

IN THE SUPERIOR COURT OF PENNSYLVANIA  
WESTERN DISTRICT

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BRIAN LYNN,

Appellant,

v.

NATIONWIDE INSURANCE COMPANY

and TERRA M. LYNN,

Appellees.

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No. 1458 WDA 2012

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**BRIEF FOR *AMICI CURIAE* WOMEN'S LAW PROJECT,  
PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE,  
AND TWENTY-FOUR DOMESTIC VIOLENCE VICTIM SERVICES  
ORGANIZATIONS IN SUPPORT OF APPELLANT BRIAN LYNN**

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**Appeal from the Order of Court and Memorandum Opinion of  
the Court of Common Pleas of Allegheny County, Pennsylvania, Civil Division,  
entered on September 7, 2012, and amended September 14, 2012,  
No. GD10-012335**

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ACCESS-YORK/VICTIM ASSISTANCE CENTER/YWCA YORK  
ALLE-KISKI AREA HOPE CENTER, INC.  
BLACKBURN CENTER AGAINST DOMESTIC & SEXUAL VIOLENCE  
CENTRE COUNTY WOMEN'S RESOURCE CENTER  
CITIZENS AGAINST PHYSICAL, SEXUAL & EMOTIONAL ABUSE, INC.  
CLINTON COUNTY WOMEN'S CENTER, INC.  
CRISIS CENTER NORTH  
CRISIS SHELTER OF LAWRENCE COUNTY  
DOMESTIC ABUSE PROJECT OF DELAWARE COUNTY, INC.  
DOMESTIC VIOLENCE CENTER OF CHESTER COUNTY, PA  
DOMESTIC VIOLENCE INTERVENTION OF LEBANON COUNTY, INC.  
DOMESTIC VIOLENCE SERVICES OF LANCASTER COUNTY  
HAVIN, DOMESTIC VIOLENCE AND SEXUAL ASSAULT CENTER, ARMSTRONG  
COUNTY  
LUTHERAN SETTLEMENT HOUSE  
PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE  
SAFENET, DOMESTIC VIOLENCE SAFETY NETWORK  
STOP ABUSE FOR EVERYONE  
SURVIVORS, INC.  
VICTIMS' INTERVENTION PROGRAM  
WOMEN AGAINST ABUSE  
WOMEN IN TRANSITION, INC.  
WOMEN'S CENTER OF BEAVER COUNTY  
WOMEN'S CENTER OF MONTGOMERY COUNTY  
WOMEN'S CENTER, INC. OF COLUMBIA AND MONTOUR COUNTIES  
WOMEN'S LAW PROJECT  
YOUR SAFE HAVEN, INC.

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### CASES

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Financial Services Modernization Act, 12 U.S.C. § 1831x(e)(1999) .....	11
<i>Health Insurance and Domestic Violence, Hearing on S. 524, S. 1028, and H.R. 1201 Before the Senate Comm. on Labor and Human Resources, 104th Cong. 19, 32 (1995)</i> .....	10, 11
Health Insurance Portability and Accountability Act of 1996 (HIPAA), 29 U.S.C. §§ 1181-82 .....	11
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H.R. 1201, 104th Cong. (1995) .....	11
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H.B. 1790, Gen. Assemb., Reg. Sess. (Pa. 2001) .....	16
S.B. 363, Gen. Assemb., Reg. Sess. (Pa. 2005).....	17
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NAIC, Unfair Discrimination Against Subjects of Abuse in Disability Insurance Model Act (2001) .....	12
NAIC, Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act (2001).....	12

## OTHER AUTHORITIES

- Big Insurers Will Not Cover Battered Wives: High-Risk Situation Seen as Bad Risk by Insurance Companies*, Boston Globe, Mar. 13, 1995, available at [http://articles.sun-sentinel.com/1995-03-13/news/9503120217\\_1\\_domestic-violence-violence-victims-health-insurance](http://articles.sun-sentinel.com/1995-03-13/news/9503120217_1_domestic-violence-violence-victims-health-insurance) ..... 10
- Brent R. Lindahl, *Comment: Insurance Coverage for an Innocent Co-Insured Spouse*, 23 William Mitchell L. Rev. 433 (1997)..... 5, 14
- Catherine F. Klein & Leslye G. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801 (1993)..... 5
- Cindy Scharr, *Man Facing Arson Charges in Haverford Apartment Fire*, Delaware County Daily Times, Oct. 22, 2010, <http://www.delcotimes.com/articles/2010/10/22/news/doc4cc1095423f68198630439.txt>..... 5
- Elizabeth A. Hoskins, *Survey of South Carolina Law: Insurance: South Carolina Women Are Not Preexisting Conditions*, 63 S.C.L. Rev. 949 (Summer 2012) ..... 8
- Ellen J. Morrison, *Insurance Discrimination Against Battered Women: Proposed Legislative Protections*, 72 Ind. L. J. 259 (1996) ..... 11
- Fern Shen, *Battered Women Say They're Victimized Again — By Insurers*, Wash. Post, Mar. 13, 1995..... 9
- Greenfield Man Charged With Setting Fire in House*, Pittsburgh Post-Gazette, Nov. 10, 2010 (first published), <http://www.post-gazette.com/pg/10314/1102018-53.stm> ..... 5
- Jake Batsell, *Insurance To Cover House Burned Down By Spouse — Safeco Settlement Will Allow Rebuilding*, Seattle Times, Nov. 25, 1997, <http://community.seattletimes.nwsourc.com/archive/?date=19971125&slug=2574455>..... 15
- Jill Porter, *This Law to Help Battered Spouses Long Overdue*, Phila. Daily News, Jan. 4, 2006, <http://www.accessmylibrary.com/article-1G1-140480016/philadelphia-daily-news-jill.html>..... 16, 18
- Joan Zorza, *Batterer Manipulation and Retaliation Compounded by Denial and Complicity in the Family Courts*, in *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues* 14-15 (Mo Therese Hannah & Barry Goldstein eds., 2010)..... 4, 5
- Katharine Q. Seelye, *Insurability for Battered Women*, N.Y. Times, May 12, 1994, at A9, <http://www.nytimes.com/1994/05/12/us/insurability-for-battered-women.html> ..... 10

Lauren H. Otis, *Domestic Abuse Law Hearings Sought*, National Underwriter, Sept. 17, 1997, at 3, <http://m.propertycasualty360.com/1997/09/17/domestic-abuse-law-hearings-sought>..... 15

Lois Schwaeber, *Recognizing Domestic Violence: How to Know It When You See It and How to Provide Appropriate Representation*, in *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues 2-10* (Mo Therese Hannah & Barry Goldstein eds. 2010)..... 9

M.C. Black, et al., *The National Intimate Partner and Sexual Violence Survey 39* (2011) ..... 4

Michelle J. Mandel, *Review of Selected 1997 California Legislation: Ensuring that Victims of Domestic Abuse Are Not Discriminated Against in the Insurance Industry*, 29 McGeorge L. Rev. 677 (1998) ..... 7

Monica C. Fountain, *Insurance Companies Hit Battered Women Too*, Chicago Tribune, June 4, 1995, [http://articles.chicagotribune.com/1995-06-04/features/9506040136\\_1\\_domestic-violence-battered-domestic-abuse](http://articles.chicagotribune.com/1995-06-04/features/9506040136_1_domestic-violence-battered-domestic-abuse) ..... 7, 11

Pennsylvania Coalition Against Domestic Violence (PCADV), *Annual Report: 35 Years on a Mission (2010/11)*, available at <http://www.pcadv.org/Resources/2010-2011AnnualRpt.pdf> ..... 6

Pennsylvania Medical Society, *RADAR: A Domestic Violence Intervention*, <http://www.pamedsoc.org/MainMenuCategories/PatientCare/PublicHealth/DomesticViolence/RADAR.html> ..... 6

Pennsylvania Office of the Victim Advocate, *Address Confidentiality Program*, <http://www.paacp.state.pa.us/portal/server> ..... 6

Rebecca Brannan, *Unfair Trade Practices: Prohibit Discrimination Against Victims of Family Violence in Insurance Coverage, Rates, and Claims*, 17 Ga. St. U.L. Rev. 220 (2000)..... 8

Sheri A. Mullikin, *Note: A Cost Analysis Approach to Determining the Reasonableness of Using Domestic Violence as an Insurance Classification*, 25 J. Legis. 195 (1999)..... 8, 12

Steven Thomma, *Battered — and Often Denied Insurance*, Phila. Inq., May 13, 1994, at A3, [http://articles.philly.com/1994-05-13/news/25826539\\_1\\_insurance-companies-state-farm-insurance-cos-coverage/2](http://articles.philly.com/1994-05-13/news/25826539_1_insurance-companies-state-farm-insurance-cos-coverage/2) ..... 8

Terry L. Fromson & Nancy Durborow, *Insurance Discrimination Against Victims of Domestic Violence* (1998), available at [http://www.womenslawproject.org/brochures/Insurance\\_discrimDV.pdf](http://www.womenslawproject.org/brochures/Insurance_discrimDV.pdf)..... 8, 15

Women’s Law Project & Pa. Coalition Against Domestic Violence, *FYI Insurance Discrimination Against Victims of Domestic Violence Supplement* (2002), available at [http://www.womenslawproject.org/brochures/InsuranceSup\\_DV2002.pdf](http://www.womenslawproject.org/brochures/InsuranceSup_DV2002.pdf) ..... 8, 15

Women’s Law Project, *State Laws Prohibiting Insurance Discrimination on the Basis of Domestic Violence* (Sept. 2010), available at [http://www.womenslawproject.org/resources/StateStatutes\\_Prohibit\\_InsuranceDiscrim.pdf](http://www.womenslawproject.org/resources/StateStatutes_Prohibit_InsuranceDiscrim.pdf) ..... 13



## STATEMENT OF INTEREST OF *AMICI CURIAE*

*Amici Curiae* are the Women's Law Project, Pennsylvania Coalition Against Domestic Violence, and 24 non-profit organizations providing services to domestic violence victims in Pennsylvania. *Amici* have specialized knowledge and expertise regarding the use of property damage as a tool by which abusers inflict domestic violence, how the denial of insurance coverage for such property damage compounds the destructive impact of the abuse on the innocent victim, and the circumstances that gave rise to Pennsylvania's adoption of statutory protection to address this injustice. Some *amici* worked directly with the Pennsylvania individuals who were denied coverage and whose experiences spurred the Pennsylvania General Assembly to act, not once, but twice, to prohibit insurers from denying coverage to victims of abuse and to specifically require insurers to pay property claims of innocent co-insureds when the loss is caused by the intentional act of the insured. Many *amici* actively advocated for and supported the Pennsylvania General Assembly's adoption of these provisions, and all appreciate the need to protect access to property and casualty insurance coverage for innocent victims of abuse.

This brief provides the context for the General Assembly's clear legislative response to an insurance practice that revictimized the victim by depriving her of the means to recover from the financial ruin and homelessness resulting from domestic violence. This context demonstrates both the error committed by the trial court when it failed to recognize the plain meaning of the General Assembly's response to a serious problem and the importance of rectifying this error by making clear that Pennsylvania law requires insurers to pay the claims of innocent co-insureds. Individual statements of interest of *Amici Curiae* are contained in Appendix A to this brief.

## SUMMARY OF ARGUMENT

This case raises an issue identified by this Court to be of singular importance to survivors of domestic violence. In 1997, this Court called on the Pennsylvania General Assembly to address the “twin evils of destruction and destitution” that are caused when property insurers apply intentional act exclusions to innocent, victimized spouses. *Kundhal v. Erie Ins. Group*, 703 A.2d 542, 545 (Pa. Super. Ct. 1997). In that case, the insurer denied the innocent victim’s claim after her abusive spouse burned down their home and destroyed their automobile. The insurer relied on a policy provision that applied the policy’s intentional act exclusion to all insureds, penalizing the innocent spouse for the victimization she suffered at her husband’s hands. This Court thus sounded the alarm to the General Assembly that a 1996 amendment to the Unfair Insurance Practices Act (UIPA) – which prohibited insurers from using domestic violence as an underwriting criterion or as a basis for refusing to pay claims – was still leaving innocent co-insured victims vulnerable to this troubling form of insurance discrimination. Indeed, the injustice that led the *Kundahl* Court to plead for legislative reform in Pennsylvania was occurring in communities across the country and became the focus of media scrutiny and public outrage.

The General Assembly ultimately responded to this call for action in 2006, when it enacted 40 Pa. Stat. § 1171.5(a)(14)(i)(D) (hereinafter “the Innocent Co-Insured Victim Act”).<sup>1</sup> This Act explicitly prohibits the denial of abuse-related claims filed by innocent co-insureds where the loss was caused by the intentional act of another insured.

Yet, despite the Act’s plain language and the public outcry giving rise to its enactment, in a meager one-paragraph opinion, the trial court literally read the Innocent Co-Insured Victim Act

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<sup>1</sup> *Amici* adopted this title of the Act for ease of reference. It is not the official title.

out of the law and essentially undid the General Assembly's specific legislative efforts – and this Court's underlying directive – to protect innocent co-insureds.

*Amici*, all of whom work to eliminate domestic violence and to mitigate the effects of such violence on survivors, ask this Court to reverse the trial court's decision misinterpreting and rendering meaningless a statutory provision enacted to provide vital redress to domestic violence victims. Unless the Court restores the plain meaning of this statute – to require insurers to pay claims to innocent victims of abuse whose homes and automobiles are destroyed by the intentional acts of their abusive spouses – victimized spouses will be rendered homeless and destitute through the destructive acts of domestic violence and the promise of the General Assembly's 2006 enactment will be nullified.

## ARGUMENT

### I. DOMESTIC VIOLENCE IS A SERIOUS AND PERVASIVE SOCIETAL PROBLEM.

Five decades ago, domestic violence was a hidden problem, committed behind closed doors and shrouded in secrecy and shame. The problem came into public view in the 1970s, and public awareness about the prevalence and nature of domestic violence has grown over time. It is now known that intimate partner violence happens frequently and affects people in every demographic group. While women are more likely to suffer from domestic abuse than men, men, too, are its victims. According to a 2011 study by the Centers for Disease Control and Prevention, more than 1 in 3 women (35.6%) and more than 1 in 4 men (28.5%) in the United States have experienced rape, physical violence, and/or stalking by an intimate partner in their lifetime. M.C. Black, et al., *The National Intimate Partner and Sexual Violence Survey 39* (2011) (hereinafter NISVS Survey), *available at* [http://www.cdc.gov/ViolencePrevention/pdf/NISVS\\_Report2010-a.pdf](http://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf). Almost 7 million women and 5.7 million men report experiencing rape, physical violence, and/or stalking by an intimate partner in a 12-month period. *Id.*

The common conception of domestic abuse involves physical harm or the threat of physical harm, such as striking, strangling, or murdering, but abuse takes many forms: physical, sexual, and emotional. As the U.S. Supreme Court has recognized, “Physical violence is only the most visible form of abuse. Psychological abuse, particularly forced social and economic isolation of women, is also common.” *Planned Parenthood v. Casey*, 505 U.S. 833, 891 (1992). Abusers use a variety of tactics to subjugate and instill fear in their victims, including exerting control over anything the victim loves. Sometimes, abusers will threaten to hurt a victim’s children or pets, or take or damage valuable and necessary family possessions. *See* Joan Zorza, *Batterer Manipulation and Retaliation Compounded by Denial and Complicity in the Family*

*Courts, in Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues* 14-15 (Mo Therese Hannah & Barry Goldstein eds., 2010). Sometimes, their intimidation rises to actions that leave the victim and his or her family financially ruined and homeless, when they deliberately destroy or damage the victim's home and car. Catherine F. Klein & Leslye G. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 Hofstra L. Rev. 801, 872 (1993) (batterers often damage property to terrorize, threaten, and exert control over a victim of domestic violence); *see also* Zorza, *supra*, at 14-15.

It is not unusual for this form of domestic violence to include setting fire to the family home. *See, e.g., Greenfield Man Charged With Setting Fire in House*, Pittsburgh Post-Gazette, Nov. 10, 2010 (first published), <http://www.post-gazette.com/pg/10314/1102018-53.stm> (last visited Nov. 2, 2012); Cindy Scharr, *Man Facing Arson Charges in Haverford Apartment Fire*, Delaware County Daily Times, Oct. 22, 2010, <http://www.delcotimes.com/articles/2010/10/22/news/doc4cc1095423f68198630439.txt> (last visited Nov. 2, 2012). In these cases, "arson is simply the abuser's current weapon of choice." *See* Brent R. Lindahl, *Comment: Insurance Coverage for an Innocent Co-Insured Spouse*, 23 William Mitchell L. Rev. 433, 456 (1997). In addition to inflicting pain and terror on the victim, destroying the family home can further the abuser's goal of depriving his or her victim of the economic independence the victim needs to separate from the abuser permanently. Thus, domestic violence that includes arson of the victim's home serves to lock the victim into the abusive relationship.

## **II. PENNSYLVANIA HAS A STRONG, CONSISTENT RECORD OF SUPPORTING REDRESS FOR DOMESTIC VIOLENCE VICTIMS.**

Pennsylvania has consistently been a leader in recognizing the seriousness of domestic violence and adopting remedies and implementing strategies to assist victims of abuse. Once domestic violence became recognized as a widespread, often lethal problem, Pennsylvania began

to fund treatment, housing, and counseling programs for survivors. Significant efforts have gone into improving the response of the civil and criminal justice systems and increasing services to domestic violence victims. Today, Pennsylvania supports a statewide network of programs that provide 24-hour emergency hotlines, counseling, shelter, transitional housing, legal advocacy and representation, healthcare-based advocacy, children's programs, and other free and confidential services throughout the state. *See* Pennsylvania Coalition Against Domestic Violence (PCADV), *Annual Report: 35 Years on a Mission (2010/11)*, *available at* <http://www.pcadv.org/Resources/2010-2011AnnualRpt.pdf>. Medical providers are now trained in protocols to identify, treat, and refer victims of abuse. *See* Pennsylvania Medical Society, *RADAR: A Domestic Violence Intervention*, <http://www.pamedsoc.org/MainMenuCategories/PatientCare/PublicHealth/DomesticViolence/RADAR.html> (last visited Nov. 5, 2012). Battered women are therefore encouraged to report abuse to their medical providers and to the police, and to avail themselves of civil remedies and criminal sanctions against their abusers.

Pennsylvania was one of the first states to adopt legal protection from abuse under civil law when it adopted the Protection From Abuse Act (PFA Act) in 1976. 23 Pa. Cons. Stat. Ann. §§ 6101-6122. The Pennsylvania Office of the Victim Advocate administers the Pennsylvania Address Confidentiality Program to assist victims in keeping their address confidential, thereby promoting their safety from further abuse. *See* Pennsylvania Office of the Victim Advocate, *Address Confidentiality Program*, [http://www.paacp.state.pa.us/portal/server.pt/community/address\\_confidentiality\\_program/11192](http://www.paacp.state.pa.us/portal/server.pt/community/address_confidentiality_program/11192) (last visited Nov. 9, 2012). The Pennsylvania Department of Public Welfare (DPW) has adopted the federal Family Violence Option pursuant to which DPW refers abuse victims enrolled in the cash assistance program to local services and waives program requirements for recipients if compliance would be unfair or

would place victims at risk of further violence. 55 Pa. Code §§ 108.1-108.18. The recent amendments to the state child custody statute reinforce the Pennsylvania General Assembly's determination that consideration of domestic violence is a priority in child custody decisions. *See* 23 Pa. Cons. Stat. Ann. § 5323(e) (requiring court to include safety conditions in any custody order in which abusive partner is granted custodial time); 23 Pa. Cons. Stat. Ann. § 5328(a)(2) (requiring consideration of risk of harm to both child and abused parent in custody determination). These policies and initiatives are evidence of Pennsylvania's historic and continuing commitment to eradicating domestic violence.

### **III. IN THE MID-1990s, THE PUBLIC LEARNED OF THE INSURANCE INDUSTRY'S PRACTICE OF DENYING COVERAGE BASED ON DOMESTIC VIOLENCE.**

In 1994, another problem for domestic violence victims came to light. When a Pennsylvania woman sought help after two insurance companies denied her health, life, and mortgage disability insurance because she reported to her doctor that she had been abused by her husband, the public learned that insurance companies were refusing to insure victims of abuse precisely because they were victims. *See, e.g.*, Letter from Debbie Hale, Life Underwriter at State Farm Insurance Companies, to Applicant for Insurance (Oct. 1, 1993) (attached as Appendix B); *see also*, Monica C. Fountain, *Insurance Companies Hit Battered Women Too*, Chicago Tribune, June 4, 1995, [http://articles.chicagotribune.com/1995-06-04/features/9506040136\\_1\\_domestic-violence-battered-domestic-abuse](http://articles.chicagotribune.com/1995-06-04/features/9506040136_1_domestic-violence-battered-domestic-abuse) (last visited Nov. 5, 2012) (describing how State Farm, First Colony Life, and Nationwide Insurance Company denied insurance to two Pennsylvania women based on domestic violence); Michelle J. Mandel, *Review of Selected 1997 California Legislation: Ensuring that Victims of Domestic Abuse Are Not Discriminated Against in the Insurance Industry*, 29 McGeorge L. Rev. 677, 677 (1998)

(recounting that Nationwide Insurance Company denied insurance to a woman because her medical records revealed that her husband had assaulted her three times).

Insurers were using domestic violence as a basis to determine whom to cover, what to cover, and how much to charge. See Elizabeth A. Hoskins, *Survey of South Carolina Law: Insurance: South Carolina Women Are Not Preexisting Conditions*, 63 S.C.L. Rev. 949, 949-52 (Summer 2012) (citing Terry L. Fromson & Nancy Durborow, *Insurance Discrimination Against Victims of Domestic Violence* (1998), available at [http://www.womenslawproject.org/brochures/Insurance\\_discrimDV.pdf](http://www.womenslawproject.org/brochures/Insurance_discrimDV.pdf); Women's Law Project & Pa. Coalition Against Domestic Violence, *FYI Insurance Discrimination Against Victims of Domestic Violence Supplement* (2002), available at [http://www.womenslawproject.org/brochures/InsuranceSup\\_DV2002.pdf](http://www.womenslawproject.org/brochures/InsuranceSup_DV2002.pdf); Sheri A. Mullikin, *Note: A Cost Analysis Approach to Determining the Reasonableness of Using Domestic Violence as an Insurance Classification*, 25 J. Legis. 195, 197 n.16 (1999)). The practice of relying on domestic violence to deny, cancel, or exclude coverage or to charge a higher premium was found in all lines of insurance — health, life, disability, and property and casualty (*i.e.*, homeowners, personal automobile, and commercial property and automobile) — and occurred in both individual and group policies. Mullikin, *supra*, at 197; Rebecca Brannan, *Unfair Trade Practices: Prohibit Discrimination Against Victims of Family Violence in Insurance Coverage, Rates, and Claims*, 17 Ga. St. U.L. Rev. 220, 221-23 (2000).

Insurers justified these discriminatory practices by characterizing domestic violence as a lifestyle choice. They inappropriately portrayed domestic violence victims as willfully engaged in reckless behavior, analogizing them to skydivers who choose risky recreational activities or diabetics who refuse to take their insulin. See Steven Thomma, *Battered — and Often Denied Insurance*, Phila. Inq., May 13, 1994, at A3, <http://articles.philly.com/1994-05->



13/news/25826539\_1\_insurance-companies-state-farm-insurance-cos-coverage/2 (last visited Nov. 8, 2012). In the candid words of one industry executive, shifting the risk of loss to battered survivors was good for the insurer's bottom line: "Whether it's battering or breast cancer or HIV or a sky diver or a person recovering from breast cancer, if we fail to take these things into account, it could lead us into bankruptcy." Fern Shen, *Battered Women Say They're Victimized Again — By Insurers*, Wash. Post, Mar. 13, 1995 (quoting David McMahon, Vice President of First Colony Life Insurance Co.).

Insurers wrongly blamed victims for not leaving their abusers, disregarding the insidious ways in which abusers trap their victims in violent relationships. To the contrary, no one chooses to be battered or to remain in a violent situation. Leaving an abusive relationship is often a daunting process, complicated by concerns for safety, children, and economic security. See *Casey*, 505 U.S. at 892 ("Many abused women who find temporary refuge in shelters return to their husbands, in large part because they have no other source of income."). Many victims cannot escape violence due to lack of finances, having children with the batterer, and fearing harm from the known increased risk of violence accompanying separation. Others are deterred from seeking help due to embarrassment, lack of family support, lack of awareness of available help, and concern that the police and courts will not believe and protect them. Lois Schwaeber, *Recognizing Domestic Violence: How to Know It When You See It and How to Provide Appropriate Representation*, in *Domestic Violence, Abuse, and Child Custody: Legal Strategies and Policy Issues 2-10* (Mo Therese Hannah & Barry Goldstein eds. 2010).

In 1994, fear of losing insurance became an additional barrier to obtaining help as victims learned that accessing legal and medical assistance or filing an insurance claim could create a record that would be used to deny them insurance. As a witness for the American Medical

Association explained in testimony to the U.S. Senate Committee on Labor and Human Resources regarding the proposed advice of an insurance agent that a battered client should “[w]ear a long blouse to hide your injuries in the doctor’s office”:

The logic is that if the woman hides her injuries, her insurance company will never find out that she’s a battered woman and will not cancel her insurance. From a physician’s viewpoint, this is an extremely perverse outcome, preventing the improvement of a battered woman’s health.

*See Health Insurance and Domestic Violence, Hearing on S. 524, S. 1028, and H.R. 1201 Before the Senate Comm. on Labor and Human Resources, 104th Cong. 19, 32 (1995) (testimony of Timothy Flaherty, M.D., on behalf of the American Medical Association).*

The immediate impact of these discriminatory insurance practices was to deny victims and their families the life necessities that only insurance can provide: health insurance for themselves and their children, replacement income in the event of disability or death, and homeowners and auto insurance, which are prerequisites to home and auto ownership and essential to providing shelter and retaining employment for self-support. The inability to replace a house burned down or damaged by a batterer may result in homelessness. For a battered victim seeking to leave the batterer, access to insurance and the life necessities associated with insurance may mean the difference between leaving or remaining trapped in the abusive situation.

The denial of insurance to victims of domestic violence generated national attention and outrage. *See* Katharine Q. Seelye, *Insurability for Battered Women*, N.Y. Times, May 12, 1994, at A9, <http://www.nytimes.com/1994/05/12/us/insurability-for-battered-women.html> (last visited Nov. 8, 2012); *Big Insurers Will Not Cover Battered Wives: High-Risk Situation Seen as Bad Risk by Insurance Companies*, Boston Globe, Mar. 13, 1995, available at [http://articles.sun-sentinel.com/1995-03-13/news/9503120217\\_1\\_domestic-violence-violence-victims-health-](http://articles.sun-sentinel.com/1995-03-13/news/9503120217_1_domestic-violence-violence-victims-health-)

insurance (last visited Nov. 5, 2012); Ellen J. Morrison, *Insurance Discrimination Against Battered Women: Proposed Legislative Protections*, 72 Ind. L. J. 259, 266 n.52 (1996) (citing Fern Shen, *For the Battered Spouse, Insurers' Bias Worsens Pain*, Wash. Post, Mar. 9, 1995, at A1). The Subcommittee on Crime and Criminal Justice of the U.S. House of Representatives Judiciary Committee promptly surveyed the largest insurers in the country and found that eight of the nation's sixteen largest insurers used domestic violence as a factor in underwriting and pricing insurance. See Fountain, *supra*. Congress held hearings examining proposals to prohibit insurers from denying health insurance coverage and benefits or varying premiums based on the status of an individual as a victim of domestic violence, and federal legislators commenced efforts to enact legislation to prohibit such practices. See *Hearings on S. 524, S. 1028, and H.R. 1201 Before the Senate Comm. on Labor and Human Resources, supra.*; see, e.g., S. 524, 104th Cong. (1995); H.R. 1191, 104th Cong. (1995); H.R. 1201, 104th Cong. (1995); H.R. 1920, 104th Cong. (1995). Ultimately, Congress enacted several bills protecting domestic violence victims from discriminatory insurance practices, including most recently in the Affordable Care Act. See e.g., Affordable Care Act, §2705, as added and amended Pub. L. 111-148, title I, §1201(3), (4), Mar. 23, 2010, 124 Stat. 154, 156 (codified at 42 U.S.C. § 300gg-4) (prohibiting individual and group health plans from denying coverage based on domestic abuse); Financial Services Modernization Act, 12 U.S.C. § 1831x(e)(1999) (prohibiting banks from considering status as a victim of domestic violence or as a provider of services to victims of domestic violence as a criterion in any decision with regard to health and life insurance underwriting, pricing, renewal, scope of coverage, or payment of claims); Health Insurance Portability and Accountability Act of 1996 (HIPAA), 29 U.S.C. §§ 1181-82 (prohibiting group health plans and health insurers

offering group coverage from discriminating on the basis of “conditions arising out of domestic violence”).

Similar activity occurred at the state level. State insurance departments, including Pennsylvania’s, surveyed insurers doing business in their states. In May 1995, the Pennsylvania Insurance Commissioner reported that 26% of the 489 responding accident, health, and life insurers stated that they considered domestic violence as an underwriting criterion, and significantly higher percentages admitted using domestic violence as a basis to deny new applications. Mullikin, *supra*, at 198 n.25 (citing Pa. Ins. Dep’t, *Survey of Accident and Health and Life Insurers Relating to Insurance Coverage for Victims of Domestic Violence* (1995)). Led by Connecticut, Massachusetts, Delaware, Florida, Iowa, California, and Indiana, states were quick to adopt legislation prohibiting insurers from denying coverage based on domestic violence. *See* Conn. Gen. Stat. § 38a-816(18), 38a-469; Mass. Gen. Laws ch. 175, §§ 95B, 108G, 120D, ch. 176A, § 3A, ch. 176B, § 5A, ch. 176G, § 19; Del. Code Ann. tit. 18 §§ 2302(5), 2304(24)-(25); Fla. Stat. Ann. § 626.9541(g)(3)(e); Iowa Code § 507B.4(7)(c); Cal. Health & Safety Code § 1374.75; Cal. Ins. Code §§ 675, 676.9, 10144.2, 10144.3; Ind. Code Ann. § 27-8-24.3-1 et seq.

State reform efforts were assisted by the work of the National Association of Insurance Commissioners (NAIC), which, from 1995 through 2001, developed and finalized model laws prohibiting practices harmful to domestic violence victims in each of the four lines of insurance: NAIC, *Unfair Discrimination Against Subjects of Abuse in Health Benefit Plans Model Act*; *Unfair Discrimination Against Subjects of Abuse in Disability Insurance Model Act*; *Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act*; and *Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act*. Since

1994, 43 states have adopted legislation that prohibits insurance discrimination against victims of domestic violence. Women’s Law Project, *State Laws Prohibiting Insurance Discrimination on the Basis of Domestic Violence* (Sept. 2010), *available at* [http://www.womenslawproject.org/resources/StateStatutes\\_Prohibit\\_InsuranceDiscrim.pdf](http://www.womenslawproject.org/resources/StateStatutes_Prohibit_InsuranceDiscrim.pdf).

**IV. THE PENNSYLVANIA LEGISLATURE HAS TWICE AMENDED THE UNFAIR INSURANCE PRACTICES ACT TO PROHIBIT SPECIFIC INSURANCE PRACTICES HARMFUL TO DOMESTIC VIOLENCE VICTIMS.**

In 1996, Pennsylvania adopted its own statutory protection from insurance discrimination by adding a new section 14 to the Pennsylvania Unfair Insurance Practices Act (UIPA), that prohibits insurers from:

- (i) Taking any of the following actions because the insured or applicant for an insurance policy or insurance contract is a victim of abuse:
  - (A) Denying, refusing to issue, refusing to renew, refusing to reissue or cancelling or terminating an insurance policy or insurance contract or restricting coverage under an insurance policy or insurance contract.
  - (B) Adding a surcharge, applying a rating factor or using any other underwriting standard or practice which adversely takes into account a history or status of abuse.
  - (C) Excluding or limiting benefits or coverage under an insurance policy or insurance contract for losses incurred.

Before final passage, the following provisions were added to the bill:

- (ii) Nothing in this paragraph shall be construed as:
  - (A) requiring that a person issue, renew or reissue an insurance policy or insurance contract solely because the insured or applicant is a victim of abuse; or
  - (B) requiring a person to provide benefits or coverage for losses incurred solely because the insured or applicant is a victim of abuse.
- (iii) A person shall not be in violation of this paragraph if any action taken is permissible by law and applies to the same extent to all applicants and insureds without regard to whether an applicant or insured is a victim of abuse.

40 Pa. Stat. § 1171.5(a)(14). Representative Patricia Vance, the prime sponsor of the legislation, explained during floor debate of the measure that subsections (ii) and (iii) “did not alter the intent

of the legislation.” H. Legis. J. 2042 (Oct. 24, 1995), *available at* <http://www.legis.state.pa.us/WU01/LI/HJ/1995/0/19951024.pdf>. Rather, subsection (ii) was added in response to a concern “that this legislation would create a special class of insureds who would be automatically covered solely because they are victims of abuse”; the additional amendatory language “is merely clarifying that if you happened to have been a victim of domestic violence in the past and you have some injury that is totally unrelated to this, you are not automatically covered if the company never pays for that particular injury.” *Id.* at 2043. Representative Vance further explained that subsection (iii) was added simply to clarify “the legal standard which the insurer must meet.” *Id.*

Despite this broad statutory protection, insurers continued to deny coverage to domestic violence survivors based on overbroad “intentional act” exclusions in homeowners and auto policies. Although the exclusions were intended to prevent a homeowner from reaping financial gain by damaging his or her own home, insurers wrote them to apply to all persons insured under the policy, without regard to whether an insured participated in the intentional act. *See* Lindahl, *supra*, at 438-39. These intentional act exclusions, predicated on an archaic view of husband and wife as a single legal entity, proved devastating to domestic violence victims trying to leave their abusers. *See id.* By leaving the victim without a home or the means to replace it, insurers guaranteed the accomplishment of the batterer’s goal of harming the victim. In effect, the insurer served as an accessory to or accomplice of the batterer, giving cover and support to the batterer’s acts of intimidation and control. This practice in no way supported the underlying purpose of the intentional act exclusion and was causing serious harm to the victim, rendering the victim and his or her children homeless and destitute.

In 1997, shortly after Pennsylvania amended its UIPA to protect victims of abuse from harmful insurance practices, the Superior Court issued its decision in *Kundhal v. Erie Insurance Group*, 703 A.2d 542 (Pa. Super. Ct. 1997). *Kundhal* arose out of an insurer's denial of coverage to a woman whose husband had intentionally set fire to their home, destroying a substantial portion of the residence and his wife's car. The *Kundhal* Court determined that existing law permitted the application of the intentional act exclusions in the home and auto insurance policies against the innocent wife. Nevertheless, the Superior Court panel recognized the injustice of the situation and called "upon the legislature to address this problem so that victimized spouses are no longer faced with the twin evils of destruction and destitution." *Id.* at 545.

Not long after this ruling, in 1997, Safeco Insurance Company denied a claim that a Washington woman made after her estranged abusive husband deliberately set fire to the home he had agreed to give her in a divorce property settlement. Lauren H. Otis, *Domestic Abuse Law Hearings Sought*, National Underwriter, Sept. 17, 1997, at 3, <http://m.propertycasualty360.com/1997/09/17/domestic-abuse-law-hearings-sought> (last visited Nov. 8, 2012). She sued to recover under the policy, but a Washington state court reluctantly upheld the denial under state law and made a plea to the legislature to take action to stop this practice. After nationwide negative publicity, Safeco eventually settled the claim. Jake Batsell, *Insurance To Cover House Burned Down By Spouse — Safeco Settlement Will Allow Rebuilding*, Seattle Times, Nov. 25, 1997, <http://community.seattletimes.nwsourc.com/archive/?date=19971125&slug=2574455> (last visited Nov. 8, 2012); see Fromson & Durborow, *supra*, and *FYI Insurance Discrimination*, *supra* (describing additional coverage denials to innocent co-insureds).

Public outrage over the impact of intentional act exclusions on innocent victims of abuse led to legislative reform. The NAIC included the following prohibition in its model legislation, which was completed in 1998 and revised in format in 2001:

Section 4.B.(1) It is unfairly discriminatory to . . .

(b) Fail to pay losses arising out of abuse to an innocent first party claimant to the extent of such claimant's legal interest in the covered property if the loss is caused by the intentional act of an insured, or using other exclusions or limitations on coverage which the commissioner has determined unreasonably restrict the ability of subjects of abuse to be indemnified for such losses.

NAIC, Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act § 4(B)(1)(b) (2001).

Two years later, American National Property and Casualty denied the property claim of a Philadelphia, Pennsylvania woman whose abusive husband set fire to her home, after barricading himself inside the home with their youngest child. The couple had previously separated, and the husband moved out of the residence. After denying the claim, the insurance company filed a declaratory judgment action in federal court seeking a determination that it was not liable for the claim based on the intentional act exclusion in the policy. Only after the family's plight was described in a newspaper report did the insurer enter into a settlement that permitted the woman to restore the house and replace her belongings. Jill Porter, *This Law to Help Battered Spouses Long Overdue*, Phila. Daily News, Jan. 4, 2006, <http://www.accessmylibrary.com/article-1G1-140480016/philadelphia-daily-news-jill.html> (last visited Nov. 8, 2012).

Against the backdrop of these events and growing public outrage, Representative Vance introduced a bill in 2001 to add protection against the application of intentional act exclusions against innocent victims of abuse to the existing 1996 UIPA prohibition against denying coverage based on domestic violence. H.B. 1790, Gen. Assemb., Reg. Sess. (Pa. 2001). In her



co-sponsorship memo, she cited both the Superior Court's decision in *Kundahl* and the insurance denial of the Philadelphia victim in support of her bill. Co-sponsorship Memo from Rep. Patricia H. Vance to All House Members, May 17, 2001 (attached as Appendix C). In 2005, following her election to the Pennsylvania Senate, Senator Vance reintroduced the same measure as a Senate bill. S.B. 363, Gen. Assemb., Reg. Sess. (Pa. 2005). In her co-sponsorship memo, Senator Vance again highlighted the *Kundahl* case and clearly stated that the goal of her legislation was "to create a statutory prohibition against an insurance company's refusal to pay a homeowner's or property/casualty claim arising out of abuse to an innocent claimant when an abusive spouse caused the property damage." Co-sponsorship Memo from Senator Patricia H. Vance to All Senators, Jan. 20, 2005 (attached as Appendix D). Representative George Kenney, who had been a co-sponsor of Representative Vance's House bill, introduced the same measure in the Pennsylvania House of Representatives in 2005, which became law in 2006. H.B. 1632, Gen. Assemb., Reg. Sess. (Pa. 2005); 40 Pa. Stat. § 1171.5(a)(14)(i)(D).

With the enactment of the Innocent Co-Insured Victim Act, HB 1632, the UIPA was amended specifically to prohibit property and casualty insurers from denying claims arising out of abuse if the loss was caused by the intentional act of another insured. The Innocent Co-Insured Victim Act designates the following to be a prohibited insurance practice:

With respect to a policy of a private passenger automobile, a policy covering owner-occupied private residential property or a policy covering personal property of individuals, refusing to pay an insured for losses arising out of abuse to that insured under a property and casualty insurance policy or contract to the extent of the insured's legal interest in the covered property if the loss is caused by the intentional act of another insured or using other exclusions or limitations which the commissioner has determined unreasonably restrict the ability of victims of abuse to be indemnified for such losses. When an insured submits a claim for losses pursuant to this subsection, the insurer shall provide to the insured a notice stating:

- (I) that the insurer cannot refuse to pay a claim without conducting a reasonable investigation;
- (II) that such investigation may include or result in contact with other insureds;
- (III) that at the request of the insured, the insurer will not disclose the location of the insured to the other insureds or third parties as part of the investigation;
- (IV) that the insurer will notify the insured at least fourteen days prior to instituting any legal action against the insured alleged to have caused the loss;
- (V) that, after an insurer has paid a loss as a result of the claim, the insurer may nonrenew coverage or impose a surcharge as to the insured alleged to have caused the loss as long as the nonrenewal or surcharge imposition is not done prior to the later of six months following payment of the claim or the policy's renewal date; and
- (VI) the national domestic violence hotline number.

40 Pa. Stat. § 1171.5(a)(14)(i)(D). It also expanded the definition of abuse to include “attempting to cause or intentionally, knowingly or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another person covered under 23 Pa.C.S. Ch. 61 (relating to protection from abuse).” 40 Pa. Stat. § 1171.3.

After the House passed the bill, the Pennsylvania Insurance Federation, a state trade association representing insurers, publicly stated that, “the industry agrees that battered victims should ‘receive coverage for the acts of the abuser. Our concern remains making sure the abuser does not get the same benefits.’” Jill Porter, *supra*. In response to this concern, the Innocent Co-Insured Victim Act contains a subsection providing that, “Payment of a claim pursuant to subparagraph (i)(D) shall constitute payment as to all other insureds under the policy.” 40 Pa. Stat. § 1171.5.

The events leading up to the adoption of the Innocent Co-Insured Victim Act of 2006 make it clear that the General Assembly intended the provision to do exactly what the language of the amendment states – prohibit the denial of claims to innocent co-insureds where the loss was caused by the intentional act of another insured. The trial court’s interpretation flies in the

face of the statute's plain language, as well as its clear historical record, and unravels the General Assembly's legislative efforts to answer this Court's call to eradicate the "twin evils of destruction and destitution" caused when property insurers apply intentional act exclusions to innocent, victimized spouses.

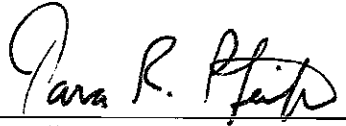
At a time when the insurance industry's bad practices toward domestic violence victims captured national attention and prompted national outrage, the Pennsylvania General Assembly adopted the Innocent Co-Insured Victim Act to prevent the very evil that befell Appellant Lynn and his children. By rendering the Innocent Co-Insured Victim Act all but meaningless, the trial court has undermined the objective to be achieved by its enactment and has exposed domestic violence victims across the Commonwealth to a renewed threat.

## CONCLUSION

For the foregoing reasons, *Amici* ask this Court to reverse the trial court and restore the Innocent Co-Insured Victim Act to its intended vitality.

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Respectfully submitted,



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**APPENDIX A**

**STATEMENTS OF INTEREST OF *AMICI CURIAE***

## **STATEMENTS OF INTEREST OF *AMICI CURIAE***

### **ACCESS-YORK/VICTIM ASSISTANCE CENTER/YWCA YORK**

For over thirty years, ACCESS York/Victim Assistance Center/YWCA York has provided services to victims of domestic violence, sexual assault, and other violent crimes. Each year thousands of individuals from York County and communities across Pennsylvania, in their darkest hour, begin a long and arduous recovery from trauma. These people experience a range of injuries and overcome numerous institutional and legal obstacles, including ill-conceived insurance practices that often serve as obstacles to recovery and many times re-traumatize the victims. ACCESS York/Victim Assistance Center/YWCA York educates the public about the dynamics of victimization and the barriers impeding recovery for the neediest and most vulnerable abuse survivors.

### **ALLE-KISKI AREA HOPE CENTER, INC.**

Alle-Kiski Area HOPE Center, Inc. (“HOPE”) is an organization whose mission is the safe elimination of domestic violence through intervention, prevention, and collaboration. HOPE serves the communities of the Allegheny and Kiski valleys and touches the lives of more than 20,000 individuals each year, including 3,500 direct victims of domestic violence. Insurance companies need to be part of a system of support for domestic violence victims by refraining from practices that compound the effects of trauma and violence on already-victimized people.

### **BLACKBURN CENTER AGAINST DOMESTIC & SEXUAL VIOLENCE**

Blackburn Center Against Domestic and Sexual Violence (“Blackburn Center”) is one of the oldest sexual assault and domestic violence agencies in Pennsylvania, having celebrated 35 years of service to Westmoreland County in 2011. Blackburn Center is the only organization in Westmoreland County offering free services in counseling, advocacy and supportive programs for survivors of sexual assault, sexual harassment, child sexual abuse, and incest. It operates one of two domestic violence programs in Westmoreland County. As an agency that provides services to thousands of domestic violence victims each year, Blackburn Center has firsthand knowledge of the importance of protecting victims of domestic violence from punitive insurance practices.

### **CENTRE COUNTY WOMEN’S RESOURCE CENTER**

The Centre County Women’s Resource Center (“Resource Center”) provides crisis intervention and advocacy services to victims of domestic violence, stalking, and sexual assault and their significant others. In the Resource Center’s experience with survivors, abuse often takes the forms of financial control and destruction of property. This tactic may be used to intimidate the victims, displace them, or injure them, thereby giving the perpetrator continued power and

control. Furthermore, this escalation in behavior often occurs when the victim is planning to leave or has left. Victims who have left abusive partners face significant financial barriers to establishing independence, and it is essential that insurance carriers do not engage in practices that will place additional burdens on them.

### **CITIZENS AGAINST PHYSICAL, SEXUAL & EMOTIONAL ABUSE, INC.**

Citizens Against Physical, Sexual & Emotional Abuse, Inc. (“CAPSEA”) is a private nonprofit organization that provides life-saving services to victims of sexual violence, domestic violence, serious crimes and homelessness in Elk and Cameron counties in western Pennsylvania. CAPSEA’s experience serving victims of domestic violence indicates that victims are not at fault, have no control over a perpetrator’s actions, and should not be “re-victimized” by insurance companies.

### **CLINTON COUNTY WOMEN’S CENTER, INC.**

The Clinton County Women’s Center, Inc. (“CCWC”) is a private non-profit agency that has been providing services for victims of domestic violence for 33 years. CCWC provides shelter, hot-line, crisis and options counseling, and prevention/education programming. Any kind of discrimination against a victim of domestic violence that is based on their victimization is wrong. Innocent victims should not be penalized further for the actions of their abusers that have resulted in not only physical harm to their person but often the destruction of their property and belongings.

### **CRISIS CENTER NORTH**

Crisis Center North (“CCN”) is a domestic violence counseling and resource center serving the northern and western communities of Allegheny County. CCN provides free and confidential services to victims of domestic violence, including: a 24-hour hotline; individual and group counseling and animal-assisted therapy for children and adults; support and counseling for family members and friends; legal advocacy; medical advocacy; case management; economic empowerment programming; and school- and community-based prevention education programming. CCN is unique in that it is not a shelter; rather, programming focuses on emergency advocacy services and longer-term issues like housing, education, and employment. CCN’s mission is to empower victims of domestic violence and cultivate community attitudes and behaviors that break the cycle of violence. CCN achieves its mission by providing counseling and advocacy to victims, offering prevention programs in the community and increasing public awareness of domestic violence. Key CCN activities include: (1) the provision of immediate and transitional services to victims and their families free of charge; (2) increasing community awareness of the social costs of violent behavior; (3) developing professional expertise for responding to victims; (4) promoting strategies to combat violence in homes, schools, and neighborhoods; and (5) networking with other organizations to address the broader needs of victims to break the cycle of violence.

## **CRISIS SHELTER OF LAWRENCE COUNTY**

Crisis Shelter of Lawrence County (“CSLC”) was incorporated in 1980 as a 501(c)(3) non-profit corporation dedicated to empower and advocate for those affected by domestic violence, sexual assault and other violent crimes. CSLC inspires and educates citizens to create safer communities and break the cycle of violence. As the only domestic violence emergency shelter and sexual assault provider in Lawrence County, CSLC offers a comprehensive range of free services all under one roof. It provides: emergency shelter 24 hours a day, 7 days a week; transitional housing for up to two years; counseling (including art and music therapy); legal and medical advocacy and accompaniment; protection from punitive practices that compound the harm an abuser inflicts upon his or her victim; assistance obtaining crime victim compensation; education and outreach; prevention education, including youth anti-violence programs; and professional training.

## **DOMESTIC ABUSE PROJECT OF DELAWARE COUNTY, INC.**

Domestic Abuse Project/Delaware County (“DAP”) seeks to prevent domestic violence and is committed to providing services that meet the needs of victims. DAP supports an empowerment process, which enables victims to move toward self-sufficiency. DAP was founded in 1976 as part of a grass-roots effort to provide safety, advocacy and supportive services not otherwise available within Delaware County to victims of domestic violence. DAP provides a number of services for victims of domestic abuse, including counseling, housing, and legal services. DAP also provides cell phones through its 911 cell phone program. In addition, DAP provides medical and welfare advocacy, educational programs, and consulting services about domestic abuse. Each year, DAP provides services to more than 4,500 residents of Delaware County. All services are free, including free representation in Protection from Abuse hearings. DAP remains the sole provider of these services throughout the 49 townships and boroughs of Delaware County.

## **DOMESTIC VIOLENCE CENTER OF CHESTER COUNTY, PA**

The mission of the Domestic Violence Center of Chester County, PA (“DVCCC”) is to provide intervention, education, outreach, advocacy and programs to prevent, reduce and remedy domestic violence in Chester County. DVCCC has a wide variety of services that are available to its clients, including a 24-hour hotline, counseling services and safety planning, rapid response, support groups, legal advocacy, court appearance accompaniment, emergency shelter and transitional housing programs, bilingual services (Spanish & English), children’s programs and counseling, information and referrals, and community education and training. DVCCC also offers training on the issue of domestic violence to medical and law enforcement personnel. DVCCC collaborates with Family Court, the District Attorney’s office, local law enforcement, and other human services agencies to help victims of domestic violence become safe and self-sufficient.



## **DOMESTIC VIOLENCE INTERVENTION OF LEBANON COUNTY, INC.**

The mission of Domestic Violence Intervention of Lebanon County, Inc. ("DVI") is to create safety and seek justice for victims of domestic violence and their families. DVI believes that no person has the right to harm another. It is DVI's goal to provide support, sanctuary and assistance to all victims of violence in the communities of Lebanon County. DVI seeks to unite and educate the residents of these communities by advocating for justice and creating safety for all victims and their families so they may live free from abuse. DVI serves over 1,200 victims and children each year by providing counseling for victims of all ages, medical, legal, and children's advocacy, public education, training, and shelter services, including crisis and transitional services, as well as services for male victims. DVI actively advocated for adoption of Pennsylvania's law protecting victims of abuse from punitive insurance practices because of the devastating effects on victims of abuse caused by denial of coverage.

## **DOMESTIC VIOLENCE SERVICES OF LANCASTER COUNTY**

Founded in 1976 as a component of the Community Action Program of Lancaster County, Domestic Violence Services of Lancaster County ("DVS") provides assistance each year to approximately 1,700 victims of domestic violence and their dependent children. DVS is the only agency in Lancaster County providing comprehensive services to victims of domestic violence. Services include: 24-hour Hotline, Emergency Shelter, Group and Individual Domestic Violence Education/Peer Counseling, Legal Advocacy, Civil Legal Representation and Transitional Housing. All services are free and confidential. DVS is a partner agency of the United Way of Lancaster County, and a member of the Pennsylvania and National Coalitions Against Domestic Violence. DVS also serves as an advocate to educate the local community about the issue of domestic violence.

## **HAVIN, DOMESTIC VIOLENCE AND SEXUAL ASSAULT CENTER, ARMSTRONG COUNTY**

HAVIN, Armstrong County's domestic violence program, provides supportive services to survivors of domestic violence and sexual assault and their significant others. HAVIN engages in advocacy to increase public awareness and effect critical changes in public policy in response to sexual and domestic violence. HAVIN's staff understands the dynamics of domestic violence and the critical need for advocacy for victims in every arena. Too often domestic violence victims are revictimized by ill-informed systems that do not understand the complexity of the issue and the many forms domestic violence takes, including control over the victim and financial devastation. HAVIN is committed to ensuring that victims are supported and that their victimization does not include punitive insurance practices. Domestic violence victims must receive the relief to which they are entitled so that they may move forward and live a life free from violence.

## **LUTHERAN SETTLEMENT HOUSE**

The Lutheran Settlement House was established in 1902 as a non-profit, community-based organization committed to serving vulnerable children, adults, and families. It was founded on the principles of the settlement house movement, and originally served communities of newly arrived immigrants in Philadelphia's Fishtown, Kensington, and Port Richmond neighborhoods. Today, the Lutheran Settlement House has four main programs including the Bilingual Domestic Violence Program ("BDVP"), Senior Services program, Homeless Services, and the Adult Literacy Program. The BDVP has been serving victims of domestic violence and their children since 1977, and assists over 3,000 families annually while reaching another 4,000 individuals through community-wide outreach efforts. The BDVP provides advocacy, education, outreach, one-on-one and group counseling, and transitional housing, and collaborates with three other domestic violence agencies to run the Philadelphia 24-hour domestic violence crisis hotline. Free-of-charge quality counseling services are provided to victims and survivors of domestic violence and dating abuse regardless of gender or sexual orientation.

## **PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE**

The Pennsylvania Coalition Against Domestic Violence ("PCADV") is a private non-profit organization working at the state and national levels to eliminate violence, secure justice for victims, enhance safety for families and communities, and create lasting systems and social change. PCADV was established in 1976 and has grown to a membership of 60 organizations across Pennsylvania. PCADV's members provide crisis and transitional assistance to survivors of violence and their children, including temporary shelter, emergency hotline, counseling, access to safe home networks, legal and medical advocacy, and transitional housing assistance. PCADV was one of the primary proponents of the legislation that protected victims of domestic violence from harmful insurance practices that resulted in the loss of insurance or coverage due to the acts of their abusive partners and spouses. In 1996, the Coalition and its member programs celebrated the success of its grassroots effort for legislative reform when Pennsylvania instituted protections for victims from harmful insurance practices. That fight, however, was not fully won until 2006 when the law was finally reformed to include protection for innocent spouses for the intentional destruction of property by their abusive spouses. PCADV has a vested interest in educating Pennsylvania courts about these legal protections and the vital role they play for victims of domestic violence in our Commonwealth.

## **SAFENET, DOMESTIC VIOLENCE SAFETY NETWORK**

SafeNet is a not-for-profit organization of dedicated professionals and community volunteers working together to end domestic violence in Erie County. From every city and township in the area, victims and their accompanying children come to Safenet seeking safety and shelter from physical abuse and threats of violence occurring in the home. SafeNet opens its doors to hundreds of abuse victims each year with compassion and understanding. SafeNet embraces inclusiveness and knows that victimization harms men as well as women and does not only occur in heterosexual relationships. Both men and women of any culture, age or sexual preference

may suffer from abuse. Through a wide range of residential and non-residential programs, SafeNet helps develop the supports needed to break the cycle of abuse and help victims regain a sense of their own dignity. SafeNet works closely with hospitals, schools, police, courts and social services to increase awareness and understanding of domestic violence. Over 30 years ago, SafeNet started as a shelter, Hospitality House. Today, SafeNet still provides shelter - and much more.

## **STOP ABUSE FOR EVERYONE (SAFE)**

Stop Abuse For Everyone (“SAFE”) is a human rights organization that provides services, publications, and training to serve those who typically fall between the cracks of domestic violence services: straight men, GLBT victims, teens, and the elderly. We promote services for all victims and accountability for all perpetrators. Located in Clarion, Pennsylvania, SAFE offers a 24-hour hotline, free and confidential domestic violence services, emergency shelter, options counseling, advocacy and accompaniment, community education, empowerment groups, and a bridge housing program.

## **SURVIVORS, INC.**

Survivors, Inc. has worked to combat domestic and sexual violence in Adams County, Pennsylvania for the past 30 years. In addition to providing direct services to those experiencing interpersonal assault, Survivors, Inc. also advocates on behalf of victims. Perpetrators use many methods to punish, harm, control, and terrorize their victims. Intentional property damage and financial abuse are merely different forms of abuse. Denial of insurance coverage to an innocent victim of abuse is an injustice that will cause an additional level of victimization to those impacted by domestic violence.

## **VICTIMS’ INTERVENTION PROGRAM**

Victims’ Intervention Program is a non-profit organization in Wayne County, Pennsylvania, that provides crisis services to victims of domestic and sexual violence. The mission of the Victims’ Intervention Program is to Educate~Empower~Envision. By educating the community on domestic violence and sexual assault, Victims’ Intervention Program empowers victims to make the best choices for their individual situations and invites the community to envision a world free from violence. Services are completely confidential and are provided at no cost to the victims and their families. Services are provided to women, men and children who are victims or significant others to the victims. It is important to protect victims of abuse from punitive insurance practices that compound the harm the abuser inflicts upon the victim.

## **WOMEN AGAINST ABUSE**

Women Against Abuse (“WAA”) is the leading domestic violence service provider in Pennsylvania. WAA operates the only emergency shelter in Philadelphia for abused women and

their children, the nation's first legal center for domestic violence victims, as well as transitional housing, the Philadelphia Domestic Violence Hotline, and community-wide education to prevent domestic and teen dating violence. WAA's services reach over 15,000 people each year through our residential services, legal aid, hotline counseling, and education and advocacy. WAA's mission is to provide high quality, compassionate services in a manner that fosters self-respect and independence, and to lead the struggle to end domestic violence. WAA understands the importance of protecting survivors of domestic abuse from punitive practices that might severely elevate the violence they are experiencing in their relationships.

### **WOMEN IN TRANSITION, INC.**

Women In Transition, Inc. ("WIT") was founded in 1971 for the purpose of promoting the economic independence and emotional well-being of women and children through a broad range of programs and services. Women In Transition is unique in that it is the only organization in the southeastern Pennsylvania region whose programs and services address both the issues of domestic violence and substance abuse. WIT is primarily an early intervention and prevention agency – helping women identify, early, the causes and prevalence of domestic or substance abuse in their lives and make long-lasting changes for themselves and their children. WIT provides telephone counseling, intake assessments and referrals, counseling and advocacy services, and lifeline peer support groups, as well as comprehensive community education programs, trainings and technical assistance in the Philadelphia region to help the community understand the links between domestic violence, substance abuse, child abuse and community violence. Given the nature of WIT's work, it is vitally important that victims of abuse are protected from insurance discrimination that prevents survivors from healing and becoming self-sufficient.

### **WOMEN'S CENTER OF BEAVER COUNTY**

The Women's Center of Beaver County ("WCBC") is a private non-profit organization dedicated to serving all victims of domestic and sexual violence. WCBC has been a vital member of the community for 36 years, providing a 24-hour helpline, shelter, transitional housing, counseling, and legal and medical advocacy for victims, survivors, and their significant others. WCBC strives to prevent violence by providing education and training programs to children and adults that increase awareness, and promote tolerance and respect for differences.

### **WOMEN'S CENTER OF MONTGOMERY COUNTY**

The Women's Center of Montgomery County ("the Center") is a volunteer, community organization with a primary focus on freedom from domestic violence and other forms of abuse. The Center's programs are administered by more than 185 trained volunteers and a paid staff of 14 employees in six offices located in Elkins Park, Norristown, Lansdale, Pottstown, Colmar, and Bryn Mawr. The Center provides a wide range of services to domestic violence victims which include a 24-hour domestic violence hotline; elder abuse counseling and supportive

services; individualized peer and group domestic violence counseling; telephone counseling; information and referral; legal advocacy; court and hospital accompaniment; emergency relocation funding for victims of domestic violence; education; and outreach to the community and schools. Through our Medical Advocacy Project, we also support staffing of a Medical Advocate at Abington Memorial Hospital and Holy Redeemer Hospital. For many of the victims with whom we work, their reliance on the protections guaranteed by their insurance carrier is a critical stabilizing factor in their transition to safety and their restoration to normalcy.

## **THE WOMEN’S CENTER, INC. OF COLUMBIA AND MONTOUR COUNTIES**

The Women’s Center Inc. of Columbia/Montour Counties (“TWC”) provides direct services for victims of domestic violence and sexual abuse, prevention activities, advocacy, and leadership to the community aimed at eradicating domestic violence and sexual assault. Located in Bloomsburg, Pennsylvania, TWC is a non-profit organization that provides free and confidential critical services to victims of domestic and sexual violence to residents of Columbia and Montour counties. TWC’s services include a range of supportive options, including: a 24-hour hotline, immediate crisis response, accompaniment to medical facilities and law enforcement agencies, legal support and options, support groups, and empowerment counseling.

## **WOMEN’S LAW PROJECT**

The Women’s Law Project (“WLP”) is a nonprofit public interest law firm with offices in Philadelphia and Pittsburgh, Pennsylvania. The WLP’s mission is to create a more just and equitable society by advancing the rights and status of all women throughout their lives. To this end, the WLP engages in high-impact litigation, advocacy, and education. WLP is committed to ending violence against women and children and to safeguarding the legal rights of women and children who experience domestic and sexual abuse. WLP provides counseling to victims of violence through its telephone counseling service, engages in public policy advocacy work, and serves as counsel for and joins as *amicus curiae* seeking to improve society’s response to domestic and sexual violence. WLP has led a statewide and nationwide effort to end insurance discrimination against victims of domestic violence by collecting documentation of affected individuals, analyzing insurance practices and their impact on battered women, developing model legislation, and providing technical advice to legislators, advocates, and insurance regulators who sought legal reform.

## **YOUR SAFE HAVEN, INC.**

Your Safe Haven, Inc. (“YSH”) is a comprehensive crime victims’ center located in Pennsylvania’s Bedford County. YSH has provided services to victims of domestic violence for 17 years. YSH is committed to eliminating violence and protecting the right of people to live free of emotional, physical, and sexual violence. YSH’s services include safe and accessible shelter, supportive and confidential counseling, appropriate medical care, crime victim compensation assistance, legal advocacy and court accompaniment. YSH is aware of the

prevalence of domestic violence including through property damage and appreciates the importance of ensuring that Pennsylvania statutes prohibiting insurance discrimination retain their intended strength.

**APPENDIX B**

**ORDER AND MEMORANDUM OPINION  
OF THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY,  
PENNSYLVANIA – CIVIL DIVISION

BRIAN LYNN,

Plaintiff.

vs.

NATIONWIDE INSURANCE COMPANY,  
and TERRA M. LYNN,

Defendants.

No. GD10-012335

Amended ORDER OF COURT

AND NOW, this 14<sup>th</sup> day of September, 2012, it is hereby

ORDERED, ADJUDGED and DECREED that Defendant's Motion for Summary Judgment is GRANTED. Summary Judgment is hereby entered in favor of Defendant Nationwide Insurance Company. Counts I and II of Plaintiff's Complaint are dismissed with prejudice. This is a Final Order because this Court expressly determines that an immediate appeal would facilitate resolution of this entire case.

BY THE COURT:

O'Brien

O'Brien, J.



IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

BRIAN LYNN

Plaintiff

v.

NATIONWIDE INSURANCE COMPANY  
and TERRA M. LYNN

Defendants

AMENDED ORDER OF COURT

FILED BY:  
W. TERRENCE O'BRIEN  
ADMINISTRATIVE JUDGE

GD 10 - 012335

Copies sent to:

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500 Grant Street  
Pittsburgh PA 15219-2502

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

BRIAN LYNN,

Plaintiff,

v.

NATIONWIDE INSURANCE COMPANY,  
and TERRA M. LYNN,

Defendants.

CIVIL DIVISION

No. GD10-012335

ORDER OF COURT

AND NOW, to-wit, this 7<sup>th</sup> day of September, 2012, it is hereby  
**ORDERED, ADJUDGED and DECREED** that Defendant's Motion for Summary Judgment is  
**GRANTED**. Summary Judgment is hereby entered in favor of Defendant Nationwide Insurance  
Company. Counts I and II of Plaintiff's Complaint are dismissed with prejudice.

BY THE COURT,

D. Brian J.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

CIVIL DIVISION

BRIAN LYNN

Plaintiff

v.

GD 10 - 012335

NATIONWIDE INSURANCE COMPANY  
and TERRA M. LYNN

Defendants

MEMORANDUM

O'BRIEN, A. J.

Pending before me is Nationwide Insurance Company's Motion for Summary Judgment, which seeks the dismissal of the breach of contract and bad faith counts of the Complaint. The Complaint was filed after Nationwide denied plaintiff's claim for insurance benefits following a fire intentionally set by his wife. Plaintiff appears to concede the intentional acts exclusion in the policy would apply, but for the Unfair Insurance Practices Act (the Act), 40 P.S. §1171.1 *et seq.*. Specifically, plaintiff relies on section 1171.5 (a)(14)(i), which prohibits an insurance company from denying a claim such as his "because the insured ... is a victim of abuse ..." (Emphasis added). Plaintiff, who argues his wife set the fire as part of a pattern of abuse directed at him, interprets the word "because" in paragraph (14)(i) to mean "if," when it actually should be interpreted to mean "for the reason that." This becomes apparent upon reading subparagraphs 14(ii)(B) and 14(iii). The former provides that nothing in paragraph 14 "shall be construed as ... requiring [an insurance company] to provide benefits or coverage for losses incurred

solely because the insured ... is a victim of abuse." The latter provides that an insurance company does not violate paragraph 14 "if any action taken is permissible by law and applies to the same extent to all ... insureds without regard to whether an ... insured is a victim of abuse." Thus, the Act prohibits *discriminating* against a benefits claimant on the basis that the claimant was a victim of abuse as defined by the Act. Because plaintiff does not even allege such discrimination, I enter the following: <sup>1</sup>

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<sup>1</sup> Nationwide's other arguments need not be addressed.

**APPENDIX C**

**LETTER FROM DEBBIE HALE, LIFE UNDERWRITER AT  
STATE FARM INSURANCE COMPANIES,  
TO APPLICANT FOR INSURANCE (OCT. 1, 1993)**



# State Farm Insurance Companies

One State Farm Drive  
CONCORDVILLE PA 19339-0001

October 1, 1993

PA

Proposed Insured:  
Applicant:  
Application

## NOTICE AND REASON FOR NON-ISSUE

Thank you for your recent application to State Farm for life insurance.

After reviewing the application carefully, we are unable to extend an offer of life insurance. The decision is due to history of a domestic dispute as indicated in the report from Dr.'s D and D.

We have enclosed the full payment submitted with the application. The coverage provided by the binding receipt has been terminated.

DEBBIE HALE  
LIFE UNDERWRITER

**APPENDIX D**

**CO-SPONSORSHIP MEMO FROM REP. PATRICIA H. VANCE  
TO ALL HOUSE MEMBERS, MAY 17, 2001**

PATRICIA H. VANCE, MEMBER  
HOUSE POST OFFICE BOX 312070  
MAIN CAPITOL BUILDING  
HARRISBURG, PENNSYLVANIA 17120-2070  
PHONE: (717) 787-3933  
FAX: (717) 783-7833  
E-MAIL: PVANCE@PAHOUSEGOP.COM

DISTRICT OFFICE:  
3806 MARKET STREET  
CAMP HILL, PENNSYLVANIA 17011-4527  
PHONE: (717) 875-1987  
FAX: (717) 875-2247  
1-800-287-4043



*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE  
VICE CHAIRMAN  
FINANCE  
HEALTH AND HUMAN SERVICES  
INSURANCE

May 17, 2001

**SUBJECT:** Proposed Legislation - Additional Insurance Protection for Victims of Domestic Violence

**TO:** All House Members

**FROM:** Rep. Patricia H. Vance *PHV*

In the near future, I plan to introduce legislation that would establish additional insurance protections for victims of domestic violence. The purpose of this legislation is to establish a statutory prohibition against an insurance company's refusal to pay a homeowners' claim arising out of abuse to an innocent claimant when an abusive spouse causes the property damage. You may recall, during the 1995-96 legislative session, I sponsored House Bill 1100, now Act 24 of 1996, to prohibit insurance companies from denying or surcharging an individual based on their history as a victim of domestic violence.

Property and casualty insurance policies typically deny claims resulting from an "intentional act" by a named insured. This exclusion was developed to prohibit insureds from intentionally damaging their own property in order to receive a financial gain. However, victims of domestic violence can face severe financial hardships due to this exclusion (please see attached).

The language I am proposing would establish a statutory prohibition against refusals to pay claims arising out of abuse to an innocent first-party claimant if the loss is caused by the intentional act of an insured. The proposal also gives authority to the Insurance Commissioner to determine if other policy limitations or exclusions should be considered discriminatory against victims of domestic violence.

If you are interested in co-sponsoring this legislation, please contact Amy Rowe in my office at 787-5935, [arowe@pahousegop.com](mailto:arowe@pahousegop.com) or via GroupWise.

Enclosure



PRINTED ON RECYCLED PAPER



Ms. Kim McLaughlin, Representative George Kenney's constituent, found herself and her children homeless after her estranged husband barricaded himself inside their home with their youngest child, and set the house on fire.

Ms. McLaughlin's insurance company filed a federal lawsuit, claiming no obligation to pay the \$60,000 in property damage because Mr. McLaughlin deliberately torched the house. When the story came to the attention of a company executive, however, the company (although not legally obligated to do so) struck a deal and settled the claim.

In 1997, the Superior Court of Pennsylvania addressed this issue in *Kundahl vs. Erie Insurance Group*, 703 A2d. 542. In this case, Mr. Kundahl intentionally set fire to the home jointly owned and insured by his spouse and by him. The Court denied insurance benefits to Mrs. Kundahl based on the exclusionary clauses in the insurance policies (homeowners' and auto). The Court ended their decision by stating:

*"We do sympathize with Mrs. Kundahl's plight. Her home and car are lost without the possibility of recovery. However, we cannot permit our sympathy to cloud the plain language of both policies. Nor can we force insurance companies to insert language in every policy they write to provide coverage for all innocent insureds. Such action is more properly left to our legislature. We, therefore, call upon the legislature to address this problem so that victimized spouses are no longer faced with the twin evils of destruction and destitution."*

**APPENDIX E**

**CO-SPONSORSHIP MEMO FROM SEN. PATRICIA H. VANCE  
TO ALL SENATORS, JAN. 20, 2005**

January 20, 2005

**To: All Senators**

**From: Patricia H. Vance**

**Re: Co-sponsorship Memo #4 - Introduction of  
legislation prohibiting insurance discrimination for  
victims of domestic violence (HB 2662 of 2004)**

---

In the near future, I plan to introduce legislation that would establish additional insurance discrimination protection for victims of domestic violence. The purpose of this legislation is to create a statutory prohibition against an insurance company's refusal to pay a homeowner's or property/casualty claim arising out of abuse to an innocent claimant when an abusive spouse caused the property damage.

Property and casualty insurers typically deny claims resulting from an "intentional act" by a named insurer. This exclusion was developed to prohibit insureds from intentionally damaging their own property in order to benefit financially. However, victims of domestic violence can face severe financial hardships due to this exclusion.

The language I am proposing would establish a statutory prohibition against refusal to pay claims arising out of abuse to an innocent first-party claimant if the loss is caused by the intentional act of an insured. The proposal also gives authority to the Insurance Commissioner to determine if other policy limitations or exclusions should be considered discriminatory against victims of domestic violence.

In the 1997 decision of *Kundahl v. Erie Insurance Group* (703 A.2d 542), the Pennsylvania Superior Court urged the legislature to take action "so that victimized spouses are no longer faced with the twin evils of destruction and destitution." The Governor's Policy Office and Insurance Commissioner support the language I am proposing.

If you are interested in co-sponsoring this legislation, please contact Amy Bolze at 787-8524 or [abolze@pasen.gov](mailto:abolze@pasen.gov).

**CERTIFICATE OF SERVICE**

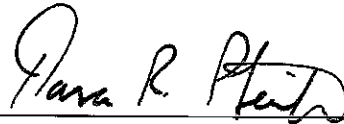
I hereby certify that I served 2 copies of the Brief for *Amici Curiae* Women's Law Project, Pennsylvania Coalition Against Domestic Violence and Twenty-Four Domestic Violence Victim Services Organizations in Support of Appellant Brian Lynn on the persons and date indicated below by First Class mail in compliance with Pa. R.A. P. 121:

Gary M. Davis, Esq.  
1700 Lawyers Building  
4278 Forbes Avenue  
Pittsburgh PA 15219  
*Attorney for Appellant*

Daniel L. Rivetti, Esq.  
BNY Mellon Center 23d Floor  
500 Grant Street  
Pittsburgh, PA 15219

Terra M. Lynn (154247)  
Allegheny County Jail  
950 Second Avenue  
Pittsburgh, PA 15219

Date: November 13, 2012



Tara R. Pfeifer  
Pa. Attorney I.D. No. 200575  
WOMEN'S LAW PROJECT  
The Arrott Building  
401 Wood Street, Suite 1020  
Pittsburgh, PA 15222  
*Counsel for Amici Curiae*