

2013 WL 8748701 (Pa.Com.Pl.) (Trial Motion, Memorandum and Affidavit)  
Court of Common Pleas of Pennsylvania.  
Allegheny County

Pamela CIAPPETTA,  
v.  
EXTENDICARE HOMES, INC., et al.

No. GD13003655.  
November 26, 2013.

Civil Division  
Jury Trial Demanded

### **Plaintiff's Brief in Opposition to Defendants' Preliminary Objections**

[Peter D. Giglione](#), Esquire, Pa. I.D. #89523, [Ryan J. Duty](#), Esquire, Pa. I.D.#309685, Wilkes & McHugh, P.A., Frick Building, Suite 912, 437 Grant Street, Pittsburgh, PA 15219, (412) 434-1110, (412) 434-4882, for plaintiff, Pamela Ciappetta.

Plaintiff, Pamela Ciappetta, by and through her undersigned counsel and the law firm of Wilkes & McHugh, P.A., files the instant Brief in Opposition to Defendants' Preliminary Objections.

#### **I. INTRODUCTION**

The instant nursing home neglect and **abuse** action was commenced by way of Writ of Summons on or about March 12, 2013. Thereafter, Plaintiff filed her Complaint in Civil Action on October 15, 2013.<sup>1</sup> In her Complaint, Plaintiff alleges that she suffered multiple injuries during her stay at the skilled nursing facility commonly known as Belair Health and Rehabilitation Center ("the Facility"), which was collectively, and/or through joint venture, owned, operated, managed and controlled by the Extendicare Defendants. Specifically, the negligent and/or reckless acts of Defendants caused Plaintiff to suffer a fall, worsening [decubitus ulcer](#) to coccyx, a [urinary tract infection](#), Staphylococcus Epidermis, Klebsiella pneumoniae (ESBL), left abdomen wound infected with Pseudomonas aeruginosa and Serratia Marcescens, weight loss, dehydration, poor hygiene, and severe pain.

On or about November 6, 2013, Defendants filed their Preliminary Objections to Plaintiff's Complaint. In their Preliminary Objections, Defendants assert that (1) Plaintiff's claims against Defendants Sharon Silkroski and Mary Stevens Should be Dismissed<sup>2</sup>; (2) Plaintiff's Complaint contains scandalous and impertinent matter; (3) Plaintiff failed to plead allegations with sufficient specificity; (4) Count Two of Plaintiff's Complaint alleging negligence *per se* under [18 Pa.C.S.A. § 2713](#) should be stricken as a matter of law; and (5) Count Three of Plaintiff's Complaint alleging negligence *per se* under [35 P.S. § 10225.101](#) should be stricken as a matter of law.

For the reasons that follow, Extendicare Defendants' Preliminary Objections should be overruled in their entirety.

#### **II. QUESTIONS PRESENTED**

1. Should Defendants' First Preliminary Objection to dismiss claims against Sharon Silkroski and Mary Stephens be overruled as moot?

**Suggested Answer: YES**

2. Are the allegations in Paragraphs 92 and 93 of Plaintiff's Complaint material and pertinent?

**Suggested Answer: YES**

3. Are the allegations in Paragraphs 92 and 93 of Plaintiff's Complaint sufficiently specific?

**Suggested Answer: YES**

4. Does Plaintiff's Complaint properly set forth a claim of negligence per se under the Neglect of Care-Dependent Persons Statute, [18 Pa. C.S.A. § 2713](#)?

**Suggested Answer: YES**

5. Does Plaintiff's Complaint properly set forth a claim of negligence per se under the Older Adult Protective Services Act, [35 P.S. § 10225.101](#), et seq.?

**Suggested Answer: YES**

### **III. ARGUMENT**

#### **A. Standard for Ruling on Preliminary Objections**

Under Pennsylvania law, Preliminary Objections should only be sustained in cases that are free and clear from doubt. [Bower v. Bower](#), 531 Pa. 54, 57, 611 A.2d 181, 182 (1992). A court must overrule objections to a plaintiff's complaint if the complaint pleads sufficient facts which, if believed, would entitle the plaintiff to the relief sought. [Wilkesburg Police Officers Ass'n v. Commonwealth](#), 535 Pa. 425, 431, 636 A.2d 134, 137 (1993). When facing Preliminary Objections in the nature of a demurrer, the court must accept as true all material facts set forth in plaintiff's complaint, as well as all inferences reasonably deducible therefrom. [Youndt v. First Nat'l Bank](#), 868 A.2d 539, 542 (Pa. Super. 2005); [Vosk v. Encompass Ins. Co.](#), 851 A.2d 162, 164 (Pa. Super. 2004). "Thus, the court may determine only whether, on the basis of the allegations the plaintiff pled, he or she possesses a cause of action recognized at law." [In re Adoption of S.P.T.](#), 783 A.2d 779, 782 (Pa. Super. Ct. 2001).

#### **B. Defendants' First Preliminary Objection Should be Overruled as Moot**

Defendants' First Preliminary Objection to dismiss all claims against former Defendants Sharon Silkroski and Mary Stephens is moot. Plaintiff's action with regard to Defendants Sharon Silkroski and Mary Stevens was discontinued by way of Plaintiff's Praecipe to Discontinue Action As to Less Than All Defendants Pursuant to [Pa.R.C.P No. 229\(b\)\(2\)](#) filed with this Honorable Court on November 13, 2013.<sup>3</sup>

Therefore, Defendants' First Preliminary Objection should be overruled as moot.

#### **C. Paragraphs 92 and 93 of Plaintiff's Complaint Do Not Contain Scandalous and Impertinent Matter**

Extendicare Defendants argue that Paragraphs 92 and 93 of Plaintiff's Complaint contain scandalous and impertinent matter. This objection is unfounded as the identified paragraphs are material and pertinent to Plaintiff's instant claims. Paragraph 92 avers that Extendicare Defendants were collectively on notice of the deficiencies in care at the Facility. Further, Paragraph 93 lists citations for numerous failures with regard to resident care at the Facility at large at or around the time of Plaintiff's residency. Given Plaintiff's claims sounding in corporate negligence and request for punitive damages based in part of evidence of Defendants' reckless disregard for resident health and safety, this objection is without merit and should be overruled.

Scandalous averments consist of "any unnecessary allegation which bears cruelly upon the moral character of an individual, or states anything which is contrary to good manners or anything which is unbecoming to the dignity of the court to hear, or which charges some person with a crime, not necessary to be shown." *Ellis v. Nat'l Capitol Life Ins. Co.*, 35 Pa. D. & C.2d 490, 493-94 (Montg. 1964). Impertinent averments have been defined as "immaterial and inappropriate to the proof of the cause of action." *Dept. of Env'tl. Res. v. Peggs Run Coal Co.*, 423 A.2d 765, 769 (Pa. Cmwlth. Ct. 1980). To be relevant, evidence must (only) have "any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." Pa. R.E. 401. *Accord, Com. v. Scott*, 480 Pa. 50, 54, 389 A.2d 79, 82 (1978). Further, "[t]he right of a court to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice." *Com. v. Hartford Acci. & Indem. Co.*, 396 A.2d 885, 888 (Pa. Cmwlth. Ct. 1979).

Plaintiff's references to Department of Health citations prior to and during Plaintiff's residency and those referring to care provided to residents other than Plaintiff are proper. Indeed, such information is highly relevant to Defendants' notice of care problems and their failure to cure the same. Contrary to Defendants averments, Plaintiff is not attempting to bring a claim on behalf of anyone aside from Plaintiff. With that said, Plaintiff did not reside in a bubble, isolated from the effects of Facility-wide conditions.

Specifically, Plaintiff's Complaint avers that the Defendants' intentional understaffing of the Facility caused the quality of care to suffer greatly for **all residents**, including Plaintiff. These Facility conditions, including, inter alia, Defendants' failures listed in paragraph 93, show the reckless disregard for the health and well-being of residents, including Plaintiff, who suffered from pervasive neglect at the Facility which caused her severe pain and suffering. Any similar deficiencies in care initiated and/or fostered by the Defendants, which went uncorrected, affected the total resident population including Plaintiff. Such deficiencies, which are evidenced by Department of Health Surveys are material and relevant to Plaintiff's claims of punitive damages and corporate negligence. *See Phillip Morris USA v. Williams*, 127 S.Ct. 1061, 1064 (2007) (holding "Evidence of actual harm to nonparties can help to show that the conduct that harmed plaintiff also posed a substantial risk of harm to the general public, and so was particularly reprehensible"). Moreover, the pertinent section of the MCARE Act provides that punitive damages are appropriate when a defendant exhibits a "reckless indifference to the rights *of others* ..." <sup>4</sup>

By referencing other residents and past deficiencies in these paragraphs, Plaintiff demonstrates Defendants' "reckless indifference to the rights of others," thus making punitive damages appropriate.

Moreover, when read in its entirety, Plaintiff's Complaint sufficiently pleads that Defendants' failures, as illustrated in the survey results from the Department of Health, put Defendants on notice of the problems in the Facility that caused harm to residents, including Plaintiff. These facts are directly relevant to Plaintiff's claims of corporate negligence.

Specifically, to prevail on her claims of corporate negligence, Plaintiff must show that Defendants had "actual or constructive knowledge of the defect or procedures that created the harm" and that their negligence was "a substantial factor in bringing about the harm" to Plaintiff. *Thompson v. Nason Hosp.*, 527 Pa. 330, 341, 591 A.2d 703, 708 (1991). A defendant is on constructive notice where it "should have known" about a patient's condition and/or fails to adequately supervise those providing patient care. *Brodowski v. Ryave, M.D.*, 885 A.2d 1045, 1057 (Pa. Super. 2005); *See also Scamponi v. Grane Healthcare Co.*, 11 A.3d 967, 991 (Pa. Super. 2010), *appealed on unrelated issue*, 15 A.3d 427 (Pa. 2011), affirmed on other grounds, 57 A.3d 582 (Pa. 2012).

The *Scampone* court clearly addressed the types of evidence appropriate to support claims of corporate negligence in cases of **abuse** and neglect. *Id.* For example, the *Scampone* court held that evidence of understaffing, including “evidence related to **problems with other patients** caused by understaffing,” is relevant to establishing corporate negligence against nursing facilities **and their corporate operators**. *Id.* (emphasis added). In her Complaint, Plaintiff alleges similar facts evidencing a systemic failure to hire, retain, train and supervise its staff at the Facility.<sup>5</sup> Such problems infected the Facility, including the care (or lack thereof) afforded to Plaintiff. Therefore, the averments complained of by Defendants are material and pertinent to the instant case and should not be stricken.

Furthermore, the Honorable Carmen D. Minora's Opinion in *South v. Osprey Ridge Healthcare Ctr., et al.*, is persuasive on this issue.<sup>6</sup> In *South*, Judge Minora held that similar objections by nursing home defendants based on “scandalous and impertinent” matter were “frivolous” and “without merit” because under *Scampone*, “the doctrine of corporate negligence is extended to nursing homes and notice of prior inadequate care or understaffing and failure to correct the problem is sufficient to establish both corporate negligence and liability for punitive damages.” *South*, p. 5. Similarly, Plaintiff's use of surveys here is directly relevant to the claims asserted against Defendants. Therefore, the aforementioned paragraphs are material to Plaintiff's cause of action, and neither scandalous nor impertinent.

Accordingly, Defendants' Preliminary Objection must be overruled.

#### **D. Paragraphs 92 and 93 of Plaintiff's Complaint is Pled with Requisite Specificity**

Defendants object to Paragraphs 92 and 93 of Plaintiff's Complaint which state that Defendants' corporate officers were made aware of survey results and thus placed on notice of the issues with resident care at their Facility as identified in Department of Health surveys and citations.<sup>7</sup> Defendants argue that these paragraphs are not sufficiently specific in that they fail to allege how any of the alleged deficiencies in care regarding other residents are causally related to Plaintiff's injuries in this case. Similar to Defendants' preliminary objection based on scandalous and impertinent matter, this objection lacks merit and should be overruled.

Defendants cannot look at each section of Plaintiff's Complaint in a vacuum. In a complaint, a plaintiff is required to state the “material facts on which a cause of action is based... in a concise and summary form.” Pa.R.C.P. 1019(a). This rule has been interpreted to require that the complaint give notice to the defendant of an asserted claim, and synthesizes the essential facts to support it. *Krajsa v. Key Punch, Inc.*, 424 Pa. Super. 230, 235, 622 A.2d 355, 357 (1993). A complaint is sufficiently specific if it provides the defendant with enough facts to enable the defendant to frame a proper answer and prepare a defense. *Smith v. Wagner*, 403 Pa. Super. 316, 319, 588 A.2d 1308, 1310 (1991); *Milk Mktg. Bd. v. Sunnybrook Dairies, Inc.*, 29 Pa. Cmwlth. 210, 370 A.2d 765 (1977). A pleading must achieve its purpose of informing the adverse party or parties and the court of the matters at issue. *Commonwealth of Pennsylvania, Department of Transportation v. Shipley Humble Oil Company*, 370 A.2d 438 (Pa. Cmwlth. 1977). However, nowhere does it say that Plaintiff must construct her complaint in such a way that each section must be read in a vacuum.

Defendants' averments regarding the specificity of paragraphs 92 and 93 lack analysis and support. Defendants' reliance on *Shipley Humble Oil Co.*, and *Cardenas v. Schober*,<sup>8</sup> for the general proposition that a complaint must apprise a defendant of the claims against him, and the essential facts to support the same, is generic and not persuasive in light of the pronouncements in *Scampone*, *supra*. Specifically, the court in *Scampone* found that evidence of injuries to other residents caused by the similar deficiencies that harmed plaintiff is relevant to show the requisite notice on corporate operators to support a claim of corporate negligence. *Scampone* A.3d at 978. Thus, paragraphs 92 and 93 adequately allege knowledge of specific deficiencies in the corporate owners and operators of the Facility. Such allegations are unambiguous and pertinent given the holding in *Scampone*. Moreover, it would serve Defendants well to read Plaintiff's entire Complaint rather than base Preliminary Objections on segregated readings of specific sections. Defendants are apprised of their duties and how they breached those duties in Count One, Count Two, and Count Three of Plaintiff's Complaint.

Plaintiff's Complaint clearly states that all previous paragraphs are incorporated by reference, and importantly this includes paragraph 92, which alleges requisite knowledge on Defendants of deficiencies in care, which is immediately followed in paragraph 93 by a litany of citations levied against the Facility, which are sufficiently specific to apprise Defendants of Plaintiff's claims from which they can launch their defenses.

Accordingly, Extendicare Defendants' preliminary objection should be overruled.

#### **E. Plaintiff's Negligence Per Se Cause of Action under 18 Pa.C.S.A. § 2713 is legally sufficient**

Defendants argue that Plaintiff cannot support a claim under 18 Pa. C.S. § 2713 (hereinafter § 2713") because § 2713 is a criminal statute that does not represent a proper basis for a negligence *per se* cause of action. Defendants maintain that because § 2713 does not contain a private civil cause of action against violators, Plaintiff should be precluded from substituting a negligence duty of care and breach for the proscribed acts under § 2713. As explained below, this objection lacks merit.

Defendants mischaracterize Plaintiff's claims in this matter, as Plaintiff is *not* attempting to bring a private cause of action under a criminal statute, but intends to use the statute as the standard of care for its negligence *per se* claim. Under Pennsylvania law, Plaintiff is entitled to bring a negligence *per se* claim for violation of a criminal statute. A claim based upon negligence *per se* is not the same as a private cause of action. Contrary to Defendants' assertions, Plaintiff is *not* asserting a private statutory cause of action under § 2713. Rather, Plaintiff alleges that Extendicare Defendants breached the standard of care as prescribed in § 2713, which conveys an actionable tort duty, and therefore, Extendicare Defendants should be held liable for negligence *per se*.

Defendants' contention that proceeding under this theory necessitates "a trial within a trial" is without basis. A prerequisite to any negligence *per se* claim is proof that the applicable statute was violated. See *Mahan v. Am-Gard, Inc.*, 841 A.2d 1052, 1059 (Pa. Super. Ct. 2003). Here, Plaintiff's burden is no different than any other negligence *per se* claim. Count Two of Plaintiff's Complaint requires proof that the standard of care provided by § 2713 was breached, causing Plaintiff's injuries, which Plaintiff intends to prove at trial. Defendants fail to articulate any basis for their claimed prejudice resulting from a "trial within a trial," and they do not distinguish Plaintiff's burden in this case from other negligence *per se* causes of action. Accordingly, Defendants' averments of prejudice are without merit.

Additionally, the absence of a statutory right to a private cause of action does *not* preclude a claim of negligence *per se* for violation of the statute. In a similar nursing home **abuse** and neglect case, the court held that OAPSA, discussed below, a statute which does not provide a private right of action, *can still be utilized to establish negligence per se*. *McCain v. Beverly Health and Rehabilitation Services*, 2002 WL 1565526 (E.D. Pa. 2002). Essentially, if a plaintiff can prove the defendant's negligence was the proximate cause of the injury in question, then the violation of the applicable statute is negligence *per se*, and liability may be grounded on such negligence. *Cabiroy*, 767 A.2d at 1079. A similar situation exists in the present matter. Although § 2713 does not provide a private cause of action, Defendants' conduct breached the standard of care required by the statute, which makes Defendants liable for negligence *per se*.

Pennsylvania courts have clearly established that a plaintiff asserting negligence *per se* properly relies upon a statute that lacks a private cause of action where: (1) the statute is designed to protect a particular class of individuals from the type of harm suffered by the plaintiff and (2) the claim will further the purpose of the statute. See *Cabiroy v. Scipione*, 767 A.2d 1078, 1081 (Pa. Super. 2001) (citing *Majors v. Brodhead Hotel*, 416 Pa. 265, 205 A.2d 873, 875 (1965)); *Frantz v. HCR Manor Care Inc.*, 64 Pa. D. & C.4<sup>th</sup> 457, 465 (C.P. Schuylkill 2003) (citing *McCain v. Beverly Health and Rehabilitation Svcs.*, 2002 WL 1565526, at \* 1 (E.D. Pa. 2002).

Pennsylvania courts have further clarified the idea that a plaintiff can file suit under a statute that does not provide for a private cause of action, stating that "the concept of negligence *per se* establishes both duty and required breach of duty where an

individual violates an applicable statute, ordinance or regulation designed to prevent a public harm.” *Frantz*, 64 Pa. D. & C.4<sup>th</sup> at 461-62 (quoting *Braxton v. PennDOT*, 160 Pa. Cmwlth. 32, 45, 634 A.2d 1150, 1157 (1993)). And, “[i]n analyzing a claim based on negligence *per se*, the purpose of the statute must be to protect the interest of a group of individuals, as opposed to the general public, and the statute must clearly apply to the conduct of the defendant.” *Id.* at 462. Thus, negligence *per se* applies where an individual within the class contemplated by the statute suffers the type of harm that the statute seeks to prevent. *Id.* (citing *Wagner v. Anzon Inc.*, 453 Pa. Super. 619, 627, 684 A.2d 570, 574 (1996)).

Under § 2713 of the Pennsylvania Crimes Code, a caretaker is guilty of neglect of a care-dependent person if he:

(1) Intentionally, knowingly or recklessly causes bodily injury or serious bodily injury by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care. 18 Pa.C.S.A. § 2713(a)(1).

Further, the statute defines “caretaker” as “an owner, operator, manager or employee of a nursing home.” 18 Pa.C.S.A. § 2713(f)(1). Thus, the statute’s plain language clearly establishes that its purpose is to prevent a public harm: **elder abuse** and neglect by owners and operators of nursing homes.

In this case, Defendants’ conduct breached the standard of care required by § 2713, which in turn makes Extendicare Defendants liable for negligence *per se*. Belair Health & Rehabilitation Center is a skilled nursing facility and therefore falls well within the § 2713 definition of “caretaker.” As such, Defendants clearly assumed the role of Plaintiff’s “caretakers” as defined by the statute.<sup>9</sup> Plaintiff’s averments, if proven, establish that Defendants failed to meet their responsibilities as statutory caretakers, namely that Defendants failed to “provide treatment, care, goods or services necessary to preserve the health, safety, or welfare” of Plaintiff.<sup>10</sup> Thus, the aforementioned language of § 2713 clearly establishes a clear and specific standard necessary to support Plaintiff’s claim of negligence *per se*.

Numerous courts throughout this Commonwealth have held that § 2713 may serve as the basis of a negligence *per se* claim. For example, recently in *Kania v. Extendicare Homes Inc., et.al*, the Honorable Judge Caruso of the Westmoreland Court of Common Pleas overruled a similar preliminary objection to a negligence *per se* claim under § 2713; stating:

The Neglect of Care-Dependent Persons Statute (18 Pa. C.S.A. § 2713) is sufficiently specific to form the basis of a negligence *per se* action inasmuch as the statute provides that under certain circumstances particular acts shall or shall not be done, i.e. the statute provides that under circumstances where a care-dependent person is under the care of the defendants, they cannot fail to provide treatment, care, goods or services necessary to preserve the health or welfare of the care-dependent person and failing to do so leaves little doubt that the defendants would violate the reasonable standard of care required of them.<sup>11</sup>

*Id.* Furthermore, the Honorable Carmen D. Minora’s Opinion in *South, supra.*, held that, “Plaintiff’s allegations clearly support a claim that Defendants’ conduct falls with the type of harm that the statute seeks to prevent and furthers the statute’s purpose.” *Id.* at p. 7.<sup>12</sup> Thereafter, the Honorable Edward E. Guido of the Cumberland County Court of Common Pleas found Judge Minora’s reasoning in *South* persuasive and adopted it in overruling preliminary objections on the same issue.<sup>13</sup> Furthermore, in *Ronan v. ManorCare of Carlisle PA, et al.*, the Honorable M.L. Ebert, also of the Cumberland County Court of Common Pleas, found Judge Guido’s ruling persuasive, and adopted the *South* reasoning in overruling the same preliminary objection.<sup>14</sup>

Defendants’ instant objection mischaracterize Plaintiff’s claims in this matter, as Plaintiff is not attempting to bring a private cause of action under a criminal statute, but intends to use the statute as the standard of care for its negligence *per se* claim. As shown above, under Pennsylvania law, Plaintiff is entitled to bring a negligence *per se* claim for violation of a criminal statute and numerous courts throughout Pennsylvania have recognized the propriety of § 2713 negligence *per se* actions.



Accordingly, Extendicare Defendants' objection should be overruled and Plaintiff's negligence *per se* claims arising from 18 Pa.C.S.A. § 2713 should proceed.

**F. Plaintiff's Negligence *Per Se* Cause of Action under the Older Adult Protective Services Act (OAPSA), 35 P.S. § 10225.101 et seq. is legally sufficient**

Defendants challenge Plaintiff's negligence *per se* claims under the Older Adult Protective Services Act (OAPSA), 35 P.S. § 10225.101 et seq. (hereinafter “§ 10225.101”), which sets forth civil and administrative penalties for **abuse** of a care-dependent person. Defendants advance similar analysis to their preliminary objection to § 2713, stating that §10225.101 does not incorporate a private cause of action and does not provide a sufficient basis for a negligence *per se* cause of action. This objection lacks merit and should be overruled.

The language of § 10225.101 expresses its legislative purpose as follows: “It is the intent of the General Assembly to provide for the detection and reduction, correction or elimination of **abuse**, neglect, exploitation and abandonment, and to establish a program of protective services for older adults in need of them.” 35 P.S. § 10225.102. Consistent with this purpose, in *McCain v. Beverly Health and Rehabilitation Services*, the District Court for the Eastern District of Pennsylvania denied the defendant nursing home's motion to dismiss plaintiffs negligence per se claims under OAPSA and held that OAPSA provides a proper basis to establish a patient's claim for negligence *per se* under Pennsylvania law. See *McCain*, supra, 2002 WL 1565526, at \*1. Furthermore, the Court in *Kania* overruled a similar preliminary objection to a negligence per se claim under § 10225.101.<sup>15</sup>

Applying this rationale, the court found that a healthcare resident who allegedly developed **pressure sores** as a result of the defendant's conduct fell within the class of person and type of harm that OAPSA sought to address. *Id.*

Similarly, the averments set forth in Plaintiff's Complaint are more than sufficient to support Plaintiff's claims for negligence *per se* stemming from Defendants' violations of this statute. Plaintiff alleges that Defendants' failures to provide basic care *caused* Plaintiff's needless pain and suffering.<sup>16</sup> Thus, incorporating the law and analysis from Plaintiff's response to Extendicare Defendants' preliminary objection to § 2713, Plaintiff's claim for negligence *per se* arising from Extendicare Defendants' OAPSA violations should proceed.

Accordingly, Defendants' Preliminary Objection to Plaintiff's negligence *per se* claims should be overruled.

#### IV. CONCLUSION

For the foregoing reasons, Defendants' Preliminary Objections are without merit. Plaintiffs respectfully request that this Honorable Court overrule Defendants' Preliminary Objections and order Defendants to file an Answer to Plaintiff's Complaint within twenty (20) days of the date of the Order.

Dated: 11/26/2013

Respectfully submitted,

WILKES & McHUGH, P.A.

By:

Peter D. Giglione, Esquire

Ryan J. Duty, Esquire

*Counsel for Plaintiff*

Footnotes

- 1 A true and correct copy of Plaintiff's Complaint in Civil Action is attached hereto as **Exhibit "A."**
- 2 Plaintiffs action with regard to Defendants Sharon Silkroski and Mary Stevens was discontinued by way of Plaintiffs Praeipce to Discontinue Action As to Less Than All Defendants Pursuant to [Pa.R.C.P No. 229\(b\)\(2\)](#) filed with this Honorable Court on November 13, 2013.
- 3 A true and correct copy of Plaintiff's Praeipce to Discontinue as to Less Than All Defendants is attached hereto as Exhibit **"B"**.
- 4 See MCARE statute, [40 P.S. § 1303.505](#) (emphasis added).
- 5 See Exhibit "A," at ¶¶ 36-51, 84-91.
- 6 See The Honorable Judge Minora's 6/24/2011 Order is attached hereto as Exhibit "C."
- 7 See Exhibit "A," at ¶¶ 92-93.
- 8 [783 A.2d 317, 319 \(Pa. Super. 2001\)](#)
- 9 See Exhibit "A" at ¶¶ 3-20, 23-35.
- 10 See Exhibit "A" at ¶¶ 36-51, 84-91.
- 11 See The Honorable Judge Caruso's 7/9/2013 Order is attached hereto as **Exhibit "D."**
- 12 See Exhibit "C."
- 13 See The Honorable Judge Guido's 1/10/12 Order, attached hereto as Exhibit "E."
- 14 See The Honorable Judge Ebert's 8/27/12 Order and Opinion, attached hereto as **Exhibit "F"**
- 15 See Exhibit "D."
- 16 See Exhibit "A" ¶¶ 44-48, 57-58, 91(h), 111-112.

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