

In the Superior Court of Pennsylvania

Nos. 875 & 950 MDA 2015

PATRICIA BRITTAIN A.K.A. PATRICIA MAINES, Administrator
of the Estate of BARBARA ANN MAINES,

Appellant,

v.

HOPE ENTERPRISES FOUNDATION INCORPORATED,
and/or HOPE ENTERPRISE INC., and/or
WILLIAM BIRT, and/or HEATHER PETERS and/or
SELECTIVE INSURANCE COMPANY OF AMERICA

BRIEF FOR APPELLANT

On Appeal from the Judgment of the Court of Common Pleas of
Luzerne County, Pennsylvania, entered April 30, 2015 in
Civil Division No. 10467 CV 2010

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**Exhibit Attached to Brief for Appellant in Accordance
with the Pa. Rules of Appellate Procedure**

Trial court’s opinion and order dated
July 22, 2015Exhibit A

Trial court’s order dated April 28, 2015
entering judgment on remand Exhibit B

Trial court’s order dated April 21, 2015
declining to conduct a new trial on punitive damages..... Exhibit C

Appellant’s Rule 1925(b) statements of errors
complained of on appealExhibit D

I. INTRODUCTION

If there is one guiding principle of appellate litigation, it is that a lower court must strictly adhere to the judgment and the mandate of a higher court in the case at hand. Unfortunately, the trial court in this case has strayed from that principle, necessitating the return of this case on appeal to enforce the judgment that this Court entered in its earlier decision in this case on April 25, 2014.

That earlier appeal arose after a trial of this case in the Court of Common Pleas of Luzerne County produced a jury verdict in favor of the plaintiff and against defendants Hope Enterprises and William Birt. The jury in this case found that Barbara Ann Maines (the decedent) died as a result of the tortious conduct of defendant Hope Enterprises, a residential group home operator, and its driver, Birt, while transporting Ms. Maines from a sheltered workshop back to the group home's premises. Due to injuries that Ms. Maines sustained in a motor vehicle accident while Birt, acting on behalf of Hope Enterprises, was transporting her from the sheltered workshop back to her residence, Ms. Maines experienced extended pain and suffering and ultimately passed away.

Plaintiff Patricia Brittain filed this lawsuit as the administrator of the Estate of Barbara Ann Maines. Plaintiff asserted wrongful death and survival claims against the defendants. After hearing all of the evidence and receiving the trial court's instructions, the jury found in favor of the plaintiff on both the survival and wrongful death claims.

On the wrongful death claim, the jury awarded \$2,018,628.87 to the plaintiff. And, on the survival act claim, the jury awarded \$1,000,000.00 in compensatory damages and \$100,000.00 in punitive damages. Both parties filed post-judgment motions. Plaintiff sought a new trial as to punitive damages only on the survival act claim. And the defendants sought judgment notwithstanding the verdict or, in the alternative, a new trial as to all claims.

In an order dated April 3, 2013, the trial court granted a new trial as to compensatory damages only under the Wrongful Death Act and as to punitive damages on the survival act claim. In the trial court's Rule 1925(a) opinion explaining the basis for its grant of a new trial as to those elements of damages, the trial court explained that the trifurcated method of conducting the trial "likely allowed the jury to incorporate a penal element into its Wrongful Death Act award which would explain why it awarded a

relatively small punitive damages award given the underlying compensatory awards and the net worth of Hope Enterprises, Inc.” R.26a (Rule 1925(a) opinion of June 21, 2013 at 5). Thus, in the trial court’s view, the jury’s award of compensatory damages on the wrongful death claim was seemingly too large, and as a result the jury’s punitive damages award on the survival claim ended up being lower than it otherwise would have been. *Id.*

On appeal, this Court reinstated the jury’s award of \$2,018,628.87 on the wrongful death claim (thereby overturning the trial court’s award of a new trial as to damages on that claim) and affirmed the trial court’s grant of a new trial as to punitive damages on the survival act claim. R.43a, 51a–53a (this Court’s opinion of April 25, 2014 at 16, 24–26). This Court specifically rejected as waived defendants’ argument that it would be improper to conduct a new trial as to punitive damages only. R.51a–53a (*id.* at 24–26).

In briefing the appeal on the merits before the original three-judge panel, defendants argued that this Court should not allow a new trial to be granted only as to punitive damages on the survival act claim. R.51a–52a. Once the panel issued its ruling, defendants argued in their application for

reargument that a retrial should not be limited to the issue of punitive damages. R.157a-58a. After this Court issued an order denying defendants' application for reargument, defendants filed a petition for allowance of appeal to the Pa. Supreme Court asking Pennsylvania's highest court to hold that a retrial limited to punitive damages should not occur. R.160a-65a. Importantly, there was no question in the minds of any of the parties, as evidenced by their court filings, that the result of this Court's non-precedential opinion of April 25, 2014 was to require the trial court to conduct a new trial limited only to the question of how much punitive damages should be awarded in favor of plaintiff and against Hope Enterprises on plaintiff's survival act claim.

After the Supreme Court of Pennsylvania denied defendants' petition for allowance of appeal (and defendants' application for reconsideration), this case returned to the trial court. On remand, the trial court has ruled, in disregard of this Court's judgment and mandate in the earlier appeal, that plaintiff is not entitled to a new trial limited to punitive damages. *See* Exhibit C hereto. According to the trial court, the only reason it originally granted a new trial as to punitive damages was because, in the trial court's view, the compensatory damages awarded on the wrongful death claim

improperly contained a punitive component. *See* Exhibit A hereto at 2–3. In other words, according to the trial court, now that this Court had reinstated the wrongful death verdict, plaintiff was no longer entitled to a new trial as to punitive damages on the survival act claim, even though this Court’s judgment affirmed the trial court’s grant of a new trial limited to punitive damages on the survival act claim, while simultaneously reinstating the jury’s wrongful death compensatory damage award.

The trial court’s refusal to conduct a new trial limited to punitive damages on plaintiff’s survival act claim only, in accordance with this Court’s ruling of April 25, 2014, violates the law of the case doctrine, *stare decisis*, and the mandate rule. Accordingly, this Court should reverse the trial court’s order refusing to conduct a new trial limited to punitive damages on plaintiff’s survival act claim and remand for purposes of conducting that limited new trial.

In addition, the trial court also erred in failing to add post-judgment interest, beginning to accrue from the date of the jury’s verdict, to the jury’s compensatory damages awards in the trial court’s judgment of April 28, 2015. This Court should therefore also direct the trial court on remand to

add the appropriate amount of post-judgment interest to its judgment in this case.

II. STATEMENT OF JURISDICTION

On April 21, 2015, the trial court issued an order denying plaintiff's request for a new trial limited to punitive damages, which plaintiff requested in accordance with the judgment and mandate of this Court's ruling of April 25, 2014. *See* Exhibit C hereto. Plaintiff filed a timely notice of appeal from that order on May 21, 2015. R.171a. Thereafter, the trial court on April 28, 2015 entered judgment reflecting the jury's original damages awards, plus delay damages through the date of the jury's verdict. *See* Exhibit B hereto. However, that judgment omitted any post-judgment interest. To remedy that omission, plaintiff filed a timely notice of appeal from that judgment on May 28, 2015. R.186a-87a.

This Court possesses appellate jurisdiction over this final order appeal pursuant to Pa. R. App. P. 341(a).

III. STATEMENT OF THE SCOPE AND STANDARDS OF REVIEW

This Court possesses *de novo* review to determine whether the trial court properly adhered to this Court's instructions to conduct a new trial limited to punitive damages. *See Zane v. Friends Hosp.*, 836 A.2d 25, 31 n.8 (Pa. 2003) (noting that issues relating to law of the case doctrine present a question of law subject to *de novo* review on appeal).

And whether the trial court should have included post-judgment interest from the date of the jury's verdict in the trial court's judgment also presents a question of law as to which this Court exercises *de novo* review. *See Hutchison ex rel. Hutchison v. Luddy*, 946 A.2d 744, 749-50 (Pa. Super. Ct. 2008).

IV. TEXT OF THE ORDERS IN QUESTION

On April 21, 2015, Judge Thomas F. Burke, Jr. of the Court of Common Pleas of Luzerne County, Pennsylvania issued an order providing, in pertinent part:

AND NOW, this 21st day of April, 2015, upon consideration of Plaintiff's objection to the Trial Court's determination that Plaintiff is not entitled to a new Trial on punitive damages and after argument before the Court, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiff's objection is OVERRULED.
2. Plaintiff, Patricia Brittain, Administrator of the Estate of Barbara Ann Maines, is not entitled to a new trial on the issue of Punitive Damages.

Exhibit C hereto.

And on April 28, 2015, Judge Burke issued an order providing in pertinent part:

AND NOW, this 28th day of April, 2015, upon consideration of the Motion to Strike/Amend Judgment, and joinder therein by Selective Insurance Company of America, and after argument before the Court, it is hereby ORDERED, ADJUDGED and DECREED, as follows:

* * *

2. The Court has determined an award of \$157,463.04 for damages for delay to be added to the compensatory jury verdict award to the Plaintiff in the amount of \$3,018,628.87.
3. On the joint motion of the Plaintiff and Defendants that the Court proceed with entry of judgment, it is further ORDERED that:
 - A. Judgment shall be entered in favor of Patricia Brittain a/k/a Patricia Maines, Administrator of the Estate of Barbara Ann Maines as against Hope Enterprises, Inc. and William Birt in the amount of \$3,176,091.91, plus interest and costs as permitted by law.

B. Judgment shall be entered in favor of Patricia Brittain a/k/a Patricia Maines, Administrator of the Estate of Barbara Ann Maines as against Hope Enterprises, Inc. for the punitive damages verdict award in the amount of \$100,000.00, plus interest and costs as permitted by law.

Exhibit B hereto.

V. STATEMENT OF THE QUESTIONS PRESENTED

1. Whether the trial court erred as a matter of law or abused its discretion in failing to conduct a retrial limited to the amount of punitive damages to be assessed against defendant Hope Enterprises on plaintiff's survival act claim as required by this Court's non-precedential decision dated April 25, 2014?

2. Whether the trial court erred as a matter of law or abused its discretion in failing to calculate and include post-judgment interest from the date of the jury's verdict in the judgment for compensatory damages that the trial court issued on remand from this Court?

VI. STATEMENT OF THE CASE

A. Relevant Factual History

The tragic facts leading to the unnecessary death of Barbara Ann Maines, which gave rise to this lawsuit, are recited in this Court's non-precedential ruling of April 25, 2014 at pages 2-10. R.29a-37a. As summarized above, the jury in this case found that Barbara Ann Maines (the decedent) died as a result of the tortious conduct of defendant Hope Enterprises, a residential group home operator, and its driver, defendant Birt, while transporting Ms. Maines from a sheltered workshop back to the group home's premises. Due to injuries that Ms. Maines sustained in a motor vehicle accident while Birt, acting on behalf of Hope Enterprises, was driving her from the sheltered workshop back to her residence, Ms. Maines experienced extended pain and suffering and ultimately passed away.

Although the punitive damages retrial that this Court's judgment and mandate require the trial court to conduct will focus on those tragic facts, this appeal does not directly involve the factual background of this case. As a result, this brief will focus on the relevant procedural history aspects of this case. To the extent that this Court wishes to obtain a more

extensive reminder of the factual background, this Court can consult the earlier panel's discussion of the facts at pages 2-10 of this Court's non-precedential opinion of April 25, 2014. R.29a-37a.

B. Relevant Procedural History

In connection with the earlier appeal in this case, the trial court issued a Rule 1925(a) opinion on June 21, 2013 to explain why the trial court had issued an order upholding the jury's award of \$1,000,000 in survival act compensatory damages but directing a new trial as to damages on the wrongful death claim and on punitive damages under the survival act. R.26a-27a.

In that opinion, the trial court first explained that the jury's award of \$1,000,000 on the Survival Act claim should stand and thus refused to grant either a remittitur or a new trial on that issue. R.26a (June 21, 2013 Rule 1925(a) opinion at 5). Next, however, the trial court concluded that "the jury's award of \$2,000,000.00 for 'loss of society, comfort and companionship' under the Wrongful Death Act did 'shock' the Court's 'sense of justice.'" R.26a (June 21, 2013 Rule 1925(a) opinion at 5).

The trial court's Rule 1925(a) opinion then went on to explain:

The Court is convinced that while its trifurcated approach was effective on the liability issues, it likely allowed the jury to incorporate a penal element into its Wrongful Death Act award which would explain why it awarded a relatively small punitive damages amount given the underlying compensatory awards and the net worth of Hope Enterprises, Inc. For this reason, the Court granted a new trial “limited to a determination of damages to be awarded to the Plaintiff for ‘loss of society, comfort and companionship’ under the Wrongful Death Act and to a determination of Punitive Damages.”

R.26a-27a (June 21, 2013 Rule 1925(a) opinion at 5-6).

When this appeal previously came before this Court, plaintiff/appellant Brittain argued that the jury’s award of wrongful death damages should be reinstated but that the trial court’s grant of a new trial as to punitive damages on the survival act claim should be affirmed. Defendants/cross-appellants Hope Enterprises and Birt, by contrast, argued that either judgment notwithstanding the verdict or a new trial should be granted as to plaintiff’s claims for damages under the wrongful death act, the survival act, and for punitive damages under the survival act.

In that earlier appeal, this Court began its opinion of April 25, 2014 addressing the issues raised in the appeal and cross-appeal by first addressing and resolving the arguments that plaintiff/appellant Brittain had raised. On the first issue, this Court ruled that “the trial court erred as

a matter of law when it overturned the jury's verdict [on the wrongful death claim] on the basis that the verdict was against the weight of the evidence." R.43a (this Court's April 25, 2014 opinion at 16). This Court's opinion then went on to say, "Brittain's first issue merits relief and we are constrained to reverse the court's order granting a new trial on Wrongful Death Act damages." *Id.*

Later in the opinion, in connection with addressing the cross-appeal of Hope Enterprises, this Court addressed "Hope and Birt's third issue, [in which] they claim that 'it would be a miscarriage of justice to allow the Survival Act compensatory damage verdict to stand, while ordering a new trial on the Survival Act punitive damage verdict.'" R.51a-52a (this Court's April 25, 2014 opinion at 24-25). According to this Court's decision, "This issue is waived." R.52a (this Court's April 25, 2014 opinion at 25).

Thus, the combined effect of this Court's April 25, 2014 decision was to hold that the jury's award of \$2,018,628.86 on plaintiff's wrongful death act claim did not contain any improper components of damages and that the trial court on remand should conduct a retrial limited to the issue of punitive damages only on plaintiff's survival act claim.

The effect of this Court's April 25, 2014 decision surely was not lost on defendants. When they applied to this Court for reargument, and after reargument was denied when they petitioned to the Supreme Court of Pennsylvania for allowance of appeal, one of the defendants' main assignments of error was that this Court should not have issued a decision requiring the trial court to conduct a new trial limited to the issue of punitive damages on the survival act claim without also requiring the jury at the new trial to reconsider compensatory damages. R.157a-58a, 160a-65a. Both this Court and the Supreme Court of Pennsylvania, however, denied any further review of this Court's decision of April 25, 2014.

After the Supreme Court of Pennsylvania denied defendants' petition for allowance of appeal and application for reconsideration, this case returned to the trial court. Although the effect of this Court's earlier decision was clear to the parties, the trial court nonetheless refused to conduct a retrial limited only to the issue of punitive damages on plaintiff's survival act claim. *See* Exhibit C hereto. Rather, the trial court expressed a view that its grant of a new trial for punitive damages was part and parcel of the trial court's vacating of the jury's wrongful death compensatory damages award. *See* Exhibit A hereto at 2-3. Because, in the aftermath of

this Court's ruling on the first appeal, a new trial would no longer be occurring on the jury's wrongful death compensatory damages award, in the trial court's view the plaintiff was not entitled to a new trial on plaintiff's claim for punitive damages under the survival act, notwithstanding this Court's judgment decreeing that plaintiff was entitled to that very relief. *Id.*

On April 28, 2015, after refusing to conduct a new trial limited to punitive damages on plaintiff's survival act claim, the trial court entered judgment on the jury's original verdict. *See* Exhibit B hereto. However, the trial court's entry of judgment included an award of delay damages of only \$157,463.04 up until the date of the jury's verdict. *Id.* The trial court thus did not mold its verdict to include, or otherwise encompass, the post-judgment interest that accrued on the verdict between the time the jury returned the verdict on October 25, 2012 and the time that the trial court finally entered judgment on April 28, 2015.

Thereafter, when the defendants paid the amount of the trial court's judgment on April 28, 2015 to avoid the further accrual of post-judgment interest, the defendants failed to pay the more than \$450,000 in post-judgment interest that had accrued on the jury's verdict since the time the

verdict was returned on October 25, 2012 and the entry of judgment on April 28, 2015. The trial court's failure to include post-judgment interest in the judgment and the defendants' failure through the present day to pay this accrued post-judgment interest necessitates this Court's resolution of the second issue presented on appeal.

VII. SUMMARY OF THE ARGUMENT

On April 25, 2014, this Court decided the opposing parties' earlier appeal in this case. The clear and unambiguous result of this Court's earlier decision, as the opposing parties thereafter acknowledged, was to require the trial court, on remand, to conduct a new trial limited only to the issue of punitive damages on plaintiff's survival act claim.

Under the precedents of this Court and the Supreme Court of Pennsylvania, a lower court must carry out the holdings of a higher court in a given case, instead of seeking creative ways to wriggle out from under the higher court's judgment and mandate. Here, unfortunately, the trial court has committed such an impermissible transgression, by refusing on remand to conduct the new trial limited only to the issue of punitive

damages on plaintiff's survival act claim that this Court's earlier decision of April 25, 2014 unambiguously required the trial court to conduct.

This Court must now make clear to the trial court in this matter that, when this Court decides a case, this Court says what it means and means what it says. Consequently, this Court should, in accordance with *stare decisis*, principles of law of the case, and the mandate rule, reverse the trial court's order refusing to conduct a new trial limited only to the issue of punitive damages on plaintiff's survival act claim and remand with directions to promptly conduct such a limited new trial.

Separately, the trial court also erred as a matter of law in failing to include in the judgment for compensatory damages entered on remand following this Court's April 25, 2014 decision any award for post-judgment interest that had accrued on the jury's compensatory damages verdict between the date on which that verdict issued and the date on which the trial court entered judgment on that verdict some two and a half years later. Defendants have steadfastly refused to pay the post-judgment interest that accrued on the jury's compensatory damages award between the date of the jury's verdict and the date of the trial court's entry of judgment, when defendants paid only the face amount of that judgment.

As a result, this Court should also direct the trial court on remand to issue an amended judgment specifying that defendants owe to plaintiff post-judgment interest in the amount of \$453,535.94, which had accrued between the date of the jury's verdict and the date of the trial court's entry of judgment on April 28, 2015. Such relief is necessary because, in its absence, plaintiff has been unable to collect the post-judgment interest due from defendants on the jury's compensatory damage award.

VIII. ARGUMENT

A. The Trial Court's Refusal To Conduct A New Trial Limited To Punitive Damages On The Survival Act Claim Is Directly Contrary To This Court's Earlier Ruling And Rests On A View Of The Jury's Wrongful Death Award That This Court Rejected

In our hierarchical judicial system, a lower court has no alternative other than to adhere to the judgment of a higher court in the case at hand. In violation of that principle, in this case the trial court improperly attempted to resurrect its belief, first suggested in 2013, that the grant of a new trial as to punitive damages on plaintiff's survival act claim was contingent on the occurrence of a new trial as to compensatory damages on plaintiff's wrongful death act claim. The trial court thus refused to hold a

retrial limited to punitive damages on plaintiff's survival act claim even after this Court held, in the first appeal, that the wrongful death act damages were entirely proper and that a new trial on plaintiff's claim for punitive damages on the survival act claim should nevertheless still take place on remand.

It is important to note that the trial court, in 2013, did not explicitly announce that its grant of a new trial as to punitive damages was contingent on the occurrence of a new trial on wrongful death act damages. All that the trial court theorized at the time was that the jury's award of compensatory damages on the wrongful death act claim may have included a punitive component, which might further explain why the jury awarded only \$100,000 in punitive damages on the survival act claim notwithstanding Hope Enterprises very large net worth. R.26a-27a. But, in its 2013 opinion, the trial court neither expressly stated nor implied that the plaintiff's combined total maximum recovery for punitive damages on the survival act claim and for compensatory damages on the wrongful death act claim could not exceed the then sum of those damages of \$2,118,628.87. It was quite possible, insofar as the trial court's 2013 opinion was concerned, that a new trial on plaintiff's wrongful death act claim and for

punitive damages on plaintiff's survival act claim could permissibly have produced a total verdict far in excess of \$2,118,628.87 that the original jury awarded.

In any event, when this case returned to the trial court in 2015, the trial court could no longer properly remain of the view that the jury's award of \$2,018,628.87 on plaintiff's wrongful death act claim was improperly large because it contained some sort of punitive component. This Court's opinion of April 25, 2014 expressly rejected that view of the jury's wrongful death act award in directing that award's reinstatement. R.38a-43a. Moreover, if the jury's award of \$100,000 in punitive damages on plaintiff's survival act claim originally struck the trial judge as too low, as it unquestionably did (R.26a), then this Court's April 25, 2014 opinion (which affirmed the trial court's grant of a new trial as to punitive damages alone) contained nothing to alter the trial court's view that the jury's original punitive damages award was too low.

In short, only by taking positions foreclosed by this Court's April 25, 2014 opinion was the trial court capable of concluding that a retrial limited to punitive damages was not required in the aftermath of this Court's April

25, 2014 opinion, which specifically held that a new trial limited solely to punitive damages on plaintiff's survival act claim was required. R.51a-53a.

In *Zane v. Friends Hosp.*, 836 A.2d 25, 29 n.6 (Pa. 2003) (internal quotations omitted), the Supreme Court of Pennsylvania observed that “[a]mong rules that comprise the law of the case doctrine are that upon remand for further proceedings, a trial court may not alter the resolution of a legal question previously decided by the appellate court in the matter.”

Similarly, in *Gateway Towers Condominium Ass'n v. Krohn*, 845 A.2d 855, 861 (Pa. Super. Ct. 2004), this Court explained that “[t]he doctrine of law of the case provides that if an appellate court has considered and decided a question on appeal, neither that court nor any trial court may revisit that question during another phase of the same case.” Furthermore, in *SmithKline Beecham Corp. v. Stop Huntingdon Animal Cruelty USA*, 959 A.2d 352, 358 (Pa. Super. Ct. 2008), this Court held that a decision of this Court upholding a trial court's grant of preliminary injunction “as a whole” precludes a later court from reconsidering the legality of a provision contained in the preliminary injunction even though this Court's earlier decision “did not expressly address [that] provision” at all.

And, in *Koch v. Harshaw*, 655 A.2d 1011, 1013 (Pa. Super. Ct. 1995) (internal quotations omitted), this Court made clear that “[w]here the direction contained in the mandate of the appellate court is precise and unambiguous, it is the duty of the trial court to carry it into execution without looking elsewhere for authority to change its meaning or direction.”

In this case, the defendants argued to this Court in their earlier cross-appeal that this Court should not grant a new trial as to punitive damages on plaintiff’s survival action without also granting a retrial as to compensatory damages. R.51a-52a. This Court rejected that argument as waived. R.53a. Then, in the aftermath of this Court’s April 25, 2014 ruling, the defendants argued both in their application for reargument filed in this Court and in their petition for allowance of appeal filed in the Pa. Supreme Court that this Court erred in granting a new trial only as to plaintiff’s claim for punitive damages on the survival act claim. R.157a-58a, 160a-65a. Defendants’ requests for further review of this Court’s April 25, 2014 ruling were denied both by this Court en banc and by the Pa. Supreme Court.

Presumably, defendants will urge this Court to affirm the trial court’s refusal to hold a new trial on remand limited to punitive damages only,

because the trial court's refusal to follow this Court's mandate and hold a retrial only as to punitive damages afforded the defendants the relief they sought, but were denied, from this Court sitting en banc and then from the Pa. Supreme Court. Yet any argument for affirmance that defendants now advance will directly conflict with defendants' prior filings in this Court and in the Pa. Supreme Court, which expressly conceded that the effect of this Court's April 25, 2014 decision was to require the trial court to hold a retrial limited to punitive damages only on plaintiff's survival act claim. R.157a-58a, 160a-65a.

As this Court explained in *Koch*, 655 A.2d at 1013, a trial court acts improperly by "looking elsewhere for authority to change the meaning or direction" of an unambiguous ruling of a higher court. That is precisely what the trial court improperly did here.

Indeed, this Court's ruling of April 25, 2014 provides no support for the trial court's refusal to hold a new trial limited to punitive damages on remand. This Court's April 25, 2014 decision disagreed with the trial court's view that the jury's award of \$2,018,628.87 on plaintiff's wrongful death claim evidenced the jury's improper inclusion of any punitive amount in that damages determination. R.38a-43a. This Court's April 25,

2014 decision, however, left undisturbed the trial court's observation (R.26a) that the jury's award of only \$100,000 in punitive damages on plaintiff's survival act claim seemed too low given Hope Enterprises' net worth.

The only possible basis on which the trial court could have justified its newfound view on remand that the \$100,000 punitive damages award on plaintiff's survival act claim somehow now *was not* too low was by clinging to the trial court's earlier, now-repudiated view (overturned by this Court's April 25, 2014 decision) that the jury's \$2,018,628.87 award on plaintiff's wrongful death claim improperly contained a punitive component. This Court's conclusion that the wrongful death award was not improperly large did nothing to undermine, either expressly or by implication, the trial court's separate conclusion that the jury's punitive damages award on the survival act claim was too low. Indeed, the trial court's willingness to link the jury's award of compensatory damages on plaintiff's wrongful death claim (as to which punitive damages were neither sought nor obtained) with the jury's later award of punitive damages on plaintiff's survival act claim (as to which punitive damages

were sought and awarded, albeit in an amount that the trial court correctly viewed as unusually small) defies understanding.

To summarize: (1) under applicable principles of *stare decisis*, law of the case, and the mandate rule, the trial court had no alternative other than to conduct a new trial limited to the issue of punitive damages on plaintiff's survival act claim, which is what this Court's decision of April 25, 2014 ordered and what the opposing parties thereafter correctly understood this Court's decision of April 25, 2014 to have ordered; and (2) the trial court committed an even more egregious violation of those doctrines by clinging to its view that a new trial as to punitive damages was not required because the jury's award of wrongful death damages improperly contained a punitive component, when this Court's affirmance of the jury's wrongful death award necessarily rejected any argument that the jury's wrongful death compensatory damage award was excessive.

Accordingly, this Court should reverse the trial court's order that refused to conduct a new trial limited to the issue of punitive damages on plaintiff's survival act claim and remand to the trial court for the purpose of conducting a new trial limited to the issue of punitive damages on

plaintiff's survival act claim, in accordance with the precise mandate of this Court's April 25, 2014 decision.

B. Plaintiff Is Entitled To Post-Judgment Interest From The Date Of The Jury's Verdict, And On Remand The Trial Court Should Be Instructed To Calculate And Award The Post-Judgment Interest Due To Plaintiff On The Jury's Verdict

This Court's decisions make clear that post-judgment interest at the lawful rate of six percent begins to accrue in accordance with 42 Pa. Cons. Stat. Ann. §8101 from the date of a jury's verdict awarding damages. *See Lockley v. CXS Transp. Inc.*, 66 A.3d 322, 329-30 (Pa. Super. Ct. 2013); *Johnson v. Singleton*, 658 A.2d 1372, 1374 (Pa. Super. Ct. 1995).

In *Hutchison ex rel. Hutchison v. Luddy*, 946 A.2d 744, 752-53 (Pa. Super. Ct. 2008), this Court held that post-judgment interest must still be calculated from the date of the jury's verdict even in a case, such as this one, where either judgment notwithstanding the verdict or a new trial had erroneously been granted at some point earlier in the proceedings. As this Court explained:

Giving the judgment debtor the benefit of an *erroneous* court ruling, during which time the judgment debtor is relieved from paying post-judgment interest, hampers the very purpose behind such a policy [to compensate a successful plaintiff for

being deprived of compensation]. Such a construction needlessly and, we find, unjustly benefits the recipient of an erroneous ruling [temporarily setting aside the verdict], while depriving an innocent plaintiff of his or her rightful award.

Id. at 752. In *Hutchison*, this Court held that the plaintiff was entitled to recover post-judgment interest during the entire period from the date of the jury's verdict on April 21, 1994 through until payment was made by the defendant on the jury's verdict even though in the interim the verdict had erroneously been set aside, only to be reinstated later on further appellate review.

Lastly, in *Sun Pipe Line Co. v. Tri-State Tel., Inc.*, 655 A.2d 112, 122 (Pa. Super. Ct. 1994), this Court ruled that the trial court's judgment should have specified that post-judgment interest accrued at "six percent which shall start to accrue as of the date of the verdict."

In this case, by contrast, when the trial court on April 28, 2015 finally entered judgment on the jury's verdict of October 25, 2012, the trial court's order specified merely that judgment shall be entered in favor of plaintiffs "in the amount of \$3,176,091.91 [representing the face amount of the jury's verdict and delay damages up until the date of the jury's verdict] *plus interest and costs as permitted by law.*" Exhibit B hereto (emphasis added). By

failing to specify the amount of post-judgment interest that had accrued between the time of the jury's verdict issued on October 25, 2012 and the date on which the trial court finally entered judgment on the jury's verdict, the trial court's judgment improperly deprived plaintiff of \$453,535.94 in post-judgment interest. R.83a. Moreover, the judgment's failure to specify the amount of post-judgment interest then due also enabled defendants to refuse to pay any amount of post-judgment interest on the jury's verdict through to this day.

Consequently, this Court should order the trial court on remand to issue an amended judgment that includes post-judgment interest totaling \$453,535.94. Because defendants paid the face amount of the compensatory damages judgment on the day judgment was entered on remand, this precise calculation represents the exact amount of post-judgment interest that has accrued and continues to remain due to the plaintiff. R.82a-83a.

IX. CONCLUSION

For all of the reasons set forth above, this Court should reverse the trial court's order refusing to conduct a new trial limited to the issue of punitive damages on plaintiff's survival act claim, direct that the new trial limited to the issue of punitive damages on plaintiff's survival act claim occur promptly, and direct the trial court to amend its order of April 28, 2015 entering judgment to include the amount of \$453,535.94 in post-judgment interest that had accrued as of that date.

Respectfully submitted,

Dated: October 2, 2015

/s/ Howard J. Bashman
Howard J. Bashman
2300 Computer Avenue
Suite G-22
Willow Grove, PA 19090
(215) 830-1458

Counsel for Appellant

**CERTIFICATION OF COMPLIANCE WITH TYPE-VOLUME
LIMITATION, TYPEFACE REQUIREMENTS,
AND TYPE STYLE REQUIREMENTS**

This brief complies with the type-volume limitations of Pa. R. App. P. 2135(a)(1) because this brief is not longer than 30 pages, excluding the parts of the brief exempted by Pa. R. App. P. 2135(b).

This brief complies with the typeface and the type style requirements of Pa. R. App. P. 124(a)(4) and 2135(c) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Book Antiqua font.

Dated: October 2, 2015

/s/ Howard J. Bashman

Howard J. Bashman

**Exhibit Attached to Brief for Appellant in Accordance
with the Pa. Rules of Appellate Procedure**

Trial court’s opinion and order dated
July 22, 2015Exhibit A

Trial court’s order dated April 28, 2015
entering judgment on remand Exhibit B

Trial court’s order dated April 21, 2015
declining to conduct a new trial on punitive damages..... Exhibit C

Appellant’s Rule 1925(b) statements of errors
complained of on appealExhibit D

EXHIBIT A

200658 DY

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

2015 JUL 22 PM 12:05
PROTHONOTARY
LUZERNE COUNTY

PATRICIA BRITTAIN a/k/a
PATRICIA MAINES, Administrator of the
Estate of BARBARA ANN MAINES,

NO. 10467 OF 2010

CIVIL ACTION

Plaintiff

vs.

HOPE ENTERPRISES, INC. and
WILLIAM BIRT,

Defendants

ORDER

AND NOW, this 22^d day of July, 2015, it is hereby ORDERED and
DECREED as follows:

1. The Office of Judicial Services and Records (Prothonotary) of Luzerne County
is ORDERED and DIRECTED to docket this Order and Opinion of record and to
forthwith transmit the same to the Superior Court of Pennsylvania.

2. The Office of Judicial Services and Records (Prothonotary) of Luzerne County
is ORDERED and DIRECTED to serve a copy of this Order and Opinion on all counsel
of record pursuant to Pa.R.C.P. No. 236.

BY THE COURT:

Thomas F. Burke Jr.
J.

COUNSEL:

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Scranton, PA 18503

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Jeffrey H. Quinn, Esq.
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Philadelphia, PA 19103-2003

Maureen Murphy McBride, Esq.
PO Box 565
West Chester, PA 19381-0565

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

PATRICIA BRITTAIN a/k/a
PATRICIA MAINES, Administrator of the
Estate of BARBARA ANN MAINES,

Plaintiff

vs.

HOPE ENTERPRISES, INC. and
WILLIAM BIRT,

Defendants

NO. 10467 OF 2010

CIVIL ACTION

FILED
PROthonotary
LUZERNE COUNTY
2015 JUL 22 PM 12:05

OPINION

This Opinion is furnished pursuant to the requirements of Pa. Rule of Appellate Procedure No. 1925(a).

This matter was again before this Court following remand by the Superior Court of Pennsylvania following appeals by both Plaintiff and Defendants.

On April 3, 2013, this Court entered the following Order: "AND NOW, this 3rd day of April, 2013, upon consideration of the Motion for Post-Trial Relief filed by the Defendants, Hope Enterprises, Inc. and William Birt, Plaintiff's Motion for Post-Trial Relief, Plaintiff's Motion for Delay Damages, Plaintiff's Motion for Sanctions, the Replies of the parties to the Motions, the Briefs submitted by the parties, and oral argument before this Court, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. A new trial, limited to a determination of damages to be awarded to the Plaintiff for 'loss of society, comfort and companionship' under the Wrongful Death Act and to a determination of Punitive Damages is GRANTED.

2. The remainder of Defendants' Motion for Post-Trial Relief is DENIED.

3. Plaintiff's Motion for Sanctions is DENIED.

4. Plaintiff's Motion for Delay Damages has been rendered MOOT by the Court's disposition in Paragraph #1 above.

5. The Prothonotary of Luzerne County is directed to enter this Order of record and to mail a copy of this Order to all counsel of record pursuant to Pa.R.C.P. No. 236."

In its previous Rule 1925(a) Opinion, this Court explained its rationale in support of its decision in Paragraph #1 of the April 3, 2013 Order as follows:

Under the facts of this case, however, the jury's award of \$2,000,000.00 for "loss of society, comfort and companionship" under the Wrongful Death Act did "shock" the Court's "sense of justice." By no means is the Court's conclusion on this issue meant to minimize what is clearly a very real sense of loss of comfort and companionship on the part of Barbara Maines's mother, Sharon Moyer. The record is devoid, however, of the types of services and society on the part of the decedent that supported a similarly large award in the *Retzger* case cited above.

The Court is convinced that while its trifurcated approach was effective on the liability issues, it likely allowed the jury to incorporate a penal element into its Wrongful Death Act award which would explain why it awarded a relatively small punitive damages amount given the underlying compensatory awards and the net worth of Hope Enterprises, Inc. For this reason, the Court granted a new trial "limited to a determination of damages to be awarded to the Plaintiff for 'loss of society, comfort and companionship' under the Wrongful Death Act and to a determination of Punitive Damages."

On appeal, the Superior Court concluded that this Court had committed reversible error in granting a new trial with respect to the jury's determination of the Wrongful Death damages and stated as follows: "In conclusion, we reverse and remand the trial court's order to the extent it grants a new trial on the issue of Wrongful Death damages. We direct the court to conduct whatever proceedings it deems necessary to determine the amount of delay damages to which Brittain is entitled. We

affirm the court's order in all other respects. Order reversed and remanded in part and affirmed in part. Jurisdiction relinquished.”

The Superior Court having relinquished jurisdiction and remanded this case, this Court once again had jurisdiction.

Based on Plaintiff's counsel's interpretation of the Superior Court's Opinion, Plaintiff requested a date for a trial limited to a determination of punitive damages. This Court, however, by Order dated April 21, 2015, ruled that it was not going to conduct a trial limited to punitive damages because it had previously granted a new trial based only on its belief, as set forth in the excerpt above, that the jury had incorporated a penal component into the Wrongful Death damages. The Superior Court has concluded that this Court's position in that regard was in error and accordingly reversed that portion of the Court's decision. Importantly, however, this Court has never concluded that the punitive damages award, standing alone, "shocked" the Court's "sense of justice," and it would not have granted a new trial on that issue alone. The Court's explanation of its position on this issue is set forth in greater detail at pages 2-6 of the "Transcript of Proceedings" from April 21, 2015.

Subsequently, on April 28, 2015, this Court, in accordance with the direction from the Superior Court and pursuant to its own Order dated April 24, 2015, conducted a hearing to determine the amount of delay damages to which Plaintiff was entitled. It is clear from the record that at no point did the Court purport to make a determination or enter judgment on any specific post-judgment interest amount to which Plaintiff may be entitled. The Court simply computed the amount of delay damages (\$157,463.04),

added them to the compensatory jury verdict amount (\$3,018,628.87) and entered judgment for the total amount of \$3,176,091.91 *plus interest and costs as permitted by law*. (emphasis added).

Under Pennsylvania law, Rule 238 delay damages run up to the date of the jury's award while post-judgment interest runs after the award. *Lockley v. CSX Transportation Inc.*, 66 A.3d 322 (Pa. Super Ct. 2013); 42 Pa.C.S.A. §8101. As set forth above, in its April 28, 2015 Order, this Court computed only the delay damages, added them to the jury's verdict, and entered judgment in favor of the Plaintiff for that amount, leaving open for future computation any amount of post-judgment interest to which the Plaintiff would be entitled should Plaintiff request same by praecipe, petition or motion.

End of Opinion

Order on Separate Page – 5

EXHIBIT B

200658 DY
G/CO

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

PATRICIA BRITTAIN, a/k/a PATRICIA
MAINES, Administrator of the Estate of
Barbara Ann Maines,

Plaintiff

vs.

HOPE ENTERPRISES, INC. and
WILLIAM BIRT,

Defendants

NO. 10467 OF 2010
CIVIL DIVISION

FILED
PROTHONOTARY
LUZERNE COUNTY
2015 APR 28 PM 4:08

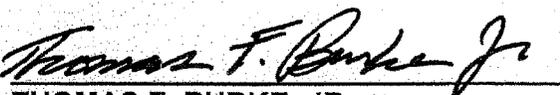
ORDER

AND NOW, this 28th day of April, 2015, upon consideration of the Motion of Defendants to Strike/Amend Judgment, and joinder therein by Selective Insurance Company of America, and after argument before the Court, it is hereby **ORDERED, ADJUDGED and DECREED**, as follows:

1. Judgments entered of record on April 21, 2015, as to the above-captioned matter, are **STRICKEN and REMOVED** in their entirety and all entries in the Judgment Indices against the above-captioned Defendants, Hope Enterprises, Inc. and William Birt, and also entered against non-parties, Hope Enterprises Foundation, Inc. and Selective Insurance Company of America, as well as entries in the Judgment Indices in favor of Plaintiff Patricia Brittain a/k/a Patricia Maines, Administrator of the Estate of Barbara Ann Maines, and also in favor of non-parties, Patricia Brittain, Patricia Maines and Barbara Ann Maines in their individual capacities, shall be **STRICKEN and REMOVED**.

2. The Court has determined an award of \$157,463.04 for damages for delay to be added to the compensatory jury verdict award to the Plaintiff in the amount of \$3,018,628.87.
3. On the joint motion of the Plaintiff and Defendants that the Court proceed with the entry of judgment, it is further ORDERED that:
 - A. Judgment shall be entered in favor of Patricia Brittain a/k/a Patricia Maines, Administrator of the Estate of Barbara Ann Maines as against Hope Enterprises, Inc. and William Birt in the amount of \$3,176,091.91, plus interest and costs as permitted by law.
 - B. Judgment shall be entered in favor of Patricia Brittain a/k/a Patricia Maines, Administrator of the Estate of Barbara Ann Maines as against Hope Enterprises, Inc. for the punitive damages verdict award in the amount of \$100,000.00, plus interest and costs as permitted by law.
4. The Clerk of Judicial Services and Records (Prothonotary) of Luzerne County shall cause the judgments entered of record on April 21, 2015 to be stricken and removed in accordance with Paragraph 1 hereof and enter judgments of record in accordance with Paragraphs 3(A) and 3(B) hereof and to serve notice of the entry hereof upon all counsel of record pursuant to Pa.R.C.P. 236.

BY THE COURT:

; J.
THOMAS F. BURKE, JR.

Copies to:

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Scranton, PA 18503

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Jeffrey H. Quinn, Esq.
1650 Arch Street, Suite 2110
Philadelphia, PA 19103-2003

EXHIBIT C

IN THE COURT OF COMMON PLEAS
OF LUZERNE COUNTY

PATRICIA BRITTAIN, a/k/a PATRICIA
MAINES, Administrator of the Estate of
BARBARA ANN MAINES,

Plaintiff

vs.

HOPE ENTERPRISES FOUNDATION INC.,
et al ,

Defendants

NO. 10467 OF 201007

CIVIL DIVISION

PROthonotary
LUZERNE COUNTY
2015 APR 21 PM 2:29

ORDER

AND NOW, this 21st day of April, 2015, upon consideration of Plaintiff's objection to the Trial Court's determination that Plaintiff is not entitled to a new Trial on punitive damages and after argument before the Court, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Plaintiff's objection is OVERRULED.
2. Plaintiff, Patricia Brittain, Administrator of the Estate of Barbara Ann Maines, is not entitled to a new trial on the issue of Punitive Damages.
3. The Prothonotary of Luzerne County is directed to enter this Order of record and to mail a copy of this Order to all counsel of record pursuant to Pa.R.C.P.No.236.

By the Court:

Thomas F. Burke Jr.
J.

EXHIBIT D

Patricia Brittain A.K.A
Patricia Maines,
Administrator of
the Estate of
Barbara Ann Maines

IN THE COURT OF COMMON
PLEAS OF LUZERNE
COUNTY

v.

Hope Enterprises Foundation
Incorporated, and/or
Hope Enterprise Inc.
and/or William Birt,
and/or Heather Peters
and/or Selective Insurance
Company of America

CIVIL ACTION – LAW
JURY TRIAL DEMANDED

10467-cv- 2010

CONCISE STATEMENT OF ERRORS COMPLAINED OF ON APPEAL
PURSUANT TO PA.R.A.P. 1925(b)(1)

AND NOW Patricia Brittain a.k.a. Patricia Maines, Administrator of the Estate of Barbara Ann Maines, Plaintiff above named, hereby files her concise statement of errors complained of on appeal pursuant to the trial court's June 8, 2015 Order and states as follows¹:

1. A Notice of Appeal has been filed to this Honorable Court's April 21, 2015 and April 28, 2015 Orders.
2. Each of the aforementioned Orders is without a memorandum and/or opinion.

¹ There are two appeals but to "cut to the chase," Appellants have stated all issues herein this document. Should the trial court send another 1925(b)(1) on the other appeal, Appellants will send another concise statement.

3. Without a Memorandum/opinion relative to each aforementioned Order, Plaintiff is unable to discern the basis for the Trial Court's decision.

4. As such, the Statement herein identifies the errors in general terms.

DELAY OR POST-JUDGMENT DAMAGES

5. The Trial Court erred when it refused to award any delay or other appropriate damages despite Statute, Court Rules, and case law being clear Plaintiff was/is entitled to these damages. (See Motion for Reconsideration as well as all other documents filed by Plaintiff/Appellants of record with the Trial Court concerning this issue).

6. Specifically, on or about April 28, 2015, this Honorable Court entered an Order awarding Plaintiff \$157,463.04 for damages for delay.

7. Plaintiff had requested delay damages and/or other post-verdict damages from the date of the verdict up to and including the date of the oral argument.

8. The Johnson v Singleton, 658 A2d 1372 (Pa.Super 1995), case and all of its progeny mandate an additional \$453,535.94 of delay damages which Plaintiff is entitled to (10/26/12 from date of verdict through 4/28/15 the date the check was delivered (which is 914 days) with a daily rate of \$496.21 to be paid by Defendant.

9. It is clear that 42 Pa.C.S.A. § 8101, states... a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award.

10. It is clear that Pa.R.A.P. 2744 mandates the interest rate at 6%.

11. It is clear that the check was not delivered to Plaintiff until 4/28/15, which is 914 days.

12. It is clear that \$496.21 multiplied by 914 days equals \$453,535.94

13. It is clear that the Johnson case cited above is clear authority that this amount is currently due and owing.

PA.R.A.P. 2744

14. Defendant/Appellees must pay to Plaintiff's Estate attorney's fees, costs and other just compensation pursuant to Pa.R.A.P. 2744 in light of the specific facts raised by Defendant precipitating these appeals.

OTHER APPEAL ISSUE IS AS FOLLOWS:

15. The Trial Court erred on April 21, 2015 when it refused to follow the Superior Court's directives of March 27, 2014 (See all motions, letters, and correspondence filed of record with the Trial Court concerning this issue including the Trial Court's refusal to allow Plaintiff's decedents new punitive damage trial).

16. Of note, the Trial Court's previous Order that was appealed by both Plaintiff and Defendant states:

“A new trial, limited to the determination of damages to be awarded to the Plaintiff for “loss of society, comfort and companionship” under the Wrongful Death Act **and** to a determination of Punitive Damages is GRANTED.” (emphasis added)

17. The Superior Court Opinion states:

“In Hope and Birt’s third issue , they claim it would be a miscarriage of justice to allow the Survival Act compensatory damage verdict to stand, while ordering a new trial on the Survival Act punitive damage verdict.” ... “This issue is waived.” See Superior Court Opinion page 24 and 25.

18. The Superior Court then states that:

“In conclusion, we reverse and remand the trial court’s order to the extent it grants a new trial on the issue of Wrongful Death damages. We direct the court to conduct whatever proceeding necessary to determine the amount of delay damages to which Brittain is entitled. We affirm the court’s order in all other respects.”

19. Obviously, reading the Trial Court’s order along with the Superior Court’s direction mandates that the Trial Court issue an Order as follows:

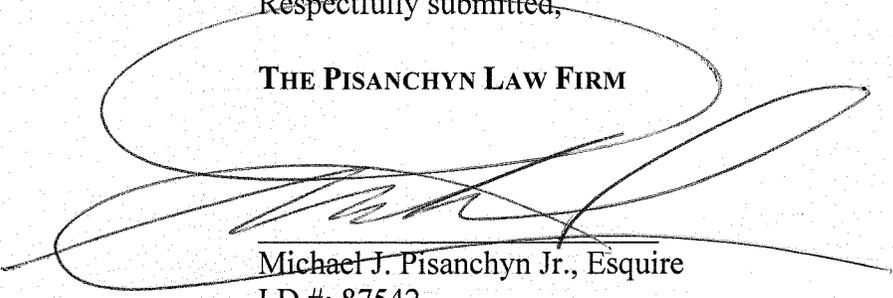
~~A new trial, limited to the determination of damages to be awarded to the Plaintiff for “loss of society, comfort and companionship” under the wrongful Death Act and to a determination of Punitive Damages is GRANTED.” (emphasis added) (the line through is the only language the Superior Court Opinion removed from the trial court’s order)~~

20. This means that Plaintiff’s punitive damage trial must proceed unless stare decisis is dead.

21. No matter which way this issue is analyzed either 1) Defendants have missed the time period to appeal the Court's Order dated April 3, 2013 and jury determination or 2) the matter has already been decided and res judicata and/or collateral estoppel prevent the matter from being re-litigated. Either way, Plaintiff/Appellant is entitled to a new trial in regard to punitive damages.

Respectfully submitted,

THE PISANCHYN LAW FIRM



Michael J. Pisanchyn Jr., Esquire

I.D.#: 87542

524 Spruce Street

Scranton, PA 18503

(570) 344-1234

**Patricia Brittain A.K.A
Patricia Maines,
Administrator of
the Estate of
Barbara Ann Maines**

**IN THE COURT OF COMMON
PLEAS OF LUZERNE
COUNTY**

v.

**CIVIL ACTION – LAW
JURY TRIAL DEMANDED**

**Hope Enterprises Foundation
Incorporated, and/or
Hope Enterprise Inc.
and/or William Birt,
and/or Heather Peters
and/or Selective Insurance
Company of America**

10467-cv- 2010

CERTIFICATE OF SERVICE

I, Michael J. Pisanchyn, Jr., Esquire, certify that on the date indicated below, I served a true and correct copy of Plaintiff, Patricia Brittain A.K.A. Patricia Maines, Administrator of the Estate of Barbara Ann Maines, foregoing concise statement of errors complained of on appeal pursuant to the trial courts June 8, 2015 Order on the below date by depositing the same in the United States Mail, first-class, postage prepaid and facsimile addressed as follows:

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Luzerne County Courthouse
200 North River Street
Wilkes-Barre PA 18711
(570) 825-6242

James A. Doherty, Esquire
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Scranton, PA 18503
Attorney for Hope Enterprises & William Birt
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Jack T. McGrath, Esquire
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Scranton, PA 18505-3118
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Andrew Cassidy, Esquire
1 West First Avenue, Suite 450
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Attorney for Selective Insurance
(610) 828-8340

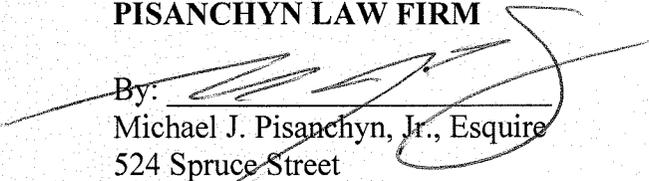
Jeffrey H. Quinn, Esquire
1650 Arch Street, Suite 2110
Philadelphia, PA 19103-2029
(888) 811-7144

Date:

6/5/15

Respectfully submitted,

PISANCHYN LAW FIRM

By: 

Michael J. Pisanchn, Jr., Esquire
524 Spruce Street
Scranton, PA 18503
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true and correct copy of the foregoing document upon the persons and in the manner indicated below which service satisfies the requirements of Pa. R. App. P. 121:

**Service by PACFile or first class mail
addressed as follows, as applicable:**

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Company of America

Dated: October 2, 2015

/s/ Howard J. Bashman
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