

PACBA Enews

Spring 2016

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**A Message
from your
President
Brit Suttell**

Happy late-Spring and early-Summer! PACBA is hard at work preparing for our Annual Meeting. Make sure you save the date of Friday, October 7, 2016! The Meeting will be held at The Desmond in Malvern. If you have any topics you want to see covered or have an idea for a presentation, please forward that along for consideration. Additionally, we are actively seeking sponsors for the Annual Meeting so those suggestions are also welcome.

The Board voted on revisions to the By-Laws in April and the revised By-Laws are included in this newsletter. Included among the changes are membership eligibility, flexibility for scheduling the Annual Meeting and the creation of three standing committees (Membership, Education, and Government Affairs). Hopefully, members will begin thinking about which committee they would like to join. The more membership gets involved with our association, the better everyone is served.

Rob Morris (Treasurer), myself and others have been engaged in discussions with President Judge Marsha Neifield, Judge Bradley Moss, and members of Community Legal Services and VIP services regarding proposed changes to the handling of consumer credit cases in Philadelphia Municipal Court. Currently, there is a pilot program in which some members have been engaged. The pilot program provides for a special listing at which pro bono consumer attorneys appear to provide legal advice to consumers. We believe the program has not met its intended goals and are working with all parties to craft a solution. If you have any further questions regarding this, please reach out to either myself or Rob Morris.

The Board continues to monitor the progress (or lack thereof) of Pennsylvania Senate Bill 1072. However, there has been much news in our industry including two United States Supreme Court decisions, *Sheriff v. Gillie* and *Spokeo, Inc. v. Robbins*. Joann Needleman has written an article for this issue concerning those decisions.

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Of course, I would be remiss without also discussing the 3rd Circuit case everybody is closing watching, *Bock v. Pressler & Pressler*. It was generally thought that the 3rd Circuit would not issue a ruling until the Supreme Court of the United States ruled on *Spokeo, Inc. v. Robbins*. While it did not issue a ruling, the Third Circuit did ask parties to file supplemental briefs addressing the applicability of *Spokeo*. As of this writing, all parties submitted their briefs and the waiting game picks back up.

I hope everyone has a safe and enjoyable summer!

Sincerely,

Brit J. Suttell, Esquire
Burton Neil & Associates, P.C.

COLLECTION ATTORNEYS GET SOME GOOD NEWS FROM THE SUPREME COURT

Joann Needleman, Esq.
Member and Consumer Financial Services
Regulatory & Practice Group Leader
Clark Hill, PLC

May was a good month for those who not only defend creditors but have been on the receiving end of consumer lawsuits. On the same day (May 16, 2016), the United States Supreme Court issued two important rulings that will have a lasting impact on collection attorneys going forward.

Spokeo v. Robbins

In a 6-2 decision, the United States Supreme Court sided with an online “people search engine” company, Spokeo.com (“Spokeo”), to provide critical insight as to when and how consumers can sue for privacy violations under the Fair Credit Reporting Act (the “FCRA”).

Thomas Robins filed a proposed class action against Spokeo in 2011 in the United States District Court for the Central District of California, arguing that because the website aggregates publicly available information upon request (from employers or otherwise), it qualifies as a “consumer reporting agency” under the FCRA. According to the Robins’ suit, a search result associated with his name contained inaccurate, but generally favorable, information as to his age, marital status, educational background, and professional accomplishments. Robins claimed the false online information contained on Spokeo had caused him harm.

The District Court dismissed the case because Robins had not “properly pled” a “concrete” harm, as required by Article III of the Constitution. On appeal, the Ninth Circuit reversed, holding

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that because Congress implicitly created a private cause of action to enforce statutory rights, Robins' "alleged violations of [those] rights [were] sufficient to satisfy the injury-in-fact requirement of Article III." Thus, Robins did not need to prove he was harmed because Spokeo violated the FCRA law, which allowed Robins to pursue statutory compensation. The Ninth Circuit's ruling highlighted a growing split amongst the Circuits on this issue.

The Supreme Court, in an opinion written by Justice Samuel Alito, re-affirmed that an injury in fact to confer standing under Article III of the Constitution "must be both concrete and particularized." After analyzing each requirement in turn and certain types of mistakes that would not qualify (e.g., incorrect zip code without more), the Court held that "Robins cannot satisfy the demands of Article III by alleging a bare procedural violation." Thus, the Court vacated and remanded for further proceedings, "[b]ecause the Ninth Circuit failed to fully appreciate the distinction between concreteness and particularization, [and] its standing analysis was[, therefore,] incomplete."

The Spokeo decision is a victory for all defendants who are subject to potential claims under various federal financial consumer protection laws that contain a similar "statutory right" to sue and which now require plaintiffs seeking damages to assert a "concrete and particularized" injury in fact.. The decision will have a significant impact on future consumer class actions. Because consumers now cannot solely rely on the penalties set forth in the statute to state a claim of actual harm, it will be harder for plaintiffs to prove damages.. Time will tell however whether creative consumer attorneys will adjust their pleadings accordingly and whether a new round of motions to dismiss will determine their adequacy. However for now, the defense is real and should be asserted whenever possible.

Sheriff et al. v. Gillie et al.

In a unanimous decision, the Supreme Court held that private attorneys hired by the Ohio Attorney General to collect debts owed to state agencies were "state officers" otherwise exempt from certain provision of the Fair Debt Collections Practices Act (FDCPA). Furthermore, assuming that the private attorney did not have "state officer" status, the sending of letters on Attorney General letterhead did not otherwise violate specific sections of § 1692e of the FDCPA.

Under Ohio law, the Attorney General was permitted to appoint special counsel to assist in the collection of debts. Two law firms were appointed who sent out collection letters on the Attorney General's letterhead. The letters, in some instances demanded payment in full and to contact the law firm. The letters were signed by the respective attorneys with the designation that they were "Outside Counsel for Attorney General's Office".

Gillie, and others, filed a punitive class action asserting that the law firms violated the FDCPA by sending the letters on the Attorney's General letterhead and by using deceptive and misleading means to collect a debt.

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The Ohio District Court granted summary judgment in favor of the law firms finding that they were officers of the State of Ohio, thus exempted from the FDCPA and that the use of the letterhead was not false or misleading. The Sixth Circuit vacated the District Court's judgment finding that special counsel are independent contractors and not provided with an exemption from the FDPCA. Further the Circuit Court found that whether a consumer was misled into believing that the Attorney General was actually collecting the account was an issue of fact.

The Supreme Court reversed and remanded. Writing for the majority Judge Ginsberg found that the use of the "Special Counsel" designation neither false nor misleading as to any of the prohibitions of the FDPCA. The statement what completely accurate and whether the law firm used their own letterhead with a similar disclosure would know change the outcome. As to the issues that the letters, by themselves, were deceptive and misleading to consumers, the Court was similarly unpersuaded. "*§1692e bars debt collectors from deceiving and misleading consumers, its does not protect consumers from fearing the actual consequences of their debt*" write Judge Ginsburg.

Gillie reiterates the arguments made by many in the industry that words means what they say and nothing more. The FDCPA mandates a quotient of reasonableness and the Court found none here. Nor are those subject to the Act an insurer of bizarre interpretations of what is otherwise the true reality.

Time will tell whether we have turned the corner on FDCPA claims that stretch the statute beyond what Congress had intended. However, the Supreme Court, in a few words, has highlighted the core principles of the FDCPA and creditors' rights attorney should posture all future litigation, whether prosecuting or defending claims, accordingly.

**SEVENTH CIRCUIT RULES NO FDCPA VIOLATION
BY DISMISSING LAWSUITS PRIOR TO TRIAL**

**Kenneth S. Shapiro, Esq.
Shapiro Law Office, PC**

On May 19, 2016, the Seventh Circuit Court of Appeals ruled that debt collectors who filed collection lawsuits and then dismissed them prior to trial did not violate the Fair Debt Collection Practices Act ("FDCPA"). The decision was rendered in Paula St. John et. Al. v. CACH, LLC et. Al. , 2016 U.S. App. LEXIS 9117 (7th Cir. 2016) a mere three days after the U.S. Supreme Court decisions in Spokeo and Gillie referenced elsewhere in this newsletter.

The 7th Circuit's ruling stems from three consumers claiming violations based on 15 U.S.C. Sec. 1692e's prohibition against false, deceptive or misleading representations threatening to take action that collectors do not intend to actually take.

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The Court found that the FDCPA Plaintiffs' speculative claims had not sufficiently alleged that Defendants did not intend to proceed to trial by simply asserting that they filed collection lawsuits and then voluntarily dismissed those complaints prior to trial. The mere fact of filing a complaint is not, as the consumers argued, a "threat" that the matter would proceed to trial. In the Court's opinion, a voluntary dismissal alone is not an indication that the Defendants never had any intention of going to trial, as the litigation process itself is inherently a process; i.e. filing a complaint does not imply that the collector actually intends to go to trial. The Court opined that trial is often not the most cost-effective or desirable resolution process – a plaintiff in any lawsuit is entitled to adjust its strategy at any stage of the litigation process.

Filing a complaint and dismissing it prior to trial is a permissible, recognized step in the civil litigation process. Absent some demonstration by a consumer that a debt collector filed the complaint for an unauthorized purpose or without the intention to seek the relief requested, the 7th Circuit's decision should limit the ability to recover damages for similar claims under the FDCPA. However, care should always be taken to follow the applicable rules of civil procedure to prevent any potential consumer plaintiffs from devising an argument that deviation from recognized civil procedures constitutes a violation of the FDCPA.

2016 ANNUAL SEMINAR

Matthew D. Urban
Weltman, Weinberg & Reis Co., LPA

The Pennsylvania Creditors Bar Association is pleased to announce the scheduling of the 2016 Seminar and Annual Meeting. This year's meeting will take place on Friday October 7, 2016 from 8:30am-4:00pm at the Desmond Hotel in Malvern Pennsylvania. On behalf of the board of directors, I would like to invite all members as well as prospective members to join us for our annual day long seminar. The seminar presents a great opportunity to not only listen to a great line up of experts in the creditor rights field discuss topics that impact us all but also serves as a fantastic opportunity to meet and network with creditor rights attorneys from all across Pennsylvania. As an added bonus we again anticipate the program being approved for continuing legal education credits.

Interested individuals can register for the conference by visiting our web site (<http://pacbar.org/education>). The registration deadline is Friday September 23, 2016 however please register early to ensure that you reserve your spot at the conference. Please do not hesitate to contact us at PACBA@CorpEvent.com with questions.

We look forward to seeing you at the Desmond in October for this great event!

Please continue to the next page for the revised By-Laws.

PENNSYLVANIA CREDITORS BAR ASSOCIATION, INC.

By – Laws

ARTICLE I

Purpose

The purpose of this Association is as follows:

- (a) To engage in activities which promote the professional interest and advancement of attorneys engaged in debt collection;
- (b) To promote the highest standards of professionalism and ethical conduct among those involved in various aspects of transactions involving debt collection;
- (c) Facilitate and improve the administration of justice; and
- (d) Promote legislation which is beneficial and germane to the practice of law involving debt collection.

ARTICLE II

Membership

2.1 Eligibility for Membership

Any person:

- (a) Who is admitted to practice law in Pennsylvania and is in good standing with the Pennsylvania Supreme Court; and
- (b) Who devotes a significant portion of his/her legal time either:
 - (1) Representing creditors in the field of creditors' rights law; or
 - (2) Related to the practice of creditors rights law.
- (c) Excluded from membership are attorneys who represent consumers in consumer protection actions filed under either state or federal laws protecting consumers related to creditors' rights.

2.2 Admission to Membership

A person eligible for membership shall be admitted upon submission of a completed application for membership as adopted by the Board of Directors and upon payment of annual dues.

2.3 Dues

The amount of annual dues shall be set by the Board of Directors after a review of the Association's financial position conducted after the annual meeting of the Association. Notice of such amount shall be given no later than 60 days after the annual meeting.

2.4 Termination of Membership

Membership may be terminated by resignation, nonpayment of dues, or expulsion by a three-fourths vote of members present at a meeting called for the purpose of considering the matter. There shall be an opportunity for a hearing before a vote to expel is taken.

ARTICLE III

Meetings of Members

3.1 Annual Meeting

An annual meeting of the members shall be held within thirty (30) days of the first Monday in October, for the purpose of electing directors, and for the transaction of such other business as may come before the meeting. If the election of directors shall not be held on the day designated herein for any annual meeting, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the members called as soon thereafter conveniently may be.

3.2 Special Meeting

Special meetings of the Regular members may be called by either the President or a majority of the Regular members of the association.

3.3 Place of Meetings

The Board of Directors may designate any place, either within or without the Commonwealth of Pennsylvania, as the place of meeting for any annual meeting or for any special meeting called by the Board of Directors. If no designation is made or if a special meeting be otherwise called, the place of meeting shall be the registered office of the association in the Commonwealth of Pennsylvania, provided, however, that if a majority of the Regular members shall meet at any time and place, either within or without the Commonwealth of Pennsylvania, and consent to the holding of a meeting, such meeting shall be valid without call or notice, and at such meeting any corporate action may be taken.

3.4 Notice of Meetings

Written or printed notice stating the place, day and hour of any meeting of members shall be delivered, either personally, by fax or by mail or email, to each member entitled to vote at such meeting, not less than twenty nor more than forty days before the day of such meeting, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting. In case of a special meeting or when required by statute or by these By-Laws, the purposes for which the meeting is called shall be stated in the notice. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States Mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

3.5 Informal Action by Members

Any action required to be taken at a meeting of the regular members of the association, or any other action which may be taken at a meeting of regular members, may be taken without notice and/or a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the regular members entitled to vote with respect to the subject matter thereof.

3.6 Quorum

The regular members holding one third of the votes which may cast shall constitute a quorum at any meeting. If a quorum is not present at any meeting of regular members a majority of the regular members present may adjourn the meeting from time to time without further notice.

ARTICLE IV

Board of Directors

4.1 General Powers

The affairs of the association shall be managed by or under the direction of its board of directors.

4.2 Number, tenure and qualifications

- (a) The number of directors shall be nine. Each director shall hold office until the next meeting for the election of directors following his or her election and until his or her successor shall have been elected and qualified. The number of directors may be decreased to not fewer than three or increased to any number from time to time by amendment of this section. No decrease shall have the effect of shortening the term of an incumbent director.
- (b) The immediate past President of the Association shall, *ex officio*, be a director of the Association for the period from the date of expiration of his or her term as President to the next annual meeting of the Board Directors. Nothing in this provision shall prohibit a past President from serving as a director in the future provided the other eligibility requirements are met.

4.3 Eligibility

No person who is not a regular member of the Association shall be eligible to serve as a director.

4.4 Regular Meetings

The directors will set the time and place for the annual meeting. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings of the Board without other notice than such resolution. Meetings may be held by teleconference.

4.5 Special Meetings

Special meetings of the Board of Directors may be called by or at the request of the President or any three directors. The person or persons authorized to call special meetings of the Board may fix any place as the place for holding any special meeting of the Board called by them.

4.6 Notice

Notice of any special meeting of the Board of Directors shall be given at least three business days previous thereto by written or email notice to each director at his or her address as shown by the records of the association or by fax except that no special meeting of directors may remove a director unless written notice of the proposed removal is delivered to all directors at least twenty days prior to such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States Mail in a sealed envelope so addressed, with postage thereon prepaid. If notice by facsimile, such notice shall be deemed to be delivered when the facsimile is delivered to the recipient's fax machine. Notice of any special meeting of the Board of Directors may be waived in writing signed by the person or persons entitled to the notice either before or after the time of the meeting. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objection to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting, unless specifically required by law or by these By-Laws.

4.7 Quorum

A majority of the Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, provided that if less than a majority of said meeting, a majority of the directors present may adjourn the meeting to another time without further notice.

4.8 Manner of Acting

The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors, unless the act of a greater number is required by

statute, these By-Laws, or the Articles of Incorporation. No director may act by a proxy on any matter.

4.9 Vacancies

Any vacancy occurring in the Board of Directors or any directorship to be filled by reason of an increase in the number of directors shall be filled by the Board of Directors unless the Articles of Incorporation, a statute, or these By-Laws provide that a vacancy or a directorship so created shall be filled in some other manner; in which case that provision shall control how a director elected or appointed to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

4.10 Resignation and Removal of Directors

A director may resign at any time upon written notice to the Board of Directors. A director may be removed with or without cause, as specified by statute.

4.11 Informal Action by Directors

The authority of the Board of Directors may be exercised without a meeting if a consent in writing, setting forth the action taken, is signed by all of the directors entitled to vote.

4.12 Compensation

The directors will receive no compensation except that by resolution of the Board of Directors, the directors may be reimbursed for any expenses.

4.13 Presumption of Assent

A director who is present at a meeting of the Board of Directors at which action on any association matter is taken shall be conclusively presumed to have assented to the action taken unless his or her dissent shall be entered in the minutes of the meeting or unless he or she files his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof shall forward such dissent by registered or certified mail to the secretary of the association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

ARTICLE V

Officers

5.1 Officers

The officers of the association shall be the executive vice-president, one or more vice-presidents (the number thereof to be determined by the Board of Directors), a treasurer, a secretary, and such other officers as may be elected or appointed by the Board of Directors; Officers whose authority and duties are not prescribed in these By-Laws have the authority to perform the duties prescribed, from time to time, by the Board of Directors. Any two or more offices may be held by the same person.

5.2 Nominating Process, Election and Terms of Office

Each February, the immediate past President of the Association shall form a nominating committee of not less than three (3) members who shall be past Presidents of the Association, to the extent possible. The nominating committee shall present a proposed slate of directors and officers to members of the Association at the annual meeting. Nominations may also be made from the floor. If there is more than one nominee for any position, nominating speeches may be made for each nominee, but shall not exceed five (5) minutes per nominee. Voting shall be secret, written ballot. If there are two (2) or more nominees, all nominees except the two (2) receiving the highest number of votes shall be eliminated at the end of the first ballot. Where there are only two (2) nominees, the nominee receiving the highest number of votes shall be elected. The term of each officer shall begin immediately upon adjournment of the meeting at which such officer is elected and shall continue until such officer's respective successor is elected and qualified.

5.3 President

The president shall be the principal executive officer of the Association and, subject to the By-Laws shall generally supervise the management of the affairs of the Association. The President shall preside at all meetings of the Association and the Board of Directors. The President shall perform all other duties ordinarily incident to such office.

5.4 Executive Vice President

The Executive Vice President shall perform the duties of the President during the absence or disability of the President. The Executive Vice President shall assist the President in the performance of the President's duties and shall perform such other duties as may be assigned by the President or Board of Directors.

5.5 Secretary

The Secretary or designated agent shall keep minutes of all meetings of the Association and Board of Directors. The Secretary or designated agent shall be custodian of all such minutes, all minutes of committee meetings, and other records, documents and property of the Association and shall at all times maintain a complete roll of members. The Secretary and/or designated agent shall also be responsible for the production and dissemination of the PACBA Newsletter. The Secretary shall have the option of appointing a subcommittee to assist in this duty. The Secretary or designated agent shall be responsible for sending notices of all Association and Board of Directors meetings and shall perform such other duties ordinarily incident to the Secretary's office or as may be assigned by the President.

5.6 Treasurer

The Treasurer shall have custody of all monies of the Association and shall collect and, subject to the direction of the Board of Directors, disburse all funds of the Association. The Treasurer shall:

- (a) Maintain accurate accounts of all financial transactions;
- (b) Maintain the Association's checking account records, including reconciling all monthly account statements;
- (c) Prepare for each Board of Directors meeting a monthly summary of all payments and receipts to the Association; and
- (d) Prepare, at a minimum quarterly cumulative statements that summarize the amount and nature of the Association's payments and receipts.

Such accounts shall be in books kept for that purpose and shall be open for inspection at any time by any member of the Board of Directors or any auditors appointed by the President or Board of Directors. The Treasurer shall submit at each annual meeting of the Association a suitably

classified, written annual report of the Association's financial position including (1) all receipts and disbursements occurring during such period and (2) all obligations outstanding at the end of the period, with any comments as to current and prospective future financial position that the Treasurer may deem informative. The Treasurer shall make such additional Interim financial reports as the President or Board of Directors shall direct.

5.7 Immediate Past President

The immediate past President shall assist the President and perform such other duties assigned by the President.

5.8 Vacancies

In the event any officer shall resign or otherwise be unable to complete such officer's term, the Board of Directors shall appoint a successor to serve until the next annual meeting.

ARTICLE VI

Committees

6.1 Committees

The Association shall have three (3) standing committees each chaired by a director. The President, with consent of the Board of Directors, may designate certain ad-hoc committees as the need arises which committees will consist of a director and such other persons as the President designates.

(a) Membership Committee

The Membership Committee is to create and implement plans for the continued growth and development of the association's membership, including carrying out strategies to recruit new members, retain current members and encourage attendance at association events (i.e. Annual Meeting).

(b) Government Affairs Committee

The Government Affairs Committee is to monitor, promote and educate the association regarding proposed legislation, including regulations, at both the federal and state level, rules of court and judicial decisions which may impact the area of creditors' rights.

Additionally, this Committee is tasked with outreach to the Commonwealth legislature and judiciary, including educating those bodies regarding this association and its mission, and providing the Board with suggestions for submitting comments regarding proposed legislation, regulations or rules.

(c) Education Committee

The Education Committee continually educates PACBA members as to current case law, statutes and regulatory trends impacting the creditors' rights industry. The goal of the Education Committee is to provide educational programs that will assist PACBA members in maintain the highest legal, professional and ethical standards.

6.2 Term of Office

Each member of a committee shall continue as such until the next annual meeting of the members of the corporation and until his or her successor is appointed, unless the committee shall be sooner terminated, or unless such member be removed from such committee or unless such member shall cease to qualify as a member thereof. Any association member in good standing is eligible to sit on any committee.

6.3 Vacancies

Vacancies in the membership of any committee may be filled by appointments made in the same manner as provided in the case of the original appointments.

6.4 Quorum

In order to constitute a quorum, 50% + 1 of the committee members must be present (i.e. if the committee has 6 members, 4 members represent a quorum). The act of a majority of the committee and of members present at a meeting at which a quorum is present shall be the act of the committee.

6.5 Rules

Each committee may adopt rules for its own government not inconsistent with these By-Laws or with rules adopted by the Board of Directors.

6.6 Informal Action

The authority of a committee may be exercised without a meeting by using a consent in writing, setting forth the action taken, and is signed by all of the members entitled to vote.

ARTICLE VII

Contracts, Checks, Deposits and Funds

7.1 Contracts

The Board of Directors may authorize any officer or officers, agent or agents of the Association, in addition to the officers so authorized by these By-Laws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association and such authority may be general or confined to specific instances.

7.2 Checks, Drafts, etc.

All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the association shall be signed by such officer or officers, agent or agents of the association and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination by the Board of Directors, such instruments shall be signed by the Treasurer or an Assistant Treasurer and counter-signed by the President or Vice-President of the association.

7.3 Deposits

All funds of the association shall be deposited from time to time to the credit of the association in such banks, trust companies, or other depositories as the Board of Directors may select.

7.4 Gifts

The Board of Directors may accept on behalf of the association any contribution, gift, bequest or devise for the general purposes or for any special purpose of the association.

ARTICLE VIII

Books and Records

The association shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors, and shall keep at the registered or principal office a record giving the names and addresses of the members entitled to vote. All books and records of the association may be inspected by any member, or his or her agent or attorney for any proper purpose at any reasonable time.

ARTICLE IX

Fiscal Year

The Fiscal year of the association shall end on December 31st.

ARTICLE X

Seal

The corporate seal shall have inscribed thereof the name of the corporation and the words "Corporate Seal, Pennsylvania." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced, provided that the affixing of the corporate seal to an instrument shall not give the instrument additional force or effect, or change the construction thereof, and the use of the corporate seal is not mandatory.

ARTICLE XI

Waiver or Notice

Whenever any notice is required to be given under the provisions of the General Not for Profit Corporation Act of Pennsylvania or under the provisions of the Articles of Incorporation or the By-Laws of the association, a waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed equivalent

to the giving of such notice. Attendance at any meeting shall constitute waiver of notice thereof unless the person at the meeting objects to the holding of the meeting because proper notice was not given.

ARTICLE XII

Indemnification

12.1 Scope of Indemnification

- (a) General Rule. The association shall indemnify an indemnified representative against any liability incurred in connection with any proceeding in which the indemnified representative may be involved as party or otherwise by reason of the fact that such person is or was serving in an indemnified capacity, including, without limitation, liabilities resulting from any actual or alleged breach or neglect of duty, error, misstatement or misleading statement, negligence, gross negligence or act giving rise to strict or products liability, except:
 - (1) where such indemnification is expressly prohibited by applicable law;
 - (2) where the conduct of the indemnified representative has been finally determined pursuant to Section 12.6 or otherwise:
- (b) to constitute willful misconduct or recklessness within the meaning of 15 Pa. C.S. §§ 518(b) and 1746(b) and 42 Pa. C.S. § 8365(b) or any superseding provision of law sufficient in the circumstances to bar indemnification against liabilities arising from the conduct; or
- (c) to be based upon or attributable to the receipt by the indemnified representative from the association of a personal benefit to which the indemnified representative is not legally entitled; or
 - (1) to the extent such indemnification has been finally determined in a final adjudication pursuant to Section 12.6 to be otherwise unlawful.
- (d) Partial Payment. If an indemnified representative is entitled to indemnification in respect of a portion, but not all, of any liabilities to which such person may be subject, the

association shall indemnify such indemnified representative to the maximum extent for such portion of the liabilities.

(e) Presumption. The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that the indemnified representative is not entitled to indemnification.

(f) Definitions. For purposes of this Article:

(1) “indemnified capacity” means any and all past, present and future service by an indemnified representative in one or more capacities as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity of enterprise;

(2) “indemnified representative” means any and all directors and officers of the corporation and any other person designated as an indemnified representative by the Board of Directors of the corporation (which may, but need not, include any person serving at the request of the corporation, as a director, officer, employee, agent, fiduciary or trustee of another corporation, partnership, joint venture, trust, employee benefit plan or other entity or enterprise);

(3) “liability” means any damage, judgment, amount paid in settlement, fine, penalty, punitive damages, excise tax assessed with respect to an employee benefit plan, or cost or expense, of any nature (including, without limitation, attorneys’ fees and disbursements); and

(4) “proceeding” means any threatened, pending or completed action, suit, appeal or other proceeding of any nature, whether civil, criminal, administrative or investigative, whether formal or informal, and whether brought by or in the right of the corporation, a class of its security holders or otherwise.

12.2 Proceedings Initiated by Indemnified Representatives

Notwithstanding any other provision of this Article, the association shall not indemnify under this Article an indemnified representative for any liability incurred in a proceeding initiated (which shall not be deemed to include counter-claims or affirmative defenses) or participated in as an intervenor or amicus curiae by the person seeking indemnification unless such initiation of or participation in the proceeding is authorized, either before or after its

commencement, by the affirmative vote of a majority of the directors in office. This section does not apply to a reimbursement of expenses incurred in successfully prosecuting or defending an arbitration under Section 12.6 or otherwise successfully prosecuting or defending the rights of an indemnified representative granted by or pursuant to the Article.

12.3 Advancing Expenses

The association shall pay the expenses (including attorneys' fees and disbursements) incurred in good faith by an indemnified representative in advance of the final disposition of a proceeding described in Section 12.1 or the initiation of or participation in which is authorized pursuant to Section 12.2 upon receipt of an undertaking by or on behalf of the indemnified representative to repay the amount if it is ultimately determined pursuant to Section 12.6 that such person is not entitled to be indemnified by the corporation pursuant to this Article the financial ability of an indemnified representative to repay an advance shall not be prerequisite to the making of such advance.

12.4 Securing of Indemnification Obligations

To further effect, satisfy or secure the indemnification obligations provided herein or otherwise, the corporation may maintain insurance, obtain a letter of credit, act as a self-insurer, create a reserve, trust, escrow, cash collateral or other fund or account, enter into indemnification agreements, pledge or grant a security interest in any assets or properties of the corporation, or use any other mechanism or arrangement whatsoever in such amounts, at such costs, and upon such other terms and conditions as the Board of Directors shall deem appropriate. Absent fraud, the determination of the Board of Directors with respect to such amounts, costs, terms and conditions shall be conclusive against all security holders, officers and directors and shall not be subject to voidability.

12.5 Payment of Indemnification

An indemnified representative shall be entitled to indemnification within 30 days after a written request for indemnification has been delivered to the secretary of the corporation.

12.6 Arbitration

- (a) **General Rule.** Any dispute related to the right to indemnification, contribution or advancement of expenses as provided under this Article, except with respect to indemnification for liabilities arising under the Securities Act of 1933 that the association has undertaken to submit to a court for adjudication, shall be decided only by arbitration in the metropolitan area in which the principal executive offices of the association are located at the time, in accordance with the commercial arbitration rules then in effect of the American Arbitration Association, before a panel of three arbitrators, one of whom shall be selected by the association, the second of whom shall be selected by the indemnified representative and third of whom shall be selected by the other two arbitrators. In the absence of the American Arbitration Association, or if for any reason arbitration under the arbitration rules of the American Arbitration Association cannot be initiated, or if one of the parties fails or refuses to select an arbitrator or if the arbitrators selected by the association and the indemnified representative cannot agree on the selection of the third arbitrator within 30 days after such time as the association and the indemnified representative have each been notified of the selection of the other's arbitrator, the necessary arbitrator or arbitrators shall be selected by the presiding judge of the court of general jurisdiction in such metropolitan area.
- (b) **Burden of Proof.** The party or parties challenging the right of an indemnified representative to the benefits of this Article shall have the burden of proof.
- (c) **Expenses.** The association shall reimburse an indemnified representative for the expenses (including attorneys' fees and disbursements) incurred in successfully prosecuting or defending such arbitration.
- (d) **Effect.** Any award entered by the arbitrators shall be final, binding and nonappealable and judgment may be entered thereon by any party in accordance with applicable law in any court of competent jurisdiction, except that the shall be entitled to interpose as a defense in any such judicial enforcement proceeding any prior final judicial determination adverse to the indemnified representative under Section 12.1 (a) (2) in a proceeding not directly involving indemnification under this Article. The arbitration provision shall be specifically enforceable.

12.7 Contribution

If the indemnification provided for in this Article or otherwise is unavailable for any reason in respect of any liability or portion thereof, the association shall contribute to the liabilities to which the indemnified representative may be subject in such proportion as is appropriate to reflect the intent of this Article or otherwise.

12.8 Mandatory Indemnification of Directors, Officers, etc.

To the extent that an authorized representative of the association has been successful on the merits or otherwise in defense of any action or proceeding referred to in 15 Pa. C. S. §§ 1741 or 1742 or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection therewith.

12.9 Contract Rights; Amendment or Repeal

All rights under this Article shall be deemed a contract between the association and the indemnified representative pursuant to which the association and each indemnified representative intend to be legally bound. Any repeal, amendment or modification hereof shall be prospective only and shall not affect any rights or obligations then existing.

12.10 Scope of Article

The rights granted by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification, contribution or advancement of expenses may be entitled under any statute, agreement, vote of shareholders or disinterested directors or otherwise both as to action in an indemnified capacity and as to action in any other capacity. The indemnification, contribution and advancement of expenses provided by or granted pursuant to this article shall continue as to a person who has ceased to be an indemnified representative in respect of matters arising prior to such time, and shall inure to the benefit of heirs, executors, administrators and personal representatives of such a person.

12.11 Reliance of Provisions

Each person who shall act as an indemnified representative of the association shall be deemed to be doing so in reliance upon the rights provided in this Article.

12.12 Interpretation

The provisions of this Article are intended to constitute by-law authorized by 15 Pa. C.S. §§ 513 and 1746 and 42 Pa. C.S. § 8365.

ARTICLE XIII

Amendments

The power to alter, amend, or repeal the By-Laws or adopt new By-Laws shall be vested in the Board of Directors unless otherwise provided in the Articles of Incorporation or the By-Laws. Such action may be taken at a regular or special meeting for which written notice of the purpose shall be given. The By-Laws may contain any provisions for the regulation and management of the affairs of the association not inconsistent with the law or the Articles of Incorporation.

ARTICLE XIV

Dissolution

Upon the dissolution of the association, the Board of Directors shall, after paying or making provisions for the payment of all the liabilities of the association, dispose of all the assets of the association exclusively for the purpose of the association in such manner as shall, at the time, qualify as an exempt organization under section 501(c)(6) of the Internal Revenue Code of 1954 (or as subsequently amended) as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Orphan's Court of any county in the Commonwealth of Pennsylvania, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.