
Late of Lawrence County, Pennsylvania
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Late of Lawrence County, Pennsylvania
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Thomas, Nancy E.
a/k/a Thomas, Nancy Ellen
Late of Taylor Township, Lawrence County, Pennsylvania
Executrix: JoEllen Thomas, 766 Seventh St., P.O. Box 417, West Pittsburg, PA 16160
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THIRD PUBLICATION

Maciarello, Carol
Late of New Castle, Lawrence County, Pennsylvania
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Attorney: Bradley G. Olson, Jr., 125 E. North St., Suite 212, New Castle, PA 16101, (724) 656-6633

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Late of Ellwood City, Lawrence County, Pennsylvania
Co-Administrators: Michael Barberio, Wampum, PA and Matthew Barberio, Ellwood City, PA
Attorney: Edward Leymarie, Jr., Leymarie Clark Long, P.C., 423 Sixth St., Ellwood City, PA 16117

Morella, Daryl M.
Late of New Castle, Lawrence County, Pennsylvania
Executrix: Sierra V. Morella, 422 Division St., Apt. 2, New Castle, PA 16101
Attorney: Carmen F. Lamancusa, 414 N. Jefferson St., New Castle, PA 16101

Reed, Robert C.
Late of New Wilmington Borough, Lawrence County, Pennsylvania
Executor: John R. Reed
Attorney: Clark & Clark Law, P.C., Robert D. Clark, Jr., 201 N. Market St., New Wilmington, PA 16142

NOTICE OF FILING OF ARTICLES OF INCORPORATION

Notice is hereby given that Articles of Incorporation were filed with the Department of State, Commonwealth of Pennsylvania, on the 22nd day of April, 2021, and a Certificate of Incorporiation was granted under the provisions of the Business Corporation Law of 1988. The name of the corporation is **JRM Construction, LLC** and the purpose or purposes for which it has been organized is to engage in and to do any lawful act concerning any or all lawful business for which corporations may be incorporated under the Business Corporation Law (Home Improvements and general construction).

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L.C.L.J. - May 3, 2021

IN THE COURT OF COMMON PLEAS OF LAWRENCE COUNTY, PENNSYLVANIA

NO. 10916 of 2020, C.A.

Stephanie Bell and Susan M. Papa, Co-Guardians of Grace Basham, an Incapacitated person PLAINTIFFS

VS.

The Unknown Successors of Bertha Wells DEFENDANTS

TO: The Unknown Successors of Bertha Wells

DATED: April 27, 2021

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS PAPER TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE FOLLOWING OFFICE SET FOTH 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
Lawrence County Government Center
New Castle, PA, 16101
(724) 656-1921

SUSAN M. PAPA
Papa & Papa
439 Court St.
New Castle, PA 16101

L.C.L.J. - May 3, 2021

Burgauer v. Mike Perrotta Contractor, LLC

Motion to Quash Subpoena – PaR.C.P. No. 4003.5 – Non-Party Expert – Deposition

There exists no lawful basis to subpoena and compel a non-party expert, hired by a defendant's insurance carrier, to testify regarding his or her opinion relative to the cause of damages to the home of a plaintiff.

Motion to Quash Subpoena – Court of Common Pleas of Lawrence County, Pennsylvania, No. 10334 of 2017, C.A.

David C. Weber, attorney for Plaintiffs

Bradley G. Olson, attorney for Defendants

Arthur J. Leonard and *Andrew Shannon*, attorneys for Erie Insurance Exchange

OPINION

Hodge, J. June 26, 2019

Before the Court for disposition is Erie Insurance Exchange's (Erie) Motion to Quash Subpoena (Motion) filed on April 9, 2019. Having considered the oral arguments of counsel and the written submissions regarding the Motion placed on the record, the Court enters the following opinion in support of the attached order.

Procedural and Factual Background

Plaintiffs, Scott and Monica Burgauer, filed the complaint in the instant matter on April 4, 2017. Through nine counts, Plaintiffs allege, *inter alia*, that Defendants, Mike Perrotta Contracting, LLC, and Michael Perrotta, committed fraud, breach of contract, breaches of express and implied warranties, unjust enrichment, negligence, and unfair trade practices related to work Defendants performed on Plaintiffs' roof removing old and installing new shingles in the spring of 2016. Defendants' misrepresentations and insufficient workmanship, Plaintiffs aver, resulted in serious damages to their residence, the mitigation of which compels Plaintiffs to seek recompense in excess of $35,000.00.

Months of filings and argument ensued, at first concerning Defendants' preliminary objections and then broadening to include Defendants' attempt to implead additional defendant DaVinci Roofscapes, LLC, which this Court ultimately resolved by Opinion and Order on August 11, 2018. These threshold issues having been addressed, the case proceeded next to discovery as evidenced by the interrogatories exchanged between Plaintiffs and Defendants starting in September 2018. As the discovery process marched along, Plaintiffs issued a subpoena to Bert Davis, Ph.D., (Davis), a structural engineer retained by Erie, to appear for a deposition scheduled for April 10, 2019.[1] Erie responded by filing the Motion *sub judice*, which

was subsequently argued by counsel on May 28, 2019.

Legal Discussion

Erie argues that it retained Davis as an expert to provide his professional opinion on the cause of the damage to Plaintiffs' home, with the implication that, as an expert witness, he cannot be later compelled to provide opinion testimony by another party. Erie asserts that compelling expert testimony (i.e. expert opinions) from a witness is barred by longstanding Pennsylvania precedent stretching back over a century to our Supreme Court's decision in Pennsylvania Co. for Insurances on Lives & Granting Annuities v. City of Philadelphia, 105 A. 630 (Pa. 1918). Additionally, cited by Erie is a litany of cases that have adopted and applied the Supreme Court's holding in Pennsylvania Co., including:

- Evans v. Otis Elevator Co., 168 A.2d 573 (Pa. 1961) (holding that the defendant company could not compel expert opinions from an expert hired by the plaintiff).
- Jistarri v. Nappi, 549 A.2d 210 (Pa. Super. 1988) (holding that a defendant, a doctor, could not be compelled to provide expert medical testimony against his co-defendants/fellow doctors).
- Columbia Gas Transmission Corp. v. Piper, 615 A.2d 979 (Pa. Cmwlth. 1992) (holding that the defendant/condemnor could not compel favorable expert testimony from real estate appraisers hired by the plaintiff/condemnee).
- Spino v. John S. Tilley Ladder Co., 671 A.2d 726 (Pa. Super. 1996), *aff'd* 696A.2d 1169 (Pa. 1997) (holding that the plaintiff could not compel favorable testimony from a medical expert hired by the defendant).

In response, Plaintiffs argue that all of Erie's cited cases are distinguishable from and inapposite to the present controversy and that, in any event, Davis does not qualify as an "expert" as envisioned by these holdings.

Plaintiffs first point to Pa. R.C.P. No. 4003.1 and its expansive language permitting litigants to "obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the present action…" Next, Plaintiffs assert that Davis is not shielded by Rule 4003.5(a)(3)'s prohibition of discovery of facts or opinions from an expert "retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial." Rather, Plaintiffs argue, Davis served only as a consultant for Erie providing a limited amount of assistance to the insurer's claims investigation. For this reason, Davis falls within the realm of a party's representatives, who are subject to discovery under Rule 4003.3, save for "mental impressions, conclusions or opinions respecting the value or merit of a claim or defense or respecting

strategy or tactics." In this vein, Plaintiffs heavily explore and cite the case of Tate v. Philadelphia Savings Fund Society, 1 Pa. D.&C.4th 131 (Pa. Com. Pl. 1987), a decision rendered by our sister courts in Philadelphia County that applied Rule 4003.3 and ordered an agent of the defendant to answer deposition questions regarding his inspection of the physical condition of a stairway.

Moreover, assuming *arguendo* that Davis is deemed to be an expert witness, Plaintiffs contend that Pennsylvania Co. and its progeny are inapplicable because those cases all involved expert witnesses who were either parties themselves to the litigation or retained by a party, whereas here, Davis was retained by Erie, who at no time has been named or joined as a party to this case. Plaintiffs, in rebutting each case's applicability here, also double down on the argument that Davis is not an expert who prepared his report in anticipation of litigation but did so in his capacity as a consultant hired by a non-party insurer merely assisting in a claims investigation.

A thorough search by this Court reveals no appellate or trial court cases squarely on point, i.e. questions involving compelling expert testimony from a non-party expert hired by a non-party to the case. Nonetheless, after considering the material on record and the applicable precedents and rules of civil procedure, the Court must ultimately side with Erie and grant the Motion.

First, the Court disagrees with Plaintiffs' assertion that Davis is not an "expert." At the outset, we acknowledge that Erie initially retained Davis to assist their claims adjuster before the commencement of the instant litigation. However, the Court's review of Davis' report, submitted as an attachment to Plaintiffs' Response to the Motion, reveals that the document's structure and language bear the unmistakable hallmarks of an expert report (e.g. "professional engineering opinion" and "reasonable degree of engineering certainty."). Accordingly, the Court concludes that Erie employed Davis as an "expert" for purposes of their claims investigation, and further concludes that this claims investigation was done in anticipation of litigation, as it is likely that Erie, who was Defendants' insurer at the time, already knew by then that Plaintiffs were likely to sue for Defendants' allegedly deficient work.

Second, because of our conclusion that Davis is an "expert," the Court determines that any discovery of him is governed by Pa. R.C.P. No. 4003.5. The rule, in pertinent part, states as follows, with emphasis added:

Rule 4003.5. Discovery of Expert Testimony. Trial Preparation Material

(a) Discovery of facts known and opinions held by an expert, otherwise discoverable under the provisions of Rule 4003.1 and acquired or developed in anticipation of litigation or for trial, may be obtained as follows:

(1) A party may through interrogatories require

(A) any other party to identify each person whom the other party expects to call as an expert witness at trial and to state the subject matter on which the expert is expected to testify and

(B) subject to the provisions of subdivision (a)(4), the other party to have each expert so identified state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. The party answering the interrogatories may file as his or her answer a report of the expert or have the interrogatories answered by the expert. The answer or separate report shall be signed by the expert.

****

(3) A party **may not** discover facts known or opinions held by **an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial** and who is **not expected to be called as a witness at trial**, except a medical expert as provided in Rule 4010(b) or except on order of court as to any other expert upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the court may deem appropriate.

The text of the rule is clear regarding its application to all named parties to a case. Ambiguity appears to arise, however, respecting the rule's extension to experts hired by entities who are not parties to the litigation but still could be added or joined. In these cases, we find the following statement of the Superior Court determinative: "[Pa. R.C.P. No. 4003.5] governs discovery of opinions that a party or a *potential party* to litigation solicits from a non-party expert." Neal by Neal v. Lu, 530 A.2d 103, 106 (Pa. Super. 1987) (emphasis ours).

Bearing in mind the Superior Court's interpretation, we accordingly hold that Erie was, at the time of the report, a potential party to litigation who hired an expert, Davis, to opine on the causation of the alleged damage to Plaintiffs' home. Therefore, we must apply the clear terms of Rule 4003.5 with full rigor to any discovery attempted on him. Erie, as a non-party to this case, is understandably not expected to present any evidence at trial. In turn, there is no possibility that Erie, as the party who retained Davis, will call on him to testify at trial. Consequently, the provisions of Pa. R.C.P. No. 4003.5(a)(3) undeniably proscribe Plaintiffs from deposing Davis as to his expert opinions. This is especially so given that Plaintiffs failed to develop any argument or present any proof that Davis' testimony would fall under Subsection (a)(3)'s exception permitting the compulsion of expert testimony in "exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same

subject by other means…"

In addition, the Court agrees with Erie's reliance on Pennsylvania Co. and the subsequent line of cases. One seminal passage from Pennsylvania Co., which we join other courts at both the appellate and trial level in quoting with approval, succinctly explains the reasoning for disfavoring the compelling of expert testimony:

> The process of the courts may always be invoked to require witnesses to appear and testify to any facts within their knowledge; but no private litigant has a right to ask them beyond that…the private litigant has no more right to compel a citizen to give up the product of his brain than he has to compel the giving up of material things. In each case it is a matter of bargain, which, as ever, it takes two to make, and to make unconstrained.

Pennsylvania Co., *supra*, at 630.

See, e.g., Dolan v. Fissell, 973 A.2d 1009, 1013 (Pa. Super. 2009); Venosh v. Henzes, M.D., 2018 WL 4898944 (Pa. Com. Pl. 2018); Hill v. Pennsylvania Hospital, 70 Pa. D.&C.2d 560, 574-75 (Pa. Com. Pl. 1974).

To summarize, this Court holds that on the bases of Pa. R.C.P. No. 4003.5 and the Supreme Court's decision in Pennsylvania Co., Plaintiffs have no lawful basis to compel Davis via subpoena to testify regarding his expert opinion on the causes of the alleged damage to Plaintiffs' home. Of course, Plaintiffs are neither barred from having Davis willingly testify as to his expert opinions nor from hiring an expert of their own to provide a similar evaluation. Whatever course of action Plaintiffs may decide to take, this Court concludes that enforcing the outstanding subpoena on Davis would be contrary to well-established rules and precedent, and in so concluding enters the following order.

ORDER OF COURT

AND NOW, this 26th day of June, 2019, the Court having heard argument on May 28, 2019, regarding the Motion to Quash Subpoena filed by Erie Insurance Exchange, with David C. Weber, Esquire, appearing and representing the Plaintiffs in this matter, Andrew D. Shannon, Esquire, appearing and representing Erie Insurance Exchange, and Bradley G. Olson, Esquire, appearing and representing the Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. Erie Insurance Exchange's Motion to Quash Subpoena is hereby GRANTED.

2. The Prothonotary is directed to serve a copy of this Order upon all counsel of record and, if a party has no counsel, then upon said party at the last known address as contained in the Court's file.

BY THE COURT:

John W. Hodge, Judge

Footnotes:

[1] Davis became involved in this case after Erie, Defendants' commercial insurance carrier at the time of the contract with Plaintiffs, retained his services to investigate and inspect Defendants' allegedly deficient work at the job site for purposes of granting or denying Plaintiffs' claim and providing a defense for Defendants. Davis visited and inspected Plaintiffs' home with Erie's claims adjuster on February 14, 2017. Based on his observations there, Davis expressed his professional opinion to Erie that Defendants' insufficient workmanship was the cause of the damage to Plaintiffs' property. Erie then used this report as the basis for denying Plaintiffs' claim and request for coverage. *See* Erie's Motion, Para. 1-8 and Plaintiff's Response at 2-3.