

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

DONNA J. GROOMES, individually and as )  
Executrix of the ESTATE OF TONY )  
GROOMES a/k/a CHARLES A. GROOMES, )

Plaintiffs, )

v. )

OLIVER W. HERNDON, M.D. and )  
HORIZONS HOSPICE, LLC, )

Defendants. )

CIVIL ACTION- MEDICAL  
PROFESSIONAL LIABILITY  
ACTION

NO: GD 12-020414

**COMPLAINT**

Filed on behalf of Plaintiffs:  
Donna J. Groomes, individually and as  
Executrix of the Estate of Tony  
Groomes a/k/a Charles A. Groomes

Counsel of Record for this party:  
James P. Sommers, Esquire

PA ID# 42162

SOMMERS LAW OFFICE, P.C.  
1804 Roosevelt Road  
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412-364-3818  
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Executrix of the ESTATE OF TONY	)	PROFESSIONAL LIABILITY
GROOMES a/k/a CHARLES A. GROOMES,	)	ACTION
	)	
Plaintiffs,	)	NO: GD 12-020414
	)	
v.	)	
	)	
OLIVER W. HERNDON, M.D. and	)	
HORIZONS HOSPICE, LLC,	)	
	)	
Defendants.	)	

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within **twenty (20) days** after this Complaint and Notice are served, by entering a written appearance, personally or by attorney, and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiffs. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**Lawyer Referral Service of  
The Allegheny County Bar Association  
920 City-County Building  
Pittsburgh, PA 15219  
Telephone: 412-261-0518**

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA**

DONNA J. GROOMES, individually and as	)	CIVIL ACTION- MEDICAL
Executrix of the ESTATE OF TONY	)	PROFESSIONAL LIABILITY
GROOMES a/k/a CHARLES A. GROOMES,	)	ACTION
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OLIVER W. HERNDON, M.D. and	)	
HORIZONS HOSPICE, LLC,	)	
	)	
Defendants.	)	

**COMPLAINT**

AND NOW, come the Plaintiff, Donna J. Groomes, individually and as Executrix of the Estate of Tony Groomes a/k/a Charles A. Groomes, by and through its attorneys, Sommers Law Offices, P.C. and James P. Sommers, Esquire, and files the within Complaint in the above-referenced case:

1. The Plaintiff, Donna Groomes, is an adult individual whose residence is 156 Spruce Valley Drive, Pittsburgh, PA 15229. Donna Groomes is the Executrix of the Estate of Tony Groomes a/k/a Charles A. Groomes, deceased by letters testamentary granted to Donna Groomes at 02-1105512, Department of Court Records Wills/Orphans Court Division, Allegheny County, Pennsylvania.
2. Until his death on August 16, 2011, Donna Groomes was the wife of Charles “Tony” Groomes, deceased. Donna Groomes is also the mother of their four children.
3. Defendant Horizons Hospice, LLC is a limited liability company or other business entity with an office or principal place of business at 2549 Mossie Boulevard, Monroeville, PA

15146. Horizons Hospice is a licensed professional with offices in Allegheny County, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

4. Mr. Groomes entered hospice care with Trinity Hospice under the guidance of its Medical Director, Oliver W. Herndon, on or about December 13, 2005.

5. The Defendant Oliver Herndon is an adult individual currently incarcerated in the Federal Prison System. His last known address is FTC Oklahoma City Federal Transfer Center, Oklahoma City, Oklahoma, 73189. At the time of the events referred to in this Complaint, Oliver Herndon was a licensed professional with offices in Allegheny or Washington Counties, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

6. In April, 2012, Oliver Herndon, inter alia was charged on seven counts of prescribing narcotics “outside the usual course of professional practice and not for a legitimate medical purpose”. He subsequently pled guilty to the charges and was sentenced to 11 years in prison.

7. The Defendant Oliver Herndon is an adult individual who at all times material and relevant to this Complaint was a medical physician. Herndon was the Medical Director of Trinity Hospice and was also the Medical Director of the Defendant Horizons Hospice.

8. Mr. Groomes came under the care of Trinity Hospice and Herndon on or about December 13, 2005 under the diagnosis of end-stage congestive heart failure (CHF).

9. Mr. Groomes remained under the care of Trinity Hospice through August 2006, when records indicate that he was discharged from Trinity Hospice due to his desire to “seeking treatment”.

10 Mr. Groomes was readmitted to Trinity Hospice on February 6, 2008 once again under the diagnosis of end-stage CHF.

11. Mr. Groomes remained a hospice patient of Trinity until approximately November 11, 2008 when Trinity ceased doing business and Oliver Herndon transferred his patients, including Mr. Groomes to Horizons Hospice. Mr. Groomes remained classified as end-stage CHF patient until the remainder of 2008, 2009 and was eventually discharged from Horizons Hospice on October 27, 2010.

12. Each hospice utilized the diagnosis of end stage CHF for billing purposes.

13. Hospice care is intended for people with six months or less to live if the disease runs its normal course.

14. Mr. Groomes clearly did not have a diagnosis in the "six month or less" requirement for hospice care.

15. Congestive heart failure is staged according to its severity. The records of Horizons Hospice indicate company use of the New York Heart Association heart failure symptom classification system in order to stage the severity of a patient's CHF for appropriateness of certification and recertification of terminal cardiac disease.

16. Throughout Mr. Groomes' treatment by Herndon and Horizons Hospice, Groomes was assessed to be a stage four on the New York Heart Association heart failure symptom classification system.

17. However, Mr. Groomes did not manifest the symptoms for end-stage congestive heart failure.

18. At all times material and relevant to this action, the Defendant, Oliver Herndon was both the attending physician for Mr. Groomes as well as the Medical Director for the Defendant, Horizons Hospice.

19. As the Medical Director for Horizons Hospice, Oliver Herndon was in charge of overall management of patients by Horizons' Interdisciplinary Team. He oversaw the appropriateness for referral to each patient and served as a consultant to the Team on matters of palliative care.

20. The Defendant, Horizons Hospice, LLC held itself out, and represented to the Plaintiff, Donna Groomes and to Mr. Groomes that they would provide care and comfort to Mr. Groomes and his family, including his wife, Donna Groomes.

21. The Defendant held itself out and represented to the Plaintiff and Mr. Groomes that they would provide the highest level of courtesy and service to patients and their families.

22. The Defendant Horizons Hospice is a clinical partner of the Pennsylvania Hospice Network. As a member of the network Defendant acknowledges that the unit of care is the patient and patient's family, and that any plan of care is for the benefit of both the patient and the family.

23. Following discharge by Horizons Hospice on or about October 27, 2010, and following testing in January 2011, it was discovered that Mr. Groomes did not have end-stage CHF or any other terminal illness.

#### **CONDUCT OF THE DEFENDANTS**

24. The injuries and damages sustained by the Plaintiff and by Mr. Groomes were caused by the negligence and recklessness of the Defendants Horizons Hospice, LLC and Oliver Herndon, their agents, servants and/or employees, jointly and severally, as follows:

- a. The Defendants identified and certified Mr. Groomes as having terminal illness when in fact he did not;
- b. The Defendants failed to confirm that Mr. Groomes did not have end-stage CHF;

- c. Defendants failed to obtain required clinical information to support a finding of terminal illness;
- d. Defendants failed to obtain review of Mr. Groomes' condition from a cardiologist to confirm hospice eligibility;
- e. Defendants caused inappropriate admission to hospice resulting in ongoing cardiac care and rehabilitative services being withheld from Mr. Groomes;
- f. Defendants continuously recertified Mr. Groomes for hospice care without any updated clinical findings;
- g. Defendants falsely documented that the patient had an EF of 10% without any recent cardiac testing;
- h. Defendants failed to establish any proper plan of care for Mr. Groomes;
- i. Defendants failed to provide ample visits by nurses and/or the physician himself, Oliver Herndon;
- j. Defendants failed to provide ample HHA visits, social work or spiritual care visits to Mr. Groomes or the Plaintiff, despite documentation in the record that the "patients' condition was declining.";
- k. Defendants failed to document the clinically standard medication dosages and treatments necessary to address Mr. Groomes' severe cardiac issues;

- l. Defendants failed to provide the proper physician services to Mr. Groomes when the records show that he did not have end-stage diagnosis;
- m. Defendants failed to establish and maintain a medical record of Mr. Groomes in accordance with accepted principals of hospice practice;
- n. Defendants failed to keep current and accurate records of drugs and biologicals including receipt and disposal of all controlled substances;
- o. Defendants overprescribed in inordinate and unusual combinations of narcotics and other agents for Mr. Groomes;
- p. Defendant improperly increased dosages of Mr. Groomes pain medications and other controlled substances in inordinate amounts without justification;
- q. Defendants failed to refer Mr. Groomes to drug rehabilitation, especially when he was not declining under hospice;
- r. Defendants failed to take the proper steps in discharging Mr. Groomes from hospice;
- s. Defendants falsely represented that Mr. Groomes' condition was declining and then discharged him from hospice several days later;



- t. Defendants failed to establish a discharge plan for Mr. Groomes, the Plaintiff and their family;
- u. Defendants abandoned Mr. Groomes, the Plaintiff and their family to navigate their way back into the traditional medical system after several years on hospice; and
- v. Defendants and their agents, servants and employees failed to question, report or investigate anyone furnishing excessive and/or unusual combinations of drugs, including narcotics to Mr. Groomes.

25. The conduct of the Defendants as aforesaid was willful, wanton and outrageous entitling Plaintiff to punitive damages.

#### **INJURIES AND DAMAGES**

26. As a direct and proximate result of the conduct of the Defendants as aforesaid, Mr. Groomes suffered the following damages and injuries. Specifically, Mr. Groomes:

- a. Developed severe and disabling drug dependency from which he did not and could not recover;
- b. Mr. Groomes experienced great physical and mental pain, suffering, anxiety, embarrassment, depression and emotional distress;
- c. Plaintiff expended large sums of money for hospice care and treatment which was unnecessary;
- d. The Plaintiff suffered lost wages and diminished earning capacity;

- e. Plaintiff was deprived of proper medical care and treatment;
- f. Plaintiff was not able to enjoy the usual pleasures of life;
- g. Plaintiff became disabled from his usual duties, occupations, avocations and vocations;
- h. Plaintiff suffered a loss of earnings and earning capacity;
- i. Plaintiff suffered a great psychological and mental pain and suffering and anxiety and embarrassment;
- j. Plaintiff suffered shock, grief, rage, humiliation, emotional pain and emotional trauma;
- k. Plaintiff suffered from headaches, insomnia, depression, nervousness and anxiety; and
- l. Plaintiff suffered premature death.

27. As a direct and proximate result of the conduct of the Defendants, the Plaintiff, Donna Groomes incurred the following damages and injuries:

- a. She suffered and has continued to suffer great psychological and mental pain, suffering and anxiety, humiliation, embarrassment and inconvenience;
- b. She has incurred or will incur medical expense to treat her mental condition;
- c. She lost the care, comfort, emotional support, society and financial support of her spouse, and the loss of consortium;
- d. She has suffered and continues to suffer shock, grief, rage, depression, and shock to the nerves and nervous system; and

- e. She has incurred costs and expenses in caring for her husband and for herself.

**COUNT I**  
**Wrongful Death Action**

28. The Plaintiff incorporates by reference herein Paragraphs 1 through 27 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

29. As a direct and proximate result of the conduct of the Defendants as aforesaid, the Plaintiff is entitled to recover the following damages:

- a. All hospital and medical expenses incurred, as well as expenses incurred which were not necessary by reason of Defendants' conduct;
- b. Funeral expenses and expenses of administration;
- c. Loss of services;
- d. Loss of contribution and/or money;
- e. Household services and work around the home;
- f. Loss of companionship, physical comforts, services and society;
- g. Loss of guidance, resources and protection;
- h. Such other damages as may be recoverable under Pennsylvania's Wrongful Death Statute, 42 Pa.C.S.A. §8301.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT II**  
**Survival Action**

30. The Plaintiff incorporates by reference herein Paragraphs 1 through 29 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

31. As a direct and proximate result of the Defendants' conduct the Plaintiff has sustained the following damages:

- a. The net loss earning potential of the decedent; and
- b. Other damages recoverable pursuant to 42 Pa.C.S.A. §8302.

**COUNT III**  
**Fraud**

32. The Plaintiff incorporates by reference herein Paragraphs 1 through 31 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

33. Defendants repeatedly represented to the Plaintiff that Mr. Groomes was terminally ill and a candidate for hospice care when the Defendants knew or should have known said representations were false.

34. The Defendants represented and held out to the Plaintiff and others that they would provide Plaintiff with hospice care, counseling services and support while Mr. Groomes was undergoing "hospice" care, all the while knowing that Mr. Groomes was not a candidate for hospice care.

35. The Defendants concealed from the Plaintiff that Mr. Groomes was not a candidate for hospice care.

36. The Plaintiff reasonably relied upon the representations made to her and Mr. Groomes, all to her detriment.

37. As a direct and proximate result of said misrepresentations, Plaintiff suffered the injuries and damages here in before averred.

38. Plaintiff is entitled to punitive damages from the Defendant as a result of their malicious, outrageous, wanton and unreasonable behavior.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT IV**  
**Negligent Infliction of Emotional Distress**

39. The Plaintiff incorporates by reference herein Paragraphs 1 through 38 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

40. The conduct of the Defendants as aforesaid constitutes negligence infliction of emotional distress upon the Plaintiff.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT V**  
**Intentional Infliction of Emotional Distress**

41. The Plaintiff incorporates by reference herein Paragraphs 1 through 40 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

42. The conduct of the Defendants as aforesaid constitutes intentional infliction of emotional distress upon the Plaintiff.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT VI**  
**Breach of Fiduciary Duty**

43. The Plaintiff incorporates by reference herein Paragraphs 1 through 42 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

44. The conduct of the Defendants as aforesaid constitutes a breach of fiduciary duty.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT VII**  
**Breach of Contract**

45. The Plaintiff incorporates by reference herein Paragraphs 1 through 44 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

46. Defendants entered into a contractual relationship with the Plaintiff and Mr. Groomes.

47. A portion of said contract is attached hereto and marked as Exhibit "A". Plaintiff does not have access to the entire contract.

48. The conduct of the Defendants as aforesaid constitutes a breach of said contract.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT VIII**  
**Fraudulent Misrepresentation**

49. The Plaintiff incorporates by reference herein Paragraphs 1 through 48 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

50. The conduct of the Defendants as aforesaid constitutes fraudulent misrepresentation upon which the Plaintiff reasonably relied to her detriment.

51. The conduct of the Defendants as aforesaid constitutes willful, wanton, malicious and outrageous conduct entitling the Plaintiff to punitive damages.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT IX**  
**Negligent Misrepresentation**

52. Plaintiff incorporates by reference herein Paragraphs 1 through 51 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

53. Defendants repeatedly represented to the Plaintiff that Mr. Groomes was terminally ill and a candidate for hospice care when the Defendants knew or should have known said representations were false.

54. The Defendants represented and held out to the Plaintiff and others that they would provide Plaintiff with hospice care, counseling services and support while Mr. Groomes was undergoing "hospice" care, all the while knowing that Mr. Groomes was not a candidate for hospice care. The Defendants concealed from the Plaintiff that Mr. Groomes was not a candidate for hospice care.

55. The Plaintiff reasonably relied upon the representations made to her and Mr. Groomes, al to her detriment.

56. As a direct and proximate result of said misrepresentations, Plaintiff suffered the injuries and damages here in before averred.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

**COUNT X**

**Violation of Pennsylvania's Unfair Trade Practice and Consumer Protection Law**

57. The Plaintiff incorporates by reference herein Paragraphs 1 through 56 inclusive, of this Complaint as though said paragraphs were set forth at length herein.

58. Defendants engaged in deceptive acts or practices under Pennsylvania's Unfair Trade Practice Law, as follows:

- a. In causing a likelihood of confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;
- b. Knowingly misrepresenting its services, replacements or repairs are needed when they were in fact not needed; and
- c. Engaging in other fraudulent or deceptive conduct which created a likelihood of confusion or misunderstanding.

59. Under Pennsylvania Unfair Trade Practice and Consumer Protection Law the Plaintiff is entitled to treble damages, attorney's fees and other relief as the court deems necessary or proper.



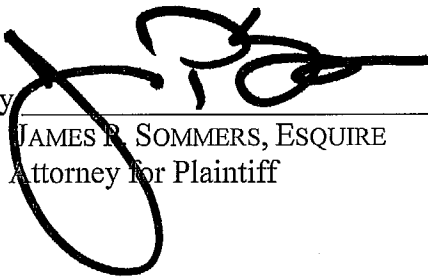
60. Plaintiff is entitled to punitive damages from the Defendant as a result of their malicious, outrageous, wanton and unreasonable behavior.

WHEREFORE, the Plaintiff requests that judgment be entered against the Defendants, jointly and severally in an amount in excess of \$25,000.00, plus the cost of suit.

JURY TRIAL DEMANDED

Respectfully submitted,

SOMMERS LAW OFFICE, P.C.

By   
\_\_\_\_\_  
JAMES R. SOMMERS, ESQUIRE  
Attorney for Plaintiff

**EXHIBIT “A”**

**INSURANCE COVERAGE**

I hereby authorize that payment be made on my behalf directly to Horizons Hospice, LLC for health insurance benefits otherwise payable to me for the professional or medical expense benefits allowable under my current insurance policy. If my current policy prohibits direct payment to provider, I instruct and direct the insurance company to make out the check to me and mail it as follows:

**Horizons Hospice, LLC 309 East Plank Rd, Altoona, Pa 16602**

I hereby authorize Horizons Hospice, LLC to endorse the payment and deposit into their account and use as payment towards the charges for services rendered to me. THIS IS A DIRECT ASSIGNMENT OF MY RIGHTS AND BENEFITS UNDER THIS POLICY. I understand that I may be responsible to Horizons Hospice, LLC for any balance of service charges over and above this insurance payment. I will be notified in writing if I am responsible for any charges before the services are provided.

I understand that I am fully responsible for all services rendered by Horizons Hospice, LLC, subject to the following:

- If I am eligible for Medicare or Medicaid hospice benefits, all costs will be paid under these programs and I will have no financial obligation.
- If I am not eligible for Medicare or Medicaid hospice benefits, but I have hospice benefits under a commercial medical insurance policy, I will be responsible for all or a portion of those costs not paid under the policy, i.e., deductibles, co-payments, and costs that exceed policy limits. The actual amount of these costs for which I am responsible will be determined based on a personal assessment of my finances and/or my family's finances.
- If I am not eligible for Medicare or Medicaid hospice benefits and I have no commercial insurance coverage, I will be responsible for all or a portion of the cost for hospice services based on a financial assessment to be performed on me and/or my family.

**FOR MEDICARE/MEDICAID RECIPIENTS ONLY**

1. I understand that in accepting the Medicare/Medicaid Hospice Benefit, I waive my rights to regular benefits except for the payments to my attending physician and treatment for medical conditions unrelated to my life-limiting illness.

2. I understand that I may revoke the Hospice Benefit at any time and have all Medicare/Medicaid benefits fully restored immediately upon my signature.

**MEDICARE SECONDARY PAYOR QUESTIONNAIRE**

1. Are you currently working full or part-time?  Yes  No Is your spouse working full or part-time?  Yes  No

2. Are you entitled to Black Lung medical benefits?  Yes  No

3. Was this service for treatment of a work related injury or illness?  Yes  No

If YES, please provide the name and address of worker's comp agency, insurance company, and your employer.

4. Is this service for treatment of an illness or injury, which resulted from an automobile or other accident?  Yes  No

If YES, please provide the name/address and policy number of the auto or non-auto liability or no-fault insurer.

5. Have you received a kidney transplant?  Yes  No Are you on dialysis?  Yes  No

6. Have you received maintenance dialysis treatments?  Yes  No

7. Do you have a fee service card from the Department of VA Affairs?  Yes  No

Acknowledging and understanding the above, I elect the  Medicare Hospice Benefit

I understand that, depending on my needs, I may be transported by a non-medical transport company. Should I desire and need immediate medical attention during the trip, I understand that I will be transported to the nearest emergency room

\_\_\_\_\_ Initials of responsible party

I authorize hospice services from Horizons Hospice, LLC effective 11/11/08 (Date)

Charles Groomes \_\_\_\_\_  
Signature of Patient or Legal Representative Date

Address of Legal Representative (if applicable) Relationship to Patient

Center M James RN \_\_\_\_\_  
Signature of Hospice Representative Date 11/11/08

Charles Groomes \_\_\_\_\_  
Patient Name Patient Number

Pursuant to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Horizons Hospice, LLC does not discriminate on the basis of race, color, national origin, disability, sexual orientation, communicable disease or age in admission, treatment or participation its programs, services and activities or in employment.

VERIFICATION

I, Donna J. Groomes, verify that the statements contained in the foregoing **COMPLAINT** are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are made subject to the penalties of 18 PA C.S. §4904 relating to unsworn falsification to authorities.

Date: Jan 18-13.

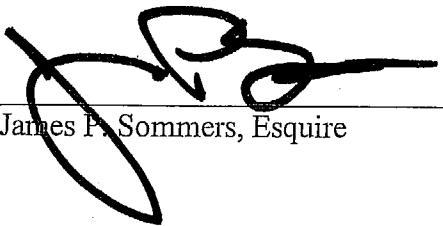
Donna J. Groomes  
Donna J. Groomes

CERTIFICATE OF SERVICE

I, James P. Sommers, hereby certify that a true and correct copy of the foregoing **COM-PLAINT** was served this 18<sup>TH</sup> day of January, 2013, via U.S. Mail, postage prepaid upon the following:

David B. White, Esquire  
Burns White, LLC  
Four Northshore Center  
106 Isabella Street  
Pittsburgh, PA 15212

Kristin L. Pieseski, Esquire  
Jason M. Logue, Esquire  
Davies, McFarland & Carroll, PC  
One Gateway Center, 10<sup>th</sup> Floor  
Pittsburgh, PA 15222



James P. Sommers, Esquire