# In The Superior Court of Pennsylvania

NO. 1520 MDA 2010

DENNIS I. WISSINGER, JR., individually and as Administrator of the Estate of Wanda M. Wissinger, Deceased; IVAN WISSINGER, a minor, by and through his parent, Dennis I. Wissinger, Jr. and OWEN WISSINGER, a minor, by and through his parent, Dennis I. Wissinger, Jr.

Appellants

vs.

JENNIFER L. BRADY, LINDA MARIE LAWUBACH, and STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Appellees

AMICUS CURIAE BRIEF SUBMITTED BY THE PENNSYLVANIA DEFENSE INSTITUTE IN SUPPORT OF POSITION OF APPELLEE, JENNIFER L. BRADY

APPEAL BY PLAINTIFFS FROM THE ORDER OF AUGUST 16, 2010 ENTERED BY THE COURT OF COMMON PLEAS OF LUZERNE COUNTY, NO. 3792-CIVIL-2010

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JENNIFER L. BRADY

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## STATEMENT OF INTEREST

The Pennsylvania Defense Institute (PDI) is a statewide association of defense counsel and insurance company professionals. Organized over forty (40) years ago in December of 1969, it now boasts a combined membership of approximately 700 lawyers, insurance company professionals, members of self-insurers, and independent adjusters from all across the Commonwealth of Pennsylvania. The members of the PDI come from all across the insurance spectrum, from automobile, land, other property, to casualty insurers. Also a part of the PDI are the attorneys who customarily represent those carriers and their insureds in Pennsylvania civil litigation matters.

The Pennsylvania Defense Institute has a significant interest in this case because its members, as well as the policyholders of the insurance company members, i.e. the Pennsylvania public, may be materially affected by the outcome of this matter which implicates the goals of proper venue in personal injury civil litigation matters. The PDI therefore files this Amicus Curiae (Latin for "a friend of the court") Brief because it believes that there will be broader ramifications, not the least of which would be rampant and unfettered forum shopping by plaintiffs, if the trial court's correct decision in this matter to reject the Plaintiff's improper venue selection is not affirmed.

For these broader policy reasons, and for the more specific substantive reasons stated below, it is respectfully requested that this Court affirm the trial court's August 16, 2010 Order requiring the Plaintiffs to pursue their lawsuit in a proper venue in accordance with the mandates of the Pennsylvania Rules of Civil Procedure.

## INCORPORATION

The Pennsylvania Defense Institute incorporates by reference the entire Brief submitted on behalf of the Defendant/Appellee, Jennifer L. Brady, specifically including but not limited to, its Statement of Jurisdiction and Order in Question. Pa. R.A.P. 2137.

## STATEMENT OF SCOPE AND STANDARD OF REVIEW

Under the standard of review applicable to this matter, the determination of the trial court on proper venue will not be overturned absent an abuse of discretion. *Masel v. Glassman*, 456 Pa. Super. 41, 45, 689 A.2d 314, 316 (1997).

Under Pennsylvania law, a "court abuses its discretion if, in resolving the issue for decision, it misapplies the law, exercises its discretion in a manner lacking reason, or does not follow legal procedure." *Continental Cas. Co. v. Pro Machine*, 916 A.2d 1111, 1115-16 (Pa. Super. 2007).

If any proper basis exists for the trial court's determination, the trial court's decision must stand. *Masel*, 456 Pa. Super. at 45, 689 A.2d at 316; *Estate of Werner v. Werner*, 781 A.2d 188, 190 (Pa.Super. 2001). Furthermore, in reviewing a trial court's ruling transferring venue, the appellate court will not disturb the ruling if the decision is reasonable in light of the facts. *Wilson v. Levine*, 963 A.2d 479, 482 (Pa.Super. 2008) *citing Krosnowski v. Ward*, 836 A.2d 143, 146 (Pa.Super. 2003)(*en banc); see also Harris v. Brill*, 844 A.2d 567, 570 (Pa. Super. 2004) *citing Mathues v. Tim-Bar Corp.*, 438 Pa.Super. 231, 234, 652 A.2d 349, 351 (1994).

## COUNTER-STATEMENT OF THE CASE

This post-Koken case[1] involves the issue of proper venue for a lawsuit which the Plaintiff filed in Luzerne County, consisting of negligence claims and wrongful death/survival claims, against the individual Defendants, Jennifer L. Brady and Linda Marie Laubach, along with separate contractual claims for underinsured motorists (UIM) benefits and bad faith damages against the UIM carrier, State Farm Mutual Automobile Insurance Company ("State Farm"). The issues presented came before the trial court by way of Preliminary Objections filed by the individual Defendant, Jennifer L. Brady, to the Plaintiffs' Complaint asserting that venue was improper in Luzerne County and requesting that the matter be transferred to a proper venue in accordance with the application Pennsylvania Rules of Civil Procedure.

It is undisputed that this matter arises out of a July 8, 2009 pedestrian/motor vehicle accident that occurred in Northumberland County, Pennsylvania. At the time of the accident, all of the Plaintiffs listed in the caption were residents of Northumberland County. It is additionally noted that Plaintiff, Dennis Wissinger, Jr., was appointed as Administrator of the Estate of Wanda M. Wissinger, deceased, by the Register of Wills of Northumberland County.

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[1] It has now been five years since the Pennsylvania Supreme Court handed down its decision in the case of *Insurance Federation of Pennsylvania v. Commonwealth, Department of Insurance (Koken)*, 585 Pa. 477, 889 A.2d 550 (2005), holding that automobile insurance carriers were not required to include arbitration clauses in their policies for the resolution of uninsured and underinsured motorist benefits claims.

After that decision was handed down, many carriers quickly rid their policies of the UM/UIM arbitration clauses, thereby requiring such claims to instead proceed by way of a lawsuit. Those UM/UIM cases now proceeding by lawsuit have come to be commonly known and referred to in Pennsylvania as "Post-Koken" cases.

It is also undisputed that neither of the individual Defendants, Jennifer L. Brady or Linda Marie Laubach, resided in Luzerne County at the time of the accident. Furthermore, there is no dispute that both of these Defendants were actually served with original process in Danville, Montour County.

The UIM carrier Defendant, State Farm, is a duly licensed insurance company with offices and/or agents throughout Pennsylvania. It was confirmed in the trial court below that there were no applicable or controlling venue provisions or forum selection clauses in the subject State Farm automobile insurance policy. *See Wissinger Rule 1925 Trial Court Opinion* at p. 4.

The trial court also confirmed in its Rule 1925 Opinion that the Plaintiffs' Complaint did not allege any joint liability between the UIM carrier Defendant, State Farm, and either individual Defendant. *Id.* at p. 4. Yet, it is the Plaintiffs' incorrect position in this matter that venue is proper in Luzerne County simply because State Farm conducts business in every county of the Commonwealth, including Luzerne County.

After argument on the issues presented, the trial court entered an August 16, 2010 Order granting the Preliminary Objections filed by the Defendant, Jennifer L. Brady, and transferring the case and the official record to Northumberland County. On September 9, 2010, the Plaintiff filed a Notice of Appeal from the trial Order of Court. On September 29, 2010, the Plaintiff filed a Statement of Matters Complained of on Appeal. Then, on November 3, 2010, Judge Van Jura issued his Opinion Pursuant to Pa. R.A.P. 1925.

## COUNTER-STATEMENT OF QUESTION INVOLVED

WHETHER THE LUZERNE COUNTY COURT OF COMMON PLEAS PROPERLY RULED, WITHIN ITS BROAD DISCRETIONARY POWERS, THAT THE PRELIMINARY OBJECTIONS ASSERTING IMPROPER VENUE FILED BY THE INDIVIDUAL DEFENDANT SHOULD BE SUSTAINED WHERE THE SUBJECT MOTOR VEHICLE ACCIDENT OCCURRED IN NORTHUMBERLAND COUNTY, WHERE BOTH INDIVIDUAL DEFENDANTS WERE ACTUALLY SERVED WITH ORIGINAL PROCESS IN MONTOUR COUNTY, WHERE THERE IS OTHERWISE NO SUBSTANTIAL CONNECTION BETWEEN THIS MATTER AND LUZERNE COUNTY, AND WHERE THERE IS NO ALLEGATION OF ANY JOINT LIABILIY BETWEEN THE INDIVIDUAL DEFENDANTS AND THE INSURANCE COMPANY DEFENDANT.

(ANSWERED IN THE AFFIRMATIVE BY THE COURT BELOW)

## SUMMARY OF ARGUMENT

This Post-Koken lawsuit, involving negligence claims against the individual Defendants and separate contractual claims for underinsured motorist benefits and bad faith damages against the insurance company Defendant, without any allegations of joint liability between the two sets of Defendants, arises out of a motor vehicle accident that occurred in Northumberland County. The individual Defendants were both served with original process in Montour County. As such, pursuant to venue Rule 1006(a)(1), Luzerne County is not a proper venue for this lawsuit against the individual Defendants.

The Plaintiff's argument in favor of venue in Luzerne County based upon Pa.R.C.P. 2179 and the nebulous notion that the Defendant insurance carrier does business in every county of the Commonwealth, including Luzerne County, was properly rejected by the trial court below. The individual Defendants and the insurance company Defendant have not been alleged in the Plaintiff's Complaint to have been jointly liable in this matter so as to afford proper venue status under the exception provided in Pa. R.C.P. 1006(c). Furthermore, there is no substantial relationship between any of the parties or claims presented and Luzerne County to render Luzerne County a proper venue.

Rather, as determined by the court below, a reading of the venue Rules together in *pari materia* pursuant to Pa.R.C.P. 131, compels the conclusion that Luzerne County is not a proper venue for this Northumberland County car accident matter and that the case was properly transferred to Northumberland County. As noted in greater detail below, affirming the trial court's decision in this regard will also have the wider benefit outside of this matter of furthering the goals of judicial economy and cost containment, in auto accident litigation matters.

## ARGUMENT

### A. THE TRIAL COURT PROPERLY SUSTAINED THE PRELIMINARY OBJECTIONS BASED UPON IMPROPER VENUE

#### 1. Preliminary Objections are proper mechanism to challenge an improper venue selection.

The Preliminary Objections filed by the individual Defendant, Jennifer L. Brady, in this matter, asserting improper venue in Luzerne County, were based upon Pa.R.C.P. 1006(a)(1), which provides, in pertinent part, as follows:

> **Rule 1006. Venue. Change of Venue**
>
> (a) Except as otherwise provided by subdivision (b) and (c) of this rule, an action against an individual may be brought in and only in a county in which
>
> (1) the individual may be served or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose or in any other county authorized by law....

Pa.R.C.P. 1006(a)(1), 42 Pa.C.S. Under Pa.R.C.P. 1006(a)(1), an individual may be served in any county where the individual is personally present and a copy of original process is handed to the individual, where the individual resides, or at the individual's office or usual place of business. *Gilfor ex rel. Gilfor v. Altman*, 770 A.2d 341, 345 (Pa.Super. 2001) *citing* Pa.R.C.P. 402, 42 Pa.C.S.

It has been noted that, "[c]learly, in promulgating Rule 1006(a)(1), the intent of the Supreme Court was to prevent forum shopping." *Pasquariello v. Godbout*, 72 Pa. D. & C. 4th 129, 137 (Northampton Co. 2005). While the Pennsylvania Supreme Court has

since noted that forum shopping by Plaintiffs is permissible among the various venues approved in the Rules of Civil Procedure, the Supreme Court does still "disapprove of forum shopping" by plaintiffs in venues that are not deemed to be proper venues under the Rules of Civil Procedure. *Zappala v. James Lewis Group*, 982 A.2d 512, 520 (Pa. Super. 2009) *quoting Zappala v. Brandolini Prop. Mgmt., Inc.*, 589 Pa. 516, 540, 909 A.2d 1272, 1286 n. 14 (2006).

It is well-settled under Pennsylvania law that a proper method of challenging an improper venue selection in a civil action is by way of Preliminary Objections. Pa.R.C.P. 1006(e), 42 Pa. C.S.; Pa.R.C.P. 1028(a)(1), 42 Pa. C.S.; *PECO Energy Co. v. Philadelphia Suburban Water Co.*, 802 A.2d 666, 668 (Pa. Super. 2002). More specifically, Pa.R.C.P. 1006(e) expressly provides that "[i]mproper venue shall be raised by Preliminary Objections and if not so raised shall be waived." Pa.R.C.P. 1006(e), 42 Pa.C.S. Additionally, Pa.R.C.P. 1028(a)(1) also expressly provides that Preliminary Objections may be filed against improper venue. Pa.R.C.P. 1028(a)(1), 42 Pa.C.S.

**2. Plaintiffs' venue selection of Luzerne County is improper as to the individual defendants and also does not comport with the design of the venue rules of having matters litigated in counties having a substantial relationship to the matter and which are the most convenient for a proper disposition of the case.**

With a Preliminary Objection asserting improper venue, a trial court is to look at the case by taking a "snap shot" of it at the time it is initiated, and if venue is proper at that time, it remains proper throughout the litigation. *Wilson*, 963 A.2d at 483 (Pa. Super. 2008) *quoting Zappala v. Brandolini Prop. Mgmt., Inc.*, 589 Pa. 516, 909 A.2d at 1281. As set forth by the Pennsylvania Supreme Court in the case of *Commonwealth v. Bethea*, 574 Pa. 100, 114, 828 A.2d 1066, 1074-75 (2003) [other citations omitted]:

> Venue relates to the right of a party to have the controversy brought and heard in a particular judicial district. Venue is predominantly a procedural matter, generally prescribed by the rules of this Court. Venue assumes the existence of jurisdiction.

Under Pennsylvania law, the term 'venue' also "pertains to the locality most convenient for the proper disposition of a matter." *Wissinger, Trial Court Rule 1925 Opinion at p. 5 citing Searles v. Estrada*, 856 A.2d 85 (Pa. Super. 2004) *appeal denied*, 871 A.2d 192 (Pa. 2005).

The courts of Pennsylvania have repeatedly held that "....a Plaintiff's choice of venue is not absolute or unassailable." *Jackson v. Laidlaw Transit, Inc. and Laidlaw Transit, Pa., Inc.*, 822 A.2d 56, 57 (Pa. Super. 2003). "[A] Plaintiff generally is given the choice of forum so long as the requirements of personal and subject matter jurisdiction are satisfied." *Deyarmin v. Consolidated Rail Corp.*, 931 A.2d 1, 9 (Pa. Super. 2007) [citations omitted]. However, the presumption in favor of a Plaintiff's choice of forum has no application when the Court is faced with the question of whether the venue was or was not proper in a particular county. *Deyarmin*, 931 A.2d at 10 *citing Kring v. University of Pittsburgh*, 829 A.2d 673, 676 (Pa. Super. 2003), *appeal denied*, 577 Pa. 689, 844 A.2d 553 (2004).

In *Kring*, the Pennsylvania Superior Court explained:

> [Venue] either is or it is not [proper]. In *Caplan v. Keystone Weaving Mills, Inc.*, 431 Pa. 407, 246 A.2d 384, 386 (Pa. 1968), the Pennsylvania Supreme Court stated that when we review a trial court's "order ruling upon the propriety of the venue chosen by the plaintiff.... we recognize no difference procedurally between the claim that the action was instituted before the wrong tribunal and a claim that the action was brought before a court lacking confidence to entertain it." If, as decided

> by the trial court in this case, venue in Washington County is improper, then it is of no import that [the Plaintiff] instituted this action in that forum, as the trial court had no jurisdiction to hear the case.

*Deyarmin*, 931 A.2d at 10 *citing Kring*, 829 A.2d at 676; *but see O'Donnell v. McDonough*, 895 A.2d 45, 47 (Pa. Super. 2006) (presumption in favor of Plaintiff's choice of venue considered).

As noted above, with respect to the individual Defendants, Jennifer L. Brady and Linda Marie Lawbach, the Pennsylvania Rules of Civil Procedure provide that proper venues for litigation against them would be in the county where the accident occurred, where the individual Defendants could be served, or in any other county authorized by law. Pa.R.C.P. 1006(a)(1), 42 Pa.C.S.

It is undisputed that the accident occurred in Northumberland County and that both of the individual Defendants were both served in Montour County, Pennsylvania. Venue against the individual Defendants in Luzerne County is not otherwise authorized by law. Accordingly, the trial court correctly concluded that the plaintiff's forum shopping selection of the venue Luzerne County over Northumberland County or Montour County is an improper venue selection under Pa.R.C.P. 1006(a)(1).

With regards to proper venue against the UIM carrier Defendant, State Farm, Pa. R.C.P. 1006(b) provides that actions against corporations "may be brought in and only in the county designated by...Rule 2179." Rule 2179 of the Pennsylvania Rules of Civil Procedure provides, in pertinent part, as follows:

> [A] personal action against a corporation or similar entity may be brought in and only in
>
> (1) the county where its registered office or principal place of business is located;

(2) a county where it regularly conducts business;

(3) the county where the cause of action arose;

(4) a county where a transaction or occurrence took place out of which the cause of action arose, or

(5) a county where the property or part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa.R.C.P. 2179, 42 Pa.C.S.

The Plaintiffs in this matter have incorrectly argued that, Pa. R.C.P. 2179 mandates that Luzerne County is a proper venue in this matter for all of the Defendants in that Luzerne County was a "county where [State Farm] regularly conducts business." **See** Pa. R.C.P. 2179(a)(2). The Plaintiffs' reliance upon Pa. R.C.P. 2179(b)(1) which provides that "[a]n action upon a policy of insurance against an insurance company...may be brought...in a county designated in Subparagraph (a) of this rule...," does not compel a different result.

The above Rule 2179, providing that venue lies against a defendant because of the defendant's regular conduction of business in a county applies only to corporations and other similar entities, and not to individual defendants. *Gilfor ex rel. Gilfor v. Altman*, 770 A.2d 341, 345 (Pa. Super. 2001). Thus, even assuming *arguendo* that venue may be technically proper against Defendant, State Farm, in Luzerne County under Rule 2179, Luzerne County is still not a proper venue for the claims against the individual Defendants under any venue rule. *Id.* at p. 344.

This remains particularly so where there is no allegation of joint liability between the individual Defendants and Defendant, State Farm, pled in the Plaintiffs' Complaint in this matter as required by Pa.R.C.P. 1006(c) in order to allow for venue to be found against all defendants in any county where venue might be proper against one of the defendants.

As noted by the trial court below, in the absence of any concrete appellate guidance on the novel issue presented, the post-Koken combination of tort and contract actions in one lawsuit, has generated venue decisions in differing results. *Wissinger, Trial Court Rule 1925 Opinion* at p. 5; *See also Exhibit "A" attached hereto: Sehl v. Neff and State Farm*, May Term 2009, No. 2487 (Phila. Co. Oct. 22, 2009 Allen, J.) (case transferred to Montgomery County)*(cited in Wissinger Trial Court Rule 1925 Opinion below) appeal filed and case currently pending in Superior Court at* Docket No. 3438 EDA 2009; *Thomas v. Titan Auto Ins., Nationwide Ins. Co., Jones, and Briel*, March Term 2010 No. 03050 (May 10, 2010, Tereshko, J.)(Court granted the Petition to Sever filed by Titan/Nationwide the third party claims from the UIM claims and also granted the request that the case be therefore transferred to Montgomery County. However, in the court's Rule 1925 Opinion, the trial court clarified that it was only sending the severed negligence claim to Montgomery County and was keeping the UIM claim in Philadelphia County. **Note:** *Thomas* is distinguishable from this matter in that the court severed the claims first and then addressed the proper venue issue—in the case at hand the claims remain consolidated and have not been severed); *Campbell v. Kelly and State Farm*, December Term 2009, No. 208 (Phila. Co. March 12, 2010, Overton, J.) (venue held proper in Philadelphia County) *(cited in Wissinger Trial Court Rule 1925 Opinion*

*below)*; *See also Pippett v. Radu and State Farm*, March Term 2010, No. 3305 (Phila. Co. July 14, 2010, Tereshko, J.) (On Motion for Reconsideration, trial court sustained Preliminary Objections of improper venue and ordered matter transferred to Delaware County); *Miscannon v. State Farm, GEICO, and Norris*, June Term 2010, No. 3302 (Phila. Co. Nov. 30, 2010, Rau, J.) (transfer of venue request denied). With no appellate decisions on this particular issue uncovered to date, it appears that this matter comes before the Superior Court as a case of first impression.

### 3. The Luzerne County Court of Common Pleas acted properly in sustaining the Preliminary Objections and transferring this matter to Northumberland County.

With the above application of the undisputed facts to the law and standard of review in mind, it is asserted that the trial court below did not err in ruling that Luzerne County is not the proper venue and that Northumberland County is a proper venue for this matter under the circumstances presented. As noted by the trial court, although the Defendant UIM carrier, State Farm, conducts business in Luzerne County, it also regularly conducts business in Northumberland County as well. Besides State Farm's involvement in this matter, there is no other connection whatsoever between this lawsuit and Luzerne County. The individual Defendants did not reside in Luzerne County at the time of the accident and were not served with original process in Luzerne County. Furthermore, the subject motor vehicle accident did not occur in Luzerne County, but rather occurred in Northumberland County, which is also where the Plaintiffs all happen to reside.

Based on these circumstances, the trial court properly rejected the Plaintiffs' argument for venue in Luzerne County, that being State Farm's "doing business" in

Luzerne County. The trial court noted that, beyond the allegation that State Farm did business in Luzerne County, "[t]he parties and issues in this action have no nexus to Luzerne County." *Wissinger, Trial Court Rule 1925 Opinion* at p. 6. The court therefore, correctly ruled that this sole argument of the Plaintiffs in favor of venue being in Luzerne County "pales" when one considers the other aggregate of venue contacts within Northumberland County. *Id.*

Granted, under Pa. R.C.P. 1006(c)(1) "an action *to enforce joint and several liability* against two or more Defendants...may be brought against all Defendants in any county in which the venue may be laid against any one of the Defendants under the general rules of subdivision (a) or (b)." Pa.R.C.P. 1006(c)(1), 42 Pa.C.S. [Emphasis added]. However, in this matter, as confirmed by the trial court below, joint and several liability between the individual Defendants and the UIM carrier Defendants has not been (and can not be) alleged by the Plaintiffs. *See Wissinger Trial Court Rule 1925 Opinion* at p. 4. The trial court properly found that the simple fact that State Farm happened to conduct business in Luzerne County was not sufficient to render Luzerne County a proper venue under the facts of this Northumberland County car accident case. *See Paradise Streams, Inc. v. Edward Hess Assoc., Inc.,* 33 Pa.D.&C. 3d 472, 474-475 (Northampton Co. 1984)(Venue in a particular county is not proper under Pa.R.C.P. 1006(c) where the defendants that are objecting to venue are not jointly or severally liable with the defendant that conducts business in the county.).

In so ruling, the trial court below turned to Rule 131 for guidance in considering the different Rules of Civil Procedure pertaining to venue separately relied upon by the

Plaintiffs and the individual Defendants in this matter. Rule 131 of the Pennsylvania Rules of Civil Procedure provides, as follows:

> **Rule 131. Rules in Pari Materia**
>
> Rules or parts of rules are in pari materia where they relate to the same proceedings or class of proceedings. Rules in pari materia shall be construed together, if possible, as one rule or one chapter of rules.

The purpose of Rule 2179, pertaining to proper venue for corporate defendants, is "to permit a Plaintiff to institute suit against the Defendant in the county most convenient for him and his witnesses and to assure that the county selected ha[s] a substantial relationship to the controversy between the parties and [is] thereby a proper forum to adjudicate the dispute." *Deyarmin,* 931 A.2d at 8 *citing County Construction Co. v. Livengood Construction Corp.*, 393 Pa. 39, 44-45, 142 A.2d 9, 13 (1958). That purpose of Rule 2179 would not be furthered by allowing this case to proceed in Luzerne County since, under the circumstances presented, Luzerne County does not have a "substantial relationship" to either the controversy or the parties and is not the most convenient location for this lawsuit even from the Plaintiffs' perspective. *Id.* It therefore follows that the trial court properly ruled that Luzerne County is not a proper forum to litigate this Northumberland County car accident matter.

The lower court's decision and rationale in this matter is supported by the Pennsylvania appellate court decision in the analogous case of *Bogetti v. Pennsylvania, Department of Transportation*, 144 Pa.Cmwlth. 180, 184, 601 A.2d 421, 423 (1991). In *Bogetti*, the injured party plaintiff attemped to secure venue of a Northumberland County car accident matter in the Allegheny County Court of Common Pleas against the Pennsylvania Department of Transportation on the basis of the Department of

Transportation having separate local offices located in all of the counties of Pennsylvania.

Although *Bogetti* did not involve construction of the same venue rules at issue in this matter under Pa.R.C.P. 1006 or Pa.R.C.P. 2179, the appellate court conducted a similar analysis under the comparable rules of venue applicable to actions brought against agencies of the Commonwealth of Pennsylvania, i.e. 42 Pa.C.S. §8523(a) ("Actions for claims against a Commonwealth party may be brought in and only in a county in which the principal or local office of the Commonwealth party is located or in which the cause of action arose or where a transaction or occurrence took place out of which the cause of action arose.").

The Court in *Bogetti* rejected the plaintiff's interpretation of the venue statute as allowing for a claim against the Department of Transportation to be filed in any county of the Commonwealth regardless of where the underlying incident occurred and regardless of the locations of the litigants. The appellate court noted that, to accept the plaintiff's incorrect interpretation of the venue provisions in this regard, would lead to improper forum shopping by Plaintiffs. That improper forum shopping, in turn, would lead to congested county courts in certain areas of the Commonwealth and which would also require citizens of counties to attend jury trials in other counties bearing no relationship to their county of residence. *Bogetti*. 144 Pa.Cmwlth. at 184, 601 A.2d at 423.

The court in *Bogetti* more specifically noted that venue was improper in Allegheny County because the cause of action did not arise in Allegheny County, because no witnesses were located in Allegheny County, and in consideration of the fact that the plaintiffs in that case were from Northumberland County. As such, the Court concluded

that "to avoid an absurd and unreasonable result as well as favoring the public interest against a private interest, venue does not properly lie in Allegheny County." *Id.* Accordingly, the appellate court affirmed the order of the trial court granting the preliminary objections and transferring the matter to the proper venue of Northumberland County. *Bogetti,* 144 Pa.Cmwlth. at 184-85, 601 A.2d at 423.

The same rationale applies to this matter and compels the conclusion that the trial court correctly decided that Luzerne County is not the proper venue for this matter and that this matter should be transferred to Northumberland County. The lower court's decision in this matter should likewise be affirmed "to avoid an absurd and unreasonable result" and to "favor[] the public interest against a private interest." *Bogetti,* 144 Pa.Cmwlth. at 184, 601 A.2d at 423.

Stated otherwise, in determining proper venue for this matter, the trial court did not abuse its broad discretion. There was no misapplication of the applicable law, no exercising of discretion in a manner lacking reason, and no failure to follow legal procedure on the part of the trial court. *See Continental Cas. Co. v. Pro Machine*, 916 A.2d at 1115-16. Since there is a proper basis for the trial court's venue determination in this matter and since the transfer of this litigation to Northumberland County is reasonable in light of the facts presented, it is respectfully asserted that the trial court's decision must stand and should not be disturbed by the Superior Court. *See Masel*, 456 Pa. Super. at 45, 689 A.2d at 316; *Harris*, 844 A.2d at 570.

## B. PUBLIC POLICY CONSIDERATIONS AND POTENTIAL RAMIFICATIONS OF AN UNFETTERED CHOICE OF VENUE FAVOR AN AFFIRMANCE OF THE TRIAL COURT'S DECISION ON PROPER VENUE IN POST-KOKEN CASES

It is also important to emphasize that public policy considerations, and potential ramifications attendant with an unfettered choice of venue by injured parties in Post-Koken cases, all militate in favor of an affirmance of the trial court's decision in this matter. Affirming the trial court's ruling granting the Preliminary Objections in this matter will have the wider benefit outside of this case of serving to promote the purpose of the venue Rules in preventing rampant, unfettered, and improper forum shopping by plaintiffs.

By rejecting the Plaintiffs' contention that Post-Koken motor vehicle accident lawsuits can be filed in any county in the Commonwealth where the defendant insurance carrier conducts business, the Superior Court will ensure that these automobile accident cases are properly litigated in the venue having a substantial relationship with the action and which is a convenient location for the disposition of the matter, i.e. the venue where the accident happened, where the individual defendant resides, or where that defendant can be served. More often than not, the venue where the accident happened, where the individual defendant resides, or where that defendant can be served, will also be the same venue where the plaintiff resides and/or where all of the relevant fact witnesses and medical witnesses are located, making that venue even more proper (even from the plaintiff's perspective) as the appropriate location for the case to proceed.

Preventing unfettered shopping by the Plaintiffs by affirming the trial court's decision in this matter will also have the added benefit to the Commonwealth's court system by avoiding and preventing congestion in those venues that are considered to be

more liberal than others. *See Bogetti*, 144 Pa.Cmwlth. at 184, 601 A.2d at 423 (1991). Furthermore, if these cases are required to be litigated in places where the accident occurred or where the defendants resided or could be served, it would be less likely that citizen litigants of those counties would have to attend depositions and jury trials in other faraway counties that bear no relationship to their resident county. *Id.* Conversely, preventing unfettered shopping for liberal venues by plaintiffs will also prevent citizens of those supposedly liberal venues from having to serve as jurors in a glut of Post-Koken automobile accident cases having little or no connection to that county.

Perhaps most significantly, affirming the trial court's decision will also have the added benefit of creating a precedent that offers certainty to a bench and bar that is starved for appellate guidance on Post-Koken issues, including but not limited to, the issue of proper venue in such cases. With such a decision from the appellate court, the bench and bar will, for the first time, have clear guidance on the proper venue for these types of cases.

Knowing the proper venue for these cases will assist members of the plaintiff's bar and the defense bar that handle auto accident matters, as well as the insurance carriers handling these claims, in properly evaluating the cases presented based, in part, upon an understanding of the reputation of the jury pool (liberal, moderate, or conservative) for the particular venue in which the case must be pursued. Having certainty as to the proper venue of a Post-Koken case, and the knowledge of that venue's reputation in terms of the slant of its jury pool, will assist the parties in their efforts to evaluate and settle the claims presented. Consequently, the goal of cost containment in automobile accident matters, as well as the interest of judicial economy, will also be furthered by the affirmance of the

trial court's decision in this matter on the venue issue presented as more cases may be able to be settled before they even enter into costly and time-consuming litigation. *See Generette v. Donegal Mut. Ins. Co.*, 598 Pa. 505, 525, 957 A.2d 1180, 1192 (2008)(one purpose of the Motor Vehicle Financial Responsibility Law is cost containment).

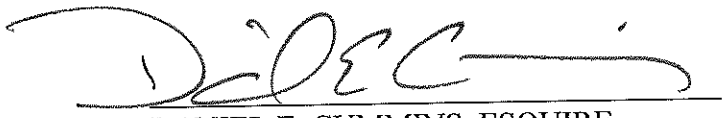
It therefore follows that a reflection upon the above public policy considerations and the benefits to be gained from a proper application of the venue rules in Post-Koken cases also favors an affirmance of the trial court's decision to sustain the Preliminary Objections on the basis of improper venue and to transfer this matter to Northumberland County where the subject car accident occurred. Accordingly, it is respectfully requested that this Honorable Court AFFIRM the trial court's decision in this matter.

## CONCLUSION

The Pennsylvania Rules of Civil Procedure applicable to this matter provide that venue in an action against an individual defendant is limited to the county where the loss occurred, the county of the defendant's residence, the county where the defendant is served, or a county as authorized by a particular law. The only exception arises when there are multiple defendants, but that exception applies only where those defendants are jointly liable. Here, the individual tort-based defendant cannot be jointly liable with the corporate contract-based defendant and there is no allegation of joint liability in the Complaint filed in this matter.

Since the lower court therefore correctly ruled that venue is not proper in Luzerne County under the novel scenario presented in this Post-Koken Northumberland County motor vehicle accident matter having no substantial relationship to Luzerne County, it is respectfully requested that this Honorable Court AFFIRM the August 16, 2010 Order of the Luzerne County Court of Common Pleas that granted the Preliminary Objections of Defendant, Jennifer L. Brady, and transferred this matter to its proper venue of Northumberland County.

Respectfully Submitted
FOLEY, COGNETTI, COMERFORD,
CIMINI & CUMMINS



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## PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the person and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

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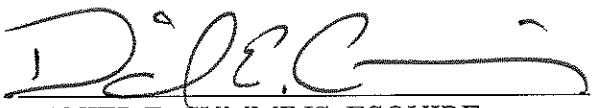

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