

**FILED**

JUN 09 2023

LAURA H. HOUGH  
PROTHONOTARY

**IN THE COURT OF COMMON PLEAS  
WASHINGTON COUNTY PENNSYLVANIA  
CIVIL DIVISION**

**BRYAN LATKANICH,  
HUNTER LATKANICH  
COLTON LATKANICH  
RYAN LATKANICH, a minor by and through  
Natural guardian BRYAN LATKANICH**

Plaintiffs

v

**CHEVRON CORP.  
CHEVRON U.S.A. INC.  
CHEVRON APPALACHIA, LLC  
CHEVRON NORTH AMERICAN EXPLORATION  
AND PRODUCTION COMPANY**

Chevron Defendants

and

**EQT CORP.  
EQT PRODUCTION COMPANY  
EQT PRODUCTON MARCELLUS  
EQT CHAP LLC**

EQT Defendants

and

**JOHN DOE DEFENDANTS**

PFAS Defendants

: **Case No. 2022-6006**  
:  
: **Type of pleading:**  
:  
: **PLAINTIFFS' BRIEF IN**  
: **SUPPORT OF ANSWER TO**  
: **DEFENDANTS'**  
: **PRELIMINARY OBJECTIONS**

: **Filed on behalf of:**  
: **Plaintiffs**

: **Counsel of Record for**  
: **Plaintiffs**

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: **JURY TRIAL DEMANDED**

**PLAINTIFFS’ BRIEF IN SUPPORT OF THEIR ANSWER TO  
DEFENDANTS’ PRELIMINARY OBJECTIONS**

Plaintiffs, Mr. Bryan Latkanich, minor child Ryan Latkanich, Mr. Hunter Latkanich, and Mr. Colton Latkanich respectfully file this brief (“Brief”) by and through their undersigned counsel in response to Defendants’ Brief in Support of Preliminary Objections to Plaintiffs’ Second Amended Complaint, incorporating their Answer to the Defendants’ Preliminary Objections and the Second Amended Complaint. Capitalized terms not otherwise defined herein shall have the meanings given them in the Second Amended Complaint. Paragraphs set forth herein not otherwise designated refer to the paragraphs of the Second Amended Complaint, provided however, that Plaintiffs’ references to such paragraphs are made without limitation to other information and paragraphs within the Second Amended Complaint.

**BRIEF HISTORY**

This case was instituted by the filing of a praecipe for the issuance of a writ of summons on September 7, 2022. Each of the Defendants were served with the writ, none of the Defendants objected to service or filed any motions to quash. Plaintiffs thereafter filed a complaint on October 28, 2022, at which point no counsel for Defendants had entered an appearance. The Defendants, including Chevron Corporation (“Chevron”) thereafter filed Preliminary Objections on December 16, 2022. Plaintiffs filed an Amended Complaint on January 26, 2023. Defendants

served their first set of discovery requests on Plaintiffs on February 1, 2023, and thereafter Defendants filed preliminary objections on February 14, 2023.

On February 6, 2023, Defendants' counsel sent 17 notices of intent to serve third party subpoenas to Plaintiffs, 11 of which were to journalists and/or news outlets, directed to: (1) Dr. Carla Ng, University of Pittsburgh, (PFAS Study and Testing), (2) University of Pittsburgh, Engineers Without Borders, (3) Mr. Don Hopey, Pittsburgh Post-Gazette, (4) Pittsburgh Post-Gazette, (5) E & E News, (6) Environmental Health News, (7) Environmental Health Project, (8) Inside Climate News, (9) Dr. John Stolz, (10) Marketplace.org, (11) Ms. Neela Banerjee, (12) NBCUniversal Media, LLC, (13) PA Department of Health, (14) WTAE-TV, (15) WV Public Broadcasting Foundation, Inc., (16) Mr. Issam Ahmed, and (17) Clean Air Council (collectively, "Notices"). On February 22, 2023, counsel for non-party Ms. Neela Banarjee filed an Objection to Defendants' Notice of Intent to Serve Subpoena upon Ms. Neela Banarjee.<sup>1</sup>

On February 28, 2023, Certificates Prerequisite to Service of Subpoenas to Produce Documents to five of those persons/entities listed above were filed with the Court, specifically to (1) Dr. John Stolz, (2) the Pennsylvania Department of Health, (3) Dr. Carla Ng, (4) Environmental Health Project, (5) Clean Air Council, and (6) the University of Pittsburgh (collectively, "Certificates").

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<sup>1</sup> The Court may consider whether this is an abuse of subpoena power by the Chevron Defendants.

On April 21, 2023, Defendants, including Chevron, filed a Motion to Compel discovery responses from Plaintiffs, which was granted by the Court on May 1, 2023. On May 1, 2023, undersigned counsel advised counsel for Defendants that she would be the sole counsel of record moving forward. Plaintiffs began responding to Defendants' discovery requests on May 5, 2023, and requested an extension to serve their discovery responses until June 30, 2023, while continuing to serve responses on a rolling basis. Undersigned counsel's appearance was entered on May 8, 2023. Plaintiffs then served their first set of discovery requests on the Chevron Defendants on May 15, 2023, and the EQT Defendants on May 24, 2023. Counsel for the Defendants has requested that the Defendants have until July 31, 2023 to respond to Plaintiffs' discovery requests, to which Plaintiffs were amenable to and requested that Defendants begin to respond to Plaintiffs' discovery requests on a rolling basis. No date has been set for such rolling responses to commence.

On May 9, 2023, Plaintiffs and Defendants filed a Joint Motion for Scheduling Order related to Plaintiffs' Complaint. The Court entered such Scheduling Order on May 9, 2023, pursuant to which Plaintiffs filed their Second Amended Complaint on May 19, 2023 ("Complaint") and Defendants filed the most-recent Preliminary Objections on June 1, 2023 ("Preliminary Objections"), to which Plaintiffs' Answer is responsive. The parties are scheduled for oral argument on the Preliminary

Objections on June 20, 2023 at 2:00 pm in front of the Honorable Judge Michael J. Lucas.

## **STATEMENT OF ISSUES**

The Defendants have filed 11 Preliminary Objections under Pa.R.Civ.P.

1028(a)(1):

1. The Court's General Jurisdiction over Chevron Under Rule §1028(a)(1);
2. The Court's Specific Jurisdiction over Chevron Under Rule §1028(a)(1);
3. Inclusion of Impertinent Matter Under §1028(a)(2);
4. Failure to State a claim (Demurrer) - Oil and Gas Development as an Ultra-Hazardous Activity Subject to Strict Liability Under §1028(a)(4);
5. Failure to State a Claim (Demurrer) - Plaintiffs Mr. Hunter Latkanich and Mr. Colton Latkanich Fail to Plead Facts Necessary to Sustain a Cause of Action for Nuisance, or Negligence Under §1028(a)(4)
6. Failure to Plead Which Defendants Took Which Actions and Motion to Strike the "EQT Defendants" Catchall Under §1028(a)(3)
7. Insufficient Specificity of Allegations made by Messrs. Hunter and Colton Latkanich Under §1028(a)(3)
8. Insufficient Specificity and Particularity of Fraud Claims Under §1028(a)(3)
9. Insufficient Specificity of Allegation that Lease was Breached by Failure to Pay Royalties in Agreed upon Quantities Under §1028(a)(3)
10. Insufficient specificity of Allegations that the Chevron Defendants had a Duty to Mitigate Under §1028(a)(3)
11. Insufficient Specificity of a Cause of Action for Negligence Under §1028(a)(3)

For the reasons set forth in Plaintiffs' Answer, this Brief, and the Complaint, Defendants' Preliminary Objections should all be overruled.

## **LEGAL STANDARD**

Pennsylvania Rule of Civil Procedure §1028 establishes the grounds for a party to file preliminary objections to a complaint: “[Preliminary objections] shall state specifically the grounds relied upon and may be inconsistent.” The rule goes on further to state in (c) that “[t]he Court shall determine promptly all preliminary objections. If an issue of fact is raised, the Court shall take evidence by deposition or otherwise.” *See* Comment to Rule 1028, Goodrich Amram 2d § 1028(c)-3,

A court, when deliberating upon preliminary objections, must accept all material facts set forth in the challenged pleading as true. *Turner v. Medical Center, Beaver, PA, Inc.*, 686 A.2d 830 (Pa. Super. Ct. 1996).

### **Personal Jurisdiction**

When deciding a motion to dismiss for lack of personal jurisdiction the court must consider the evidence in the light most favorable to the non-moving party. *Scoggins v. Scoggins*, 382 Pa. Super. 507, 513, 555 A.2d 1314, 1317 (1989), quoting *Delaware Valley Underwriting v. Williams Sapp*, 359 Pa. Super. 368, 373, 518 A.2d 1280, 1282 (1986); *see also* *Gordon v. Pennsylvania Blue Shield*, 378 Pa. Super. 256, 548 A.2d 600 (1988). A defendant making a challenge to the court's personal jurisdiction has, as the moving party, the burden of supporting its objection to jurisdiction. *Scoggins* at 513; *see also* *King v. Detroit Tool Co.*, 452 Pa. Super. 334, 682 A.2d 313 (Pa. Super. Ct. 1996).

Pursuant to the Judiciary Act, 42 Pa.C.S.A. § 5301 et seq., this Court may exercise two types of in personam jurisdiction over a non-resident defendant. *Efford v. the Jockey Club*, 796 A.2d 370, 373 (Pa. Super. Ct. 2002). One type of personal jurisdiction is general jurisdiction, which would be founded upon general activities within Pennsylvania as evidenced by continuous and systematic contacts with Pennsylvania. *Id.* The other type is specific jurisdiction, which has a more defined scope and is focused upon the particular acts that gave rise to the underlying cause of action. *Id.*

*Efford* stands for the premise that the Pennsylvania long-arm statute permits jurisdiction to be exercised “to the fullest extent allowed under the Constitution of the United States and may be based upon the most minimum contact with this Commonwealth allowed under the Constitution of the United States.” 42 Pa.C.S.A. § 5322(b); *Id.* at 373. Pennsylvania courts have recognized that this provision renders the reach of the long-arm statute coextensive with that permitted by the Due Process Clause of the Fourteenth Amendment. *Id.*

The long-arm statute specifically enumerates that framework by listing ten factors demonstrating contacts to determine whether the long-arm statute extends to Chevron by virtue of its own acts or those acts of its agent(s). *Id.* Two of the factors that implicate jurisdiction over a person includes those who contracts to supply services or things in this Commonwealth or causes harm or tortious injury in this

Commonwealth by an act or omission outside this Commonwealth. See 42 Pa.C.S.A. § 5322(a)(2) and (a)(4), respectively.

A foreign entity's contacts with Pennsylvania, arising from its own acts or those of an agent, must be such that such corporation, or such agent, could reasonably anticipate being called to defend itself in the forum. *See, e.g., Kubik v. Letteri*, 614 A.2d 1110, 1115 (1992) (expressly adopting the minimum contacts test advocated by the United States Supreme Court in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)). These activities must be directed to Pennsylvania and conducted itself in a manner indicating that the entity and/or its agent(s) has availed itself of the Pennsylvania's privileges and benefits such that they should also be subject to Pennsylvania's laws and regulations. *Id.*

### **Scandalous and Impertinent Matters**

To be scandalous and impertinent, a complaint's allegations must be immaterial and inappropriate to the proof of the cause of action." *Com., Dep't of Env'tl. Res. v. Peggs Run Coal Co.*, 423 A.2d 765, 769 (Pa. Commw. 1980). Furthermore, it is a long-held practice that scandalous and impertinent matters may be stricken from a complaint. *See Adams v. Adams*, 74 Pa. Super. 502, 504 (1920) (In addressing scandalous and impertinent matters: "the court will only order the parts that offend to be stricken from the record"). However, a court's right to strike an impertinent matter "should be sparingly exercised and only when a party can



affirmatively show prejudice.” *Commonwealth Dep’t of Env’tl. Res. v. Hartford Accident and Indem. Co.*, 396 A.2d 885, 888 (Pa.1979).

### **Demurrer**

The grounds for a preliminary objection also include legal insufficiency of the pleading (demurrer). Pa.R.Civ.P. § 1028(a)(4). To sustain a demurrer, a court must be certain that the law will not permit recovery. *Commw., Pa. Game Comm’n v. Seneca Res. Corp.*, 84 A.3d 1098, 1103 (Pa. Commw. 2014). Any doubt as to whether the demurrer should be sustained must be resolved in favor of overruling it. *McCord v. Pennsylvanians for Union Reform*, 100 A.3d 755, 758 (Pa. Commw. 2014). In ruling on a demurrer, a trial court must accept all material factual averments in a complaint as true, as well as all inferences reasonably deducible therefrom. *Weiley v. Albert Einstein Med. Ctr.*, 51 A.3d 202, 208 (Pa. Super. 2012).

### **Insufficient Specificity of a Pleading**

Pa. R.C.P. No. § 1028(a)(3) permits a preliminary objection based on insufficient specificity of a pleading. Preliminary objections in the nature of a motion for a more specific pleading raise the sole question of whether the pleading is sufficiently clear to enable the defendant to prepare a defense. *Paz v. Dep’t of Corr.*, 580 A.2d 452 (1990). Further, in pleading its case, the complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense. *Dep’t of Transp. v. Bethlehem Steel Corp.*, 380 A.2d 1308 (1977). Additionally, in

determining whether a particular paragraph in a complaint is stated with the necessary specificity, such paragraph must be read in context with all the allegations in the complaint. *Yacoub v. Lehigh Valley Med. Assocs.*, 805 A.2d 579 (Pa.Super. 2002).

## **Fraud**

Fraud consists of anything calculated to deceive, whether by single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or silence, word of mouth, or look or gesture. *Frown v. Blank*, 425 A.2d 412(1981). It has been said that fraud may induce a person to assent to something which he would not otherwise have done, or it may induce him to believe that the act which he does is something other than it actually is. *Greenwood v. Kadoich*, 357 A.2d 604 (1976). To be actionable, the misrepresentation need not be in the form of a positive assertion. *Shane v. Hoffman*, 324 A.2d 532 (1974). It is any artifice by which a person is deceived to his disadvantage. *McClellan's Estate*, 75 A.2d 595 (1950). It may be by false or misleading allegations or by concealment of that which should have been disclosed, which deceives or is intended to deceive another to act upon it to his detriment. *Baker v. Rangos*, 324 A.2d 498 (1974). It is well settled that fraud is proved when it is shown that the false representation was made knowingly, or in conscious ignorance of the truth, or recklessly without caring whether it be true or false. *Warren Balderston Co.*

*v. Integrity Trust Co.*, 170 A. 282 (1934). It has also been established that "the deliberate nondisclosure of a material fact amounts to a culpable misrepresentation no less than does an intentional affirmation of a material falsity." *Neuman v. Corn Exchange National Bank Trust Co.*, 51 A.2d 759, 764 (1947). Yet, a misrepresentation innocently made is also actionable if it relates to a matter material to the transaction involved; while if the misrepresentation is made knowingly or involves a non-privileged failure to disclose, materiality is not a requisite to the action. *Shane v. Hoffmann*, 324 A.2d 532 (1974). A misrepresentation is material when it is of such a character that if it had not been made, the transaction would not have been entered into. *Greenwood*, 357 A.2d at 607. One deceived need not prove that fraudulent misrepresentation was the sole inducement to the investment of money, a material inducement is sufficient. *Neuman*, 51 A.2d at 765 (1946).

## **ARGUMENT**

### **A. Chevron Waived its Objections to Personal Jurisdiction**

Any question over the Court's jurisdiction over Chevron has been resolved because Chevron has waived its objections to this Court's jurisdiction. Our Supreme Court stated that "it is well established that the requirement of personal jurisdiction 'recognizes and protects an individual liberty interest,' which, like other individual rights, may be waived in a variety of ways, including consenting to the personal jurisdiction of the court by appearance, contractually agreeing to personal

jurisdiction, or stipulating to personal jurisdiction.” *See Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 548 (Pa. 2021) (citing *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702-03, (1982)).

In addition to recognizing that personal jurisdiction may be waived, it is axiomatic that a party may expressly or impliedly consent to a court's personal jurisdiction by affirmatively acknowledging consent, or by taking such steps or seeking relief that manifests submission to the court's jurisdiction. *Vessells v. Jones*, No. 2105 C.D. 2010 (Pa. Cmmw. Ct. Dec. 21, 2011) (citing *Wagner v. Wagner*, 564 Pa. 448, 768 A.2d 1112 (Pa. 2001); *O'Barto v. Glossers Stores, Inc.*, 324 A.2d 474, 476 (Pa. Super. Ct. 1974).

Chevron waived its objections and consented to the Court’s jurisdiction by filing the Motion to Compel. The Motion to Compel has no relation to any question of the Court’s jurisdiction and the certificate of compliance therein specifically states that Chevron is a moving party. Moreover, the other Preliminary Objections were also made by Chevron, evidencing its participation in the merits of this matter. “[W]here the court finds that a [party] has performed some act which unconditionally accepts the jurisdiction of the court . . .”, a waiver will be found. *Hohlstein v. Hohlstein*, 223 Pa. Super. 348, 351, (1972); see also *Monaco v. Montgomery Cab Co.*, 417 Pa. 135 (1965).

The Endries Affidavit was prepared by Kari H. Endries, Assistant Secretary of Chevron, with the assistance and advice of counsel for Chevron. The Endries Affidavit is not sufficient evidence and fails on its face to support Chevron's objections to personal jurisdiction. *See Scoggins* and *King*. The wording of the Endries Affidavit indicates that it was prepared by counsel, and therefore "amounts to nothing." *See infra*. This, taken together with the deficient verification, amounts to the fact that Chevron has not met its burden to produce evidence as to the lack of this Court's personal jurisdiction over Chevron. *See infra; see also Scoggins* and *King*.

Notwithstanding the foregoing, Plaintiffs will address the information set forth in the Endries Affidavit. Chevron is highly involved in its subsidiaries' affairs. Endries Affidavit ¶¶ 2, 3, 5, 15, and 16 ("Affidavit Factors"). The Endries Affidavit also states, in direct conflict with the Affidavit Factors that the subsidiaries of Chevron maintain independent responsibility for the management of their respective businesses, including control over their activities and operations (¶ 5) and each of Chevron's subsidiaries has its own board of directors and officers who determine its policies and carry on its business (¶ 6).

The fact that Chevron U.S.A., Inc. ("Chevron U.S.A."), purportedly with its own Board and set of officers, did not provide an affidavit demonstrating its, and that of Chevron Appalachia, independence and separation of identity from Chevron

is telling. Chevron U.S.A. would have been the appropriate party to evidence the purported non-existence of Chevron's involvement in Pennsylvania generally as well as in this matter. Instead, the Chevron Defendants chose to file the Endries Affidavit.

The Court must consider these facts in a light most favorable to Plaintiffs in determining the failure of Chevron to meet its burden to object to the Court's exercise of jurisdiction over it, and as to Chevron's waiver and consent to the Court's jurisdiction. *See Scoggins*. The Court has personal jurisdiction over Chevron and this Preliminary Objection should be overruled.

**B. The Complaint Sets Forth Sufficient Contacts to Establish Personal Jurisdiction**

Plaintiffs Complaint sets forth sufficient facts to establish personal jurisdiction over Chevron either directly and/or by and through its agents, Chevron U.S.A. and Chevron Appalachia, LLC ("Chevron Appalachia"). *See* ¶¶ 13-37, 53-54, 79, 81-91, 94, 97-98, 100-107, 109, 112-114, 140-142, 147, 151-152, 155-157, 159-164, 166-167, 177-184, 186-199, 201-210, 212-218, 220-224, 226-232, 234-243, 246, 252-264, 269-274, 277-299, 307-318, 321-334, 338-339, 348-359, and 363. In evaluating the Complaint, the Court must accept as true all well-pleaded, material, and relevant facts and every inference that is fairly deducible from those facts. *Commonwealth by Shapiro v. UPMC*, 208 A.3d 898, 908 (Pa. 2019).

## 1. The Court's General Jurisdiction over Defendant Chevron Under Rule 1028(a)(1)<sup>2</sup>

A Pennsylvania court may assert general jurisdiction over foreign corporations to hear all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *See Mallory (citing Daimler AG v. Bauman, 571 U.S. 117, 127 and Goodyear Dunlop Tires Oper. v. Brown, 564 U.S. 915, 919)*. The "paradigm" forums in which a corporate defendant is "at home," the US Supreme Court explained, are the corporation's place of incorporation and its principal place of business. *Id.* at 565; *see also Daimler* at 134 and *Goodyear* at 924. The US Supreme Court has observed that in an "exceptional case," a corporate defendant's operations in another forum "may be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 566; *see also Daimler* at 139 n.19.

Whether Chevron's operations in Pennsylvania are substantial and of such a nature to justify the Court's jurisdiction over Chevron is an issue of fact. Factual disputes such as these are to be resolved through interrogatories, depositions or an evidentiary hearing. *Luitweiler v. Northchester Corp.*, 456 Pa. 530, 535, 319 A.2d 899, 902-03 (1974) (interpreting Pa. R. Civ. P. 1028(c)). While affidavits may be

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<sup>2</sup> After citing to *Helicopteros*, Defendant's immediately following citations are to decisions of three federal district courts, which are not binding on Pennsylvania courts, even when a federal question is involved. *See Kubik v. Route 252, Inc.*, 762 A.2d 1119, 1124 (Pa. Super 2000).

used if the facts are clear and specific, “[t]his is not a recommended procedure,” and it is “preferable to proceed by depositions or written interrogatories.” *Slota v. Moorings, Ltd.*, 494 A.2d 1, 2 (1985). See also *Ambrose v. Cross Creek Condominiums*, 602 A.2d 864, 869 (1991); *Luria v. Luria*, 286 A.2d 922, 923 (1971). The Endries Affidavit is not sufficient evidence and does not support Defendants’ Preliminary Objection as to personal jurisdiction over Chevron. See *supra*. For these reasons, Defendants’ Preliminary Objection should be overruled.

If this Court determines it requires additional facts to render a decision over its exercise of general or specific jurisdiction over Chevron, Plaintiffs request that this Court provide Plaintiffs with a period in which to perform discovery tailored to personal jurisdiction over Chevron.

## **2. Specific Jurisdiction over Defendant Chevron Under Rule 1028(a)(1)**

Plaintiffs specifically incorporate their above briefing. Plaintiffs also note that Section 5322(b) operates as a "catchall," providing that jurisdiction may be exercised over persons who do not fall within the express provisions of Section 5322(a) to the fullest extent permitted by the Due Process Clause of the United States Constitution. *Mendel v. Williams*, 53 A.3d 810, 821 (Pa. Super. 2012).

The behavior that Pennsylvania courts have aimed to deter, and have sanctioned when necessary to prevent injustice, comes in many forms. [T]he



corporate form may be disregarded "whenever justice or public policy demand, such as when the corporate form has been used to defeat public convenience, justify wrong, protect fraud, or defend crime." *Mortimer v. McCool*, 255 A.3d 261, 278 (Pa. 2021); *see also Calder v. Jones*, 465 U.S. 783 (1984). Fraud in its narrow sense need not be shown; Pennsylvania courts will disregard the corporate form "whenever it is necessary to avoid injustice," and so long as "the rights of innocent parties are not prejudiced, nor the theory of corporate entity rendered useless." *Id.*

This Court also has personal jurisdiction over Chevron pursuant to agency-based theories. *Williams v. OAO Severstal, No. J-A02021-18 (Pa. Super. Ct. Oct. 3, 2019)*. While agency-based theories such as instrumentality, piercing the corporate veil, and alter ego are typically utilized to exercise general jurisdiction, there is neither an express bar nor conceptual restraint that precludes applying those principles to specific jurisdiction where, as here, the cause of action flows from the veiled action of Chevron, the foreign parent. *Id.* at 11. "Thus, notwithstanding the complex corporate structure that Appellant used to purchase and govern PBS Coals, we conclude that the facts associated with the international titan's utilization of the regional mining operation as an internal source of metallurgical coal subjected it to personal jurisdiction in Pennsylvania." *Id.* at 32. Here, Defendant Chevron, a self-described holding company, utilized Chevron U.S.A. and Chevron Appalachia as internal sources of natural gas. *Id.* at 9, 29.; *see also* Endries Affidavit ¶ 7.

The injustice and harms that the Chevron Defendants have inflicted on Plaintiffs are utterly intolerable in a civilized society, and Pennsylvania has a strong interest in holding Chevron responsible. The fact that Ryan Latkanich, a child of nine years old, showed evidence of carcinogens in his urine, to which the Chevron Defendants have responded with utter disregard, alone warrants this Court's jurisdiction over Chevron. Mr. Latkanich, who lives on a fixed income of approximately \$800 per month, and his child Ryan, have been continuously exposed to pollution and radiation and have not had free access to clean drinking water for years, while at the same time facing serious and life-limiting illnesses directly attributable to the Chevron Defendants. Plaintiffs are entitled to seek justice for their claims, and if Chevron is not held accountable, justice will not be done.

Pennsylvania also has a strong interest in holding environmental polluters like Chevron accountable, as the effects of the Chevron Defendants' intentional, reckless, and outrageous actions will be felt by Washington County residents and other Pennsylvanians for generations to come. *See* Article I, § 27 of the Pennsylvania Constitution<sup>3</sup>. *See also Wicks v. Milzoco Builders, Inc.*, 470 A.2d 86 (Pa. 1983); *Hammons v. Ethicon*, 190 A. 3d 1248 (Pa. Super. Ct. 2018). The Chevron Defendants have also abused this Court's subpoena powers. *See* Notices and

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<sup>3</sup> The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of the people.

Objection to Defendants’ Notice of Intent to Serve Subpoena upon Ms. Neela Banarjee, *supra*. For these reasons, Defendants’ Preliminary Objection should be overruled.

**3. Inclusion of impertinent Matter Under 1028(a)(2)**

None of the Defendants allege, nor can they affirmatively show, any prejudice with respect to the facts Defendants object to and seek the striking of in the Complaint, nor have they alleged that any facts are “scandalous.” In fact, Defendants have not alleged any prejudice at all in any of their Preliminary Objections. Defendants take issue with ¶¶ 13(G) and 13(K) of the Complaint as being “impertinent” because they only identify agents of Chevron and do not identify a representative directly employed by Defendant Chevron.<sup>4</sup> Plaintiffs did not set forth the information about these meetings to prove liability. Indeed, the Endries Affidavit, if taken to be true, states that Chevron monitors and provides guidance to its subsidiaries with respect to their operations, which would include Chevron U.S.A. and the Operations in this matter. Each of these Chevron U.S.A. employees who signed in reflected the same email domain as Chevron and never held

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<sup>4</sup> Defendants’ footnote on this issue purports to paint Plaintiffs amendment to this section of the complaint as somehow improper; in fact, the original language should have had the words “mediation/settlement” in quotes as it was always Plaintiff Mr. Latkanich’s position that these meetings were held in bad faith. Once undersigned counsel entered her appearance, this section of the complaint was amended, which was without intent to mask the true nature of these meetings.

themselves out as being specifically from Chevron U.S.A., nor was there any disclaimer that Chevron was not involved.

Defendants also object to ¶¶ 14(b)(iii)-(v) in the Complaint, which pertain to the Lanco Incident described therein. First, Defendants' Preliminary Objection lacks the specificity required in pleading. Defendants themselves confirm that the Lanco Incident also involved Chevron Appalachia. The facts of the Lanco Incident are relevant and appropriate in pleading as it relates to, among other things, averments of recklessness, malice, intent, knowledge and other conditions related to Chevron Appalachia's operations of similar oil and gas operations as an agent of Chevron and Chevron U.S.A.

Defendants also object to Plaintiffs inclusion of references to the 43<sup>rd</sup> Grand Jury Report in ¶¶ 143 and 178 of the Complaint. First, Defendants' Preliminary Objection lacks the specificity required in pleading and is also patently meritless. *See supra*. Instead, it merely references purported "evidence" that "not only need not but should not be alleged."

The Attorney General's Office announced the findings of the Grand Jury Report on June 25, 2020. In its press release, the Attorney General's Office stated that "the Grand Jury's two-year investigation uncovered systematic failure by government agencies in overseeing the fracking industry and fulfilling their responsibility to protect Pennsylvanians from the *inherent risks* of industry

operations.” *See* June 25, 2020 Press Release, attorneygeneral.gov. (emphasis added).

On June 22, 2020, the Honorable Judge Norman A. Krumenacker, III, accepted and filed the Grand Jury Report (<https://www.attorneygeneral.gov/wp-content/uploads/2020/06/FINAL-fracking-report-w.responses-with-page-number-V2.pdf>). Judge Krumenacker’s order that found that the Grand Jury Report proposed recommendations for legislative, executive or administrative action in the public interest based upon stated findings, that the Grand Jury Report was based upon facts received in the course of an investigation authorized by the Investigating Grand Jury Act, 42 Pa. C.S. § 4541 *et seq.* and was supported by the preponderance of the evidence. The Grand Jury Report was filed as a public record with this Court pursuant to 42 Pa.C.S. § 4552(b) and (e).

Plaintiffs request that the Court take judicial notice of the Grand Jury Report pursuant to Pa. R.E. §201. Adjudicative facts are facts about the events, persons, places, or other subjects relevant to the matter before the court. *See* 1 West’s Pa. Prac., Evidence § § 201-1, 201-2 (4th ed. 2021). The findings in the Grand Jury Report are relevant to the facts and causes of action in this matter, specifically including the health harms caused to Plaintiff and minor child Ryan Latkanich.

Because Defendants failed to properly plead its Preliminary Objection, the facts set forth in such paragraphs are material and relevant to Plaintiffs’ claims, and

Defendants alleged no prejudice from such facts, Defendants' Preliminary Objection to Strike should be overruled as to each allegation. *See Commonwealth v. Hartford supra*; *see also Commonwealth v. RBC Capital Mkts. Corp.*, 368 M.D. 2018 (Pa. Cmmw. Ct. Sep. 9, 2021).

#### **4. Demurrer - Oil and Gas Development as an Ultra-Hazardous Activity Subject to Strict Liability Under 1028(a)(4)**

Defendants' Preliminary Objection to dismiss Plaintiffs' cause of action for strict liability in this phase of the litigation is premature. Whether the Defendants' Operations, which include natural gas drilling, fracking, impoundment pits, gathering lines and more, are abnormally dangerous are indeed questions of law, but ones the Court cannot answer yet. *See Albig v. Mun. Auth. Of Westmoreland Cty.*, 502 A.2d 685 (Pa. Super. 1985); *Hartman v. Citizens Natural Gas Co.*, 59 A. 315 (1904).

Defendants cite to a federal district court's summary judgment decision in *Ely v. Cabot Oil & Gas Corp.*, 38 F. Supp.3d 518, 534 (M.D. Pa. 2014) to convince this Court to immediately dispose of Plaintiffs' strict liability claim. The *Ely* court stated:

“Following a review of the record and the parties' arguments with respect to the six-factor test outlined above that courts use to determine whether an activity should be subjected to strict liability and viewing this issue through the prism of Pennsylvania law, we find that the ***natural gas drilling activities challenged in this particular case*** are not abnormally dangerous, and strict liability should not apply. (emphasis added).”

*Ely* has no sway over this Court’s review or decision on Plaintiffs’ strict liability claim for multiple reasons. First, *Ely* is a decision of a federal district court and is not binding upon the Court. *See Kubik v. Route 252, Inc.* Second, a full record had been developed. Third, there was no analysis of impoundment pits. Fourth, there was no analysis of the use of PFAS. Fifth, there was no analysis of the harmful radioactivity generated that is inherent to oil and gas operations.

Defendants next cite to *United Ref Co. v. Dep't of Env'tl. Prot.*, 163 A.3d 1125, 1135 (Pa. Commw. Ct. 2017), which was an appeal from the Pennsylvania Environmental Hearing Board (“Board”). The Commonwealth Court did not analyze a claim for strict liability because it was inapplicable as the matter was governed by statute; however, the Commonwealth Court noted that *Ely* was not binding upon it. What the Board has held, is that there is a “high level risk” associated with the operation of impoundment pits and that the “high risk requires a high level of operator attention and care.” *See DEP v. EQT Production Company*, 2014 EHB 140.

In addition, the Grand Jury Report sets forth facts that are relevant and applicable to finding that the Operations were abnormally dangerous. *e.g.*:

“Many parents and medical professionals fear for the long-term health of children who have suffered health problems related to industry activities, particularly their ability to have children of their own and the risk of developing cancer. Doctors have advised that children who have suffered persistent health problems related to nearby fracking sites participate in regular cancer screening for decades to come.” p. 40.

“Because produced water has remained in the subsurface far longer than flowback, it is more contaminated, and will typically contain high levels of sodium chloride (salt), bromide, lithium, boron, iron, manganese, arsenic, and radioactive radium.” p. 15.

“In order to release the gas, shale rock has to be fractured – ‘fracked’ – using explosives and even more chemicals.” p. 3.

The Defendants are also strictly liable under the HSCA. *See* ¶ 314. Defendants have offered no valid support that Plaintiffs’ recovery under a strict liability cause of action would not be possible. In ruling on a demurrer, the Court must accept all material factual averments in the Complaint as true, as well as all inferences reasonably deducible therefrom. *See Weiley*. For these reasons, this Preliminary Objection should be overruled. *See Commw., Pa. Game Comm’n and McCord, supra*.

**5. Demurrer - Plaintiffs Hunter Latkanich and Colton Latkanich Fail to Plead Facts Necessary to Sustain a Cause of Action for Nuisance, or Negligence Under 1028(a)(4)**

Defendants’ Preliminary Objection to the causes of action for nuisance and negligence of Mr. Hunter Latkanich and Mr. Colton Latkanich consists of one sentence and fails to meet the specificity required for pleading. *See supra*.

Moreover, this Preliminary Objection is demonstrably unsupported and meritless. Mr. Hunter Latkanich and Mr. Colton Latkanich are, where appropriate, identified separately but also included in the definition of “Plaintiffs” in the Complaint and the General Allegations also apply to them. *See* definition of



“Plaintiffs”, preamble, p. 1.; *see also Yacoub, supra*. Specifically, among other facts, these Plaintiffs unwittingly drank the contaminated groundwater and were exposed to radiation from the Operations attributable to the Defendants’ negligence and creation of nuisance. *See* ¶¶ 1, 4-5, 74, 76-77, 83, 91, 98, 112, 137, 142, 150, 152, 161-163, 166-167, 178(n), (p)and (q), 184, 195-196, 201, 208-209, 210, 212, 213-215, 218, 220, 221, 224, 227, 232, all of Counts VI, VII, VIII, IX, X C, and XI, 369, 370, and 373-375.

In ruling on a demurrer, the Court must accept all material factual averments in the Complaint as true, as well as all inferences reasonably deducible therefrom. *See Weiley*. For these reasons, this Preliminary Objection should be overruled. *See Commw., Pa. Game Comm’n and McCord, supra*.

**6. Failure to plead Which Defendants took which actions and Motion to Strike the "EQT Defendants" Catchall. Under 1028(a)(3)**

Again, Defendants fail to state their Preliminary Objection with specificity. The Complaint was amended from the First Amended Complaint to specify, upon information and belief, as to which Defendant took which action in each and every paragraph where Plaintiffs had the requisite knowledge to do so, and preserved their argument that the Court has alter ego jurisdiction over Chevron, and that alter ego liability applies to the Defendants.

Defendants cite to *Bouchon* to support their contention that they cannot ascertain which of them did what. In *Bouchon*, the plaintiff had already obtained

16-20 hours of pre-complaint deposition testimony, and the other facts set forth in *Bouchon* do not apply here, as the Complaint is specifically and well plead, and more than sufficient for Defendants to prepare their defenses; moreover, Plaintiffs have served Defendants with over 3,500 pages of discovery responses to date. *See Foster and Paz, supra.*

The section titled “As to the EQT Defendants” and corresponding 7 paragraphs in the Complaint are not separate causes of action; rather they relate to any of the EQT Defendants’ acquisition of any of the Chevron Defendants’ assets and/or assumption of liabilities. Plaintiffs’ pleading puts the EQT Defendants on notice and the ability to prepare their defenses with respect to the assets and obligations acquired from any of the Chevron Defendants related to this matter. *Id.* For these reasons, the Defendants’ Preliminary Objection should be overruled.

Plaintiffs note that Defendants’ conclusion in its Brief includes the following request to the Court for an order for a more specific pleading: “As to all causes of action to specify which Plaintiffs are bringing which causes of action,” however, this is not pled in the Preliminary Objections nor is it briefed, and accordingly is waived, and no response is required. In the abundance of caution, Plaintiffs are confirming that the Complaint, as amended, has properly pled the causes of action for each of the Plaintiffs and the information is sufficient notice to Defendants for each of them to prepare defenses. *See Foster and Paz, supra.*

**7. Insufficient specificity of allegations made by Hunter and Colton Latkanich Under 1028(a)(3)**

Defendants' Preliminary Objection is demonstrably unsupported and meritless. The Complaint is specific as to the causes of action alleged by Mr. Hunter Latkanich and Mr. Colton Latkanich. *See supra* (discussion of Preliminary Objection No. 5). These causes of action are specifically pled and relate to the times these Plaintiffs were on the Property, on which the Defendants have already served discovery, (*see supra*) and the information is sufficient notice to Defendants for each of them to prepare defenses. *See Foster and Paz, supra*. For these reasons, the Defendants' Preliminary Objection should be overruled.

**8. Insufficient Specificity and Particularity of Fraud Claims Under 1028(a)(3)**

Defendants' Preliminary Objections ¶¶ 79-89 are impossible to decipher and fail to raise an objection to each of the causes of action, and specifically as to what, if any element of fraud in a particular cause of action, is not specifically pled. *See supra*. Notwithstanding the foregoing, in response to Defendants' allegations, the Defendants' fraud can take many forms. *See supra* (legal standard for fraud).

Count II (Fraudulent Misrepresentation), Count III (Reckless Misrepresentation), Count IV (Fraudulent Concealment), and Count V (Fraudulent Non-Disclosure), each incorporate the prior paragraphs, including the General Allegations, which plead Defendants' fraudulent actions with particularity. *See* ¶¶

86, 87(b), 100, 112, 156, 157, 167, 201, 212-218, 221, 223, 231, 246, 251, 272, 294, 297, 299, 331, 338, 349, 351, 353, 361, 363, and 375(e). *See Yacoub, supra*.

The information is sufficient notice to Defendants for each of them to prepare defenses. *See Foster and Paz, supra*. For these reasons, the Defendants' Preliminary Objection should be overruled.

**9. Insufficient specificity of allegation that Lease was Breached by Failure to Pay Royalties in Agreed upon Quantities Under 1028(a)(3)**

Defendants' Preliminary Objection with respect to the specificity of allegation that the Lease was breached by failure to pay royalties in agreed upon quantities itself states the material facts of the allegation. *See* ¶¶ 83(h), 192. The allegations are sufficient for the Defendants to prepare their defenses. *See Foster and Paz, supra*. For these reasons, Defendants' Preliminary Objection should be overruled.

**10. Insufficient Specificity of Allegations that the Chevron Defendants had a Duty to Mitigate Under 1028(a)(3)**

In Pennsylvania, a duty of reasonable care attaches to persons undertaking affirmative, risk-causing acts, and is attached to the Defendants. *See Dittman v. UPMC*, 196 A.3d 1036, 1046-47 (Pa. 2018); *Laform v. Bethlehem Township*, 499 A.2d 1373 (Pa. Super. Ct. 1985). That includes the operation of industrial sites. *See, e.g., Leety*, No. 2018-cv-1159, slip op. at \*7 (holding that plaintiffs had sufficiently alleged that a landfill operator owed surrounding property owners a

"duty to exercise ordinary care and diligence" based on "[i]ndustry standards of care"); *Noerr*, 60 Pa. D. & C.2d at 453 (finding that the failure to install and properly operate adequate pollution controls was negligent). In addition, the Chevron Defendants repeatedly violated state and federal laws, and by virtue of the DEP Violations and the Consent Order, committed negligence *per se*. See ¶¶ 100-106, 112, 154, 157, 228, 254, and 291.

Plaintiffs' allegations are sufficient for the Defendants to prepare their defenses. See *Foster and Paz, supra*. For these reasons, Defendants' Preliminary Objection should be overruled.

#### **11. Insufficient Specificity of a Cause of Action for Negligence Under 1028(a)(3)**

Defendants rely on *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600, 602 n.3 (Pa. 1983). *Connor* addressed "when general allegations of negligence can be used to expand negligence theories in a post-limitations amendment." *Shiflett v. Lehigh Valley Health Network, Inc.*, 174 A.3d 1066 (Pa. Super. Ct. 2017). *Connor* and its progeny relate to [g]eneral allegations of a pleading that may have the effect of extending the available scope of a party's proof. *Id.*

Plaintiffs cause of action for negligence is supported by ¶¶ 278-292 of the Complaint, as well as the facts set forth in the General Allegations. The Cause of Action for negligence and ¶ 294 incorporates those paragraphs by reference and

are not “boilerplate allegations. ¶¶ 294 relates to the acts set forth in the Complaint and contains no language like “other acts of negligence that may be discovered during the litigation and at trial.” *Pasquariello, et al. v. Manwiller, et al.*, No. C-48-CV-2020-00607.

Defendants allege that Mr. Hunter Latkanich and Mr. Colton Latkanich do not allege any harms and that their harms are not “specific enough.” Again, this Preliminary Objection as to these Plaintiffs is demonstrably unsupported and meritless. *See supra* (discussion of Preliminary Objections 5 and 7).

As to the allegations regarding Mr. Latkanich and Plaintiff and minor child Ryan Latkanich’s medical issues are not “specific enough” in ¶¶ 178(j) and (l) of the Complaint, these too are meritless. ¶178(j) states: “During the Chevron Period, Latkanich was diagnosed with renal failure, spleen failure, neuropathy, sterility, asthma, gout, left bundle branch heart condition, and other medical conditions.” In addition, ¶ 170 states: Most recently, Mr. Latkanich had a heart attack on March 11, 2023, and his diagnosis of stage IV kidney failure was confirmed; Mr. Latkanich has suffered with neuropathy and has unexplainedly not been able to walk at times.

¶178(l) states: “During the Chevron Period and continuing through the EQT Period, minor child and Plaintiff Ryan Latkanich has had rashes and other reactions to the water and has been diagnosed with high cholesterol, asthma, and other

medical conditions.” ¶358 states: Plaintiff and minor child Ryan Latkanich has been ridiculed at school because of the physical symptoms that manifested from the Operations while attending school. Plaintiffs further refer Defendants to the toxicology results of Mr. Latkanich and Plaintiff and minor child Ryan Latkanich in ¶¶ 168-178 and 352. Defendants also allege that Plaintiffs do not specifically set forth the instances of Defendants’ negligence. This too is a meritless allegation and has already been addressed in this Brief. *See supra*. With respect to Defendants’ allegation that Plaintiffs have failed to plead gross negligence with specificity, Plaintiffs refer to ¶¶ 87(b), 100, 112, 156, 157, 167, 212-218, 246, 251, 294, 297, 299, 331, 338, 349, 353, 361, 363, 375(e).

The medical conditions alleged are specific, and list specific times. Plaintiffs also assert a cause of action for Medical Monitoring Trust Funds and health assessment or health effects study, medical monitoring under their cause of action under the Hazardous Sites Cleanup Act for medication conditions that cannot yet be diagnosed given the secrecy and concealment of the true nature of the Operations together with future illnesses, which Plaintiffs are unable to plead for obvious reasons. *See Simmons v. Pacor, Inc.*, 674 A.2d 232 (1996); *see also Redland Soccer v. Department of Army*, 696 A.2d 137 (Pa. 1997); *Habitants Against Landfill Toxicants v. City of York*, No. 84-S-3820 (Pa. York County May 20, 1985), 15 Env’tl.L.Rep. 20937, 1985 WL 1991.

Plaintiffs' allegations are sufficient for the Defendants to prepare their defenses. *See Foster and Paz, supra*. For these reasons, Defendants' Preliminary Objection as to each allegation should be overruled.

**C. The Defendants' Preliminary Objections and Brief Fail to Conform to Law or Rule of Court and "Amount to Nothing"<sup>5</sup>**

"Every pleading containing an averment of fact not appearing of record in the action or containing a denial of fact shall state that the averment or denial is true upon the signer's personal knowledge or information and belief and shall be verified." See, Pa.R.C.P. 1024(a). One or more of the parties filing the pleading must make the verification, unless an exception applies. See, Pa. R.C.P. 1024(c). The exceptions are if all the parties lack sufficient knowledge or information, or all the parties are outside the jurisdiction of the court and verification of none can be obtained within the time allowed for filing the pleading. *See* Pa. R.C.P. 1024(c). In these situations, "the verification may be made by any person having sufficient knowledge or information and belief and shall set forth the source of the person's information as to matters not stated upon his or her own knowledge and the reason why the verification is not made by the party." *See* Pa.R.C.P. 1024(c).

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<sup>5</sup> While not a Law or Rule of Court, Plaintiffs also object to Defendants' casual references to them, and request that Defendants refer to Mr. Latkanich as "Mr. Latkanich," Ryan Latkanich as "Plaintiff and minor child Ryan Latkanich", Hunter Latkanich as "Mr. Hunter Latkanich," and Colton Latkanich as "Mr. Colton Latkanich."



Only ¶¶ 8-41 of Defendants’ Preliminary Objections are “verified” by Chevron, but the verification is deficient and amounts to nothing as it states:

“I, Kari H. Endries, am the Assistant Secretary of Chevron Corporation, and state that the *information* contained in Paragraphs 8-41 of the foregoing Preliminary Objections is true and correct to the best of my current knowledge, information, and belief. *While I have knowledge of the subject matter set forth in this document, the information is not entirely within my personal knowledge; there may be no person who has personal knowledge of all such matters; and the facts stated therein have been collected by consulting with various individuals and counsel.*” (emphasis added)

The clear, plain language of the rule states that “[t]he verification shall be made by one or more of the parties” unless it falls into one of the enumerated exceptions. Kari H. Endris is not a named party. While she may be the Assistant Secretary for Chevron and a valid assumption could be made that she is speaking on behalf of Chevron, neither the verification or the Preliminary Objections state that she has the authority to speak for and represent Chevron. *See McElwee et al. v. Leber et al.*, 59 Pa. D. & C.4th 462, (Common Pl. 2002). Moreover, the second sentence makes the verification worthless.

Plaintiffs interpret the language as an indication that the specific words used in the Preliminary Objections are those of counsel. Such would ordinarily be presumed in any document filed by counsel, as it is counsel’s function to draft preliminary objections and to have it conform to proper pleading practice. However, the language used in this verification might lend itself to the person who signed the

verification saying, when asked in discovery or when cross-examined at trial as to the accuracy, or the factual basis for the Preliminary Objections, “I didn’t write this, counsel did.” Hence, the need for a verification is obvious. The verifier must attest that the facts asserted in the Preliminary Objections are true, regardless as to the wording used by counsel. *See McElwee*.

“The law requires verification and without it the statement of claim is ‘mere narration and amounts to nothing.’” *See Atlof v. Spartan Inns of America*, 25 D. & C.3d 63 (C.P. 1980). The verification is “necessary to protect a party against spurious allegations.” *See, Monroe Contract Corp. v. Harrison Square, Inc.*, 405 A.2d 954, 958 (Super. 1979). The verification accomplishes this because the purpose of the verification is to establish that the party has read the pleading and attests to its truthfulness. *See, Louwarse v. Louwarse*, 36 D. & C.3d 547 (C.P. 1985). A verification that states the *facts* are true and correct, without anything more, is to be construed that the verification is made upon the “affiant’s personal knowledge.” *See, Clark v. Clark*, 76 D. & C. 345 (C.P. 1950). (emphasis added).

At a minimum, ¶¶ 60-101 of the Preliminary Objections require verification as they are fact-based. Where there are multiple, independent claims against individual defendants, each defendant must provide a verification as to the answer to those claims. *See Flamino v. Flamino*, 10 D. & C.4th 47 (Common Pl. 1991); *Shelborne Corp. v. Bestway Basement Waterproofing, Inc.*, 6 D. & C.3d 468

(Common Pl. 1977). Requiring all defendants to verify the Preliminary Objections when there are multiple, independent claims against them meets the requirement that the facts alleged are true based on personal knowledge or personal belief. *See McElwee*. In a case where there are multiple causes of action against multiple defendants, it is possible that not all defendants possess the personal knowledge to verify the truth of the facts asserted regarding a claim against another defendant. *Id.* In multiple defendant, multiple claim situations, it is true that some cases may arise out of the same nucleus of facts, but all defendants might not have the same knowledge of those facts. *Id.* The verification requirement is instituted to ensure that the facts alleged are true based on someone who has personal knowledge swearing that they are true. *Id.* Requiring all defendants to verify ensures that the all the facts alleged in the responsive pleading are supported by someone with personal knowledge or believe. *Id.* Therefore, the Preliminary Objections are not verified by any party, and Plaintiffs argue that as such, any objections to the Complaint have been effectively waived by Defendants.

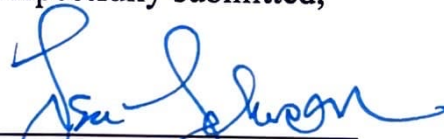
Defendants' Brief fails to comply with the Court's Rules. Specifically, the body of Defendants' brief in the "Argument" section exceeded 3,000 words in violation of Wash.L.R.C.P. 210(1) and Defendants failed to move the Court to exceed the word limit. Plaintiffs, in preparing their responses, realized the necessity of also exceeding the word limit because of Defendants' improper pleading,

meritless arguments, and lack of verification. Plaintiffs' counsel notified Defendants' counsel on June 6, 2023, and suggested that the parties enter a joint motion to the Court to alert the Court prior to Plaintiffs' filing of this Brief of the exceedance of page limitation in the "Argument" section. The Court granted the parties' joint motion on June 8, 2023. In addition, Defendants' Brief fails to include a brief history of the case, in violation of Wash.L.R.C.P. 210(2)(a).

## **CONCLUSION**

For the reasons set forth herein, Plaintiffs' Answer, and the Complaint, Plaintiffs respectfully request that the Court enter an order overruling all of Defendants' Preliminary Objections with prejudice and that Defendants answer the Complaint within 20 days of the entry of such order, together with any other relief that the Court finds equitable and just.

Respectfully submitted,



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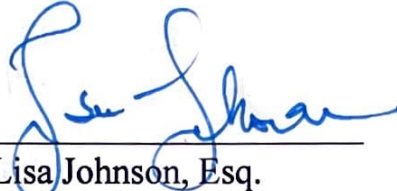
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DATED: June 9, 2023

**JURY TRIAL DEMANDED**

**CERTIFICATION OF COMPLIANCE**  
**REGARDING CONFIDENTIAL INFORMATION**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.



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Dated: June 9, 2023

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon Defendants' counsel via electronic mail, this 9th day of June 2023.

**BABST, CALLAND, CLEMENTS  
and ZOMNIR, P .C.**

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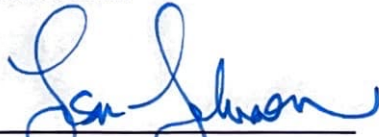
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