IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

[redacted] A.S., a minor, and M.S., a minor,	:	No. 1:11-cv-00981
Plaintiffs,	:	Hon. John E. Jones III
v.	:	
YORK COUNTY, M. STEVE CHRONISTER, CHRISTOPHER B. REILLY, DOUG HOKE, YORK COUNTY OFFICE OF CHILDREN, YOUTH AND FAMILIES, DEB CHRONISTER, JOAN HEDGCOCK, and KATIE GLADFELTER-WATTS,	:	
Defendants.	:	

MEMORANDUM & ORDER

December 20, 2012

Presently pending before the Court are the cross-motions for summary judgment of the Plaintiffs [redacted] and [redacted] and their minor children, A.S. and M.S. ("Plaintiffs") (doc. 47) and the Defendants York County, Deb Chronister, Joan Hedgcock, Katie Gladfelter-Watts, and Patricia Niederer (doc. 49). For the reasons that follow, we will grant in part and deny in part both Motions, as more fully set forth and articulated herein.

I. PROCEDURAL HISTORY

Plaintiffs commenced this Section 1983 action by filing a five-count Complaint (doc. 1) on May 23, 2011, alleging due process violations arising out of a child abuse investigation and report undertaken and filed by the Defendants. The Defendants subsequently filed a Motion to Dismiss Plaintiffs' Complaint (doc. 14) pursuant to Federal Rule of Civil Procedure 12(b)(6). On September 21, 2011, this Court issued a Memorandum and Order (doc. 28) granting in part and denying in part the Defendants' Motion to Dismiss the Plaintiffs' Complaint. In addition to dismissing several Defendants, our analysis resulted in dismissal of Plaintiffs' Count V, which asserted *Monell* liability against the Defendants for allegedly establishing a policy or practice of failing to follow Pennsylvania statutory law governing the filing reports of "indicated" child abuse and for failing to train its employees with respect to the same.

On March 30, 2012, the Plaintiffs filed a Motion to Amend and Reinstate Count V which also sought to include an additional defendant, Patricia Niederer, (doc. 36). We granted the motion by Order (doc. 39) dated April 30, 2012. The parties thereafter filed the instant Motions for Summary Judgment (docs. 47, 49). Both Motions have been fully briefed (docs. 48, 51, 60, 61, 63, 64) and statements

of material facts have been filed and answered (docs. 50, 53, 59, 62). The Motions are thus ripe for disposition.

II. STANDARD OF REVIEW

Summary judgment is appropriate if the record establishes "that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Initially, the moving party bears the burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The movant meets this burden by pointing to an absence of evidence supporting an essential element as to which the non-moving party will bear the burden of proof at trial. *Id.* at 325. Once the moving party meets its burden, the burden then shifts to the non-moving party to show that there is a genuine issue for trial. Fed. R. Civ. P. 56(e)(2). An issue is "genuine" only if there is a sufficient evidentiary basis for a reasonable jury to find for the non-moving party, and a factual dispute is "material" only if it might affect the outcome of the action under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).

In opposing summary judgment, the non-moving party "may not rely merely on allegations of denials in its own pleadings; rather, its response must . . . set out specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2). The

non-moving party "cannot rely on unsupported allegations, but must go beyond pleadings and provide some evidence that would show that there exists a genuine issue for trial." *Jones v. United Parcel Serv.*, 214 F.3d 402, 407 (3d Cir. 2000). Arguments made in briefs "are not evidence and cannot by themselves create a factual dispute sufficient to defeat a summary judgment motion." *Jersey Cent. Power & Light Co. v. Twp. of Lacey*, 772 F.2d 1103, 1109-10 (3d Cir. 1985). However, the facts and all reasonable inferences drawn therefrom must be viewed in the light most favorable to the non- moving party. *P.N. v. Clementon Bd. of Educ.*, 442 F.3d 848, 852 (3d Cir. 2006).

Summary judgment should not be granted when there is a disagreement about the facts or the proper inferences that a fact finder could draw therefrom. *Peterson v. Lehigh Valley Dist. Council*, 676 F.2d 81, 84 (3d Cir. 1982). Still, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; there must be a *genuine* issue of *material* fact to preclude summary judgment." *Anderson*, 477 U.S. at 247-48.

III. STATEMENT OF FACTS

Plaintiffs [redacted] and [redacted] [redacted] ("the [redacted] are married and the parents of minor children M.S. and A.S. (Doc. 53-1, ¶ 1). At all relevant times, Defendant Joan Hedgcock was an intake supervisor at the York County Office of Children and Youth and Family Services ("YCOCYF"); Defendant Patricia Neiderer was the intake manager at the YCOCYF; Defendant Deb Chronister was the Executive Director of the YCOCYF; and Defendant Katie Gladfelter-Watts was an intake caseworker at the YCOCYF. (*Id.* ¶¶ 2-5). The YCOCYF is an agency of Defendant York County. (*Id.* ¶ 6).

On August 21, 2010, the [redacted] took A.S. to Memorial Hospital in York, Pennsylvania, at approximately 11:00 p.m. (*Id.* ¶ 7). [redacted] [redacted] reported that A.S. had bumped his head on the floor while playing; [redacted] later reported that A.S. had been lying on a blanket on the floor and "rolled over and hit his head on the foot of the bed." (*Id.* ¶ 8; Doc. 62, ¶ 8). A CT scan taken at Memorial Hospital revealed that A.S. had sustained subdural hemorrhaging, and A.S. was transferred to Hershey Medical Center where further examination revealed that A.S. had also sustained retinal hemorrhages. (Doc. 53-1, ¶¶ 9-10). On August 22, 2010, both York Memorial Hospital and Hershey Medical Center made reports to Childline of suspected child abuse of A.S. due to the presence of the subdural hematoma and retinal hemorrhage and the doctors' beliefs that A.S.'s injuries were inconsistent

with [redacted] [redacted] explanation. (*Id.* ¶¶ 11-12). The reports to Childline indicated that A.S.'s injuries can be associated with Shaken Baby Syndrome and that Dr. Westenberge of York Memorial Hospital certified "that [A.S.] is in critical/serious condition due to suspected abuse." (Doc. 50, ¶¶ 14-15).

Also on August 22, 2010, while A.S. was still hospitalized at Hershey Medical Center, Stacy Synder, an emergency deputy representative of the YCOCYF met with the [redacted] and prepared a safety assessment. (Doc. 53-1, ¶ 14). As a result of this meeting, the [redacted] signed a safety plan which prohibited both parents from unsupervised contact with either of their minor children. (*Id.* ¶ 20). The following day, Defendant Gladfelter-Watts issued letters to the [redacted] informing them of the initial Childline reports and subsequent investigation and advising that the [redacted] have the right to counsel and "to schedule a hearing and file a petition with the court;" the letter did not otherwise explain when, how, or for what purpose the [redacted] might need to obtain counsel, file a petition, or seek a hearing. (*Id.* ¶ 22; Doc. 62, ¶ 22; Doc. 50, ¶¶ 18-19; Doc. 59, ¶¶ 18-19).

On August 24, 2010, Defendants Hedgcock and Gladfelter-Watts met with the [redacted] at the hospital to perform another safety assessment. (Doc. 53-1, ¶ 23). This safety plan again prohibited unsupervised contact with their children but further provided that the Plaintiffs may not reside in their family home with the

children (doc. 48-3, Ex. N); Defendant Hedgcock told the [redacted] that if they did not agree to the terms of the plan, she would obtain an emergency court order placing custody of the children with the Defendant County pending resolution of the investigation. (*Id.* ¶¶ 24-25). The Defendants admit that Defendants Hedgcock and Gladfelter-Watts presented the [redacted] with an ultimatum: "that they would seek a court order if Plaintiffs did not agree to [the] voluntary safety plan." (Doc. 62, ¶ 24). The safety plan contained no procedural safeguards and contained only the names of the parties to be responsible for the children in the interim period, how the plan would be monitored by social services, the anticipated duration of the plan, and the signatures of the party responsible for supervising the children, the social worker, and the children's parents. (Doc. 48-3, Exs. H, N).

The [redacted] signed the safety plan on August 24, 2010, and arranged for [redacted] [redacted] mother, the childrens' paternal grandmother, to move into the home and care for the children. (*Id.* ¶ 29). [redacted] and [redacted] [redacted] moved out of their family home and into [redacted] mother's home for the duration of the investigation. (*Id.*). The plan permitted liberal visitation rights but prohibited unsupervised contact and barred the [redacted] from sleeping in their home. (*Id.* ¶ 24). The Defendants maintain the [redacted] acceptance of the plan was voluntary.

(Doc. 62, ¶ 24). The [redacted] testified that they understood that the safety of the children was the Defendants' primary concern. (Doc. 50, ¶¶ 25-26).

Neither the August 22 nor the August 24 safety plan included a statement of the parents' rights and options or notice of an opportunity to appeal the terms and imposition of the safety plan. (Doc. 53-1, ¶ 30). This safety plan which removed the [redacted] from their family home and separated them from any unsupervised contact with their children remained in effect for eighty-six (86) days, until terminated on November 18, 2010. (*Id.* ¶ 42).

A.S. was discharged from Hershey Medical Center on August 25, 2010 with a diagnosis of bilateral subdural hemorrhage and bilateral retinal hemorrhage. (*Id.* ¶ 48). Dr. Mark Dias, A.S.'s treating physician and the head of Hershey Medical Center's child abuse safety team, and Dr. Laura Duda testified that they were highly suspicious of abuse but that they could not rule out alternative causes and thus could not render a diagnosis of abusive head trauma to a reasonable degree of medical certainty. (Doc. 50, ¶¶ 40-43; Doc. 59, ¶¶ 40-43).

On September 1, 2010, Defendant Gladfelter-Watts conducted a multi-disciplinary team meeting where she discussed A.S.'s condition with A.S.'s medical team and Officer Mike Zinn, who had been investigating for possible criminal charges. (Doc. 53-1, ¶¶ 50-51). Officer Zinn reported that the [redacted]

interviews had been consistent with their reports to the hospital. Ultimately, no criminal charges were filed. (*Id.* ¶ 51). On September 23, 2012, Dr. Julie Mack, a board certified pediatric radiologist rendering a second opinion, reported to Defendant Gladfelter-Watts that A.S. had isolated cortical venous thrombosis which could explain the subdural effusions. (*Id.* ¶ 54). On October 7, 2010, Dr. Dias reported to Defendant Gladfelter-Watts that A.S. might have a condition known as benign extraaxial collections of infancy, in which a child can have a larger head and be more prone to subdural and retinal hemorrhages even without trauma. (*Id.* ¶ 55). On October 13, 2010, Dr. Dias confirmed this report; while he remained "suspicious" for abuse, he felt "uncomfortable saying so" to a reasonable degree of medical certainty." (*Id.* ¶ 56). On October 19, 2010, Dr. Dias again reported to the Defendants that A.S.'s head chart was consistent with benign extraaxial collections of infancy and that he would not be willing to render a diagnosis or testify in court that A.S. had been abused. (*Id.* ¶ 59).

On October 20, 2010, despite the lack of medical evidence, Defendant Hedgcock reported both of the as "'indicated' perpetrators of abuse" to Childline, the Department of Public Welfare's child abuse registry, noting that the indication was supported by "medical evidence." (*Id.* ¶ 60). The report stated that A.S. "had subdural hematoma and retinal hemorrhaging . . . [which] injuries could

be associated with shaken baby syndrom" and that "[b]ased on medical evidence, it appears as if abuse occurred causing the injuries." (*Id.* ¶ 61). Defendant Gladfelter-Watts was out of the country at the time the indicated report was made, so Defendant Hedgcock drafted the indicated report and signed Defendant Gladfelter-Watts' name to it. (*Id.* ¶ 62). Several of the Defendants testified that they were in disagreement with an indicated report based on "medical evidence" given the ambivalence of that medical evidence, but would have agreed with the filing of an indicated report based on the YCOCYF investigation. (*Id.* ¶ 65-66, 72-73; 76).

On October 29, 2010, the Defendants filed dependency petitions on behalf of A.S. And M.S. wherein the Defendants averred that A.S. "was diagnosed as a victim of Shaken Baby Syndrome." (*Id.* ¶ 79). On November 9, 2010, the petitioned the Court of Common Pleas of York County to release A.S. and M.S. from the voluntary safety plan and allow the to again reside in their home with their children. (*Id.* ¶ 82). On November 12, 2010, Dr. Dudas again explained to Defendant Gladfelter-Watts that there was insufficient medical evidence to support a finding of abuse and that she and Dr. Dias were leaning toward a finding that A.S.'s injuries were caused by benign extraaxial collections of infancy. (*Id.* ¶ 83).

A hearing was held on the [redacted] petition to release the family from the safety plan on November 18, 2010. At that hearing, the YCOCYF withdrew its dependency petition for M.S. and, with the agreement of the parties, the court terminated the safety plan and permitted the [redacted] to return to their home. (*Id.* ¶ 84). The court continued the dependency hearing with respect to A.S. to allow the parties to obtain a second medical opinion. (*Id.* ¶ 85). On January 11, 2011, Dr. Jessica Carpenter issued a report which noted that there was no evidence of head trauma or fracture and that "we are left with no clear explanation for [A.S.'s] hemorrhages." (*Id.* ¶ 86). Dr. Carpenter advised Defendants Gladfelter-Watts, Defendant Hedgcock, and Defendant Chronister that she could not say that trauma had occurred. (*Id.* ¶ 87).

On February 28, 2011, the York County Court of Common Pleas denied the YCOCYF's motion for a continuance and the YCOCYF withdrew its dependency petition with respect to A.S. (*Id.* ¶ 88). On March 10, 2011, the YCOCYF file a motion of non-pursuit within the Bureau of Hearings and Appeals wherein it stated that it no longer intended to defend its indicated abuse report of the [redacted] (*Id.* ¶ 89). On March 16, 2011, the Bureau of Hearings and Appeals issued an order to expunge the reports of indicated abuse against both [redacted] and [redacted] [redacted] (*Id.* ¶ 91).

IV. DISCUSSION

The Plaintiffs' Amended Complaint (doc. 40) asserts the following counts against the remaining defendants: in Count I, a *Monell* claim against Defendant York County and Defendant Chronister for an institutional policy of implementing safety plans without procedural protections; in Count II, a *Monell* claim against Defendant York County and Defendant Chronister for failure to train employees regarding appropriate and necessary procedural protections in the implementation of safety plans; in Count III, a procedural due process claim against Defendants Hedgcock and Gladfelter-Watts for implementing a safety plan without notice or other procedural protections; in Count IV, a substantive due process claim against Defendants Hedgcock and Gladfelter-Watts for engaging in a grossly negligent investigation and making knowingly false reports of child abuse; and in Count V, a *Monell* claim against Defendant York County and Defendants Chronister and Niederer for having a policy of using a lesser standard for reporting child abuse than the substantial evidence standard required by state law. (Doc. 40).

In support of their Motion, Defendants Hedgcock and Gladfelter-Watts assert that they did not violate the Plaintiffs' constitutional rights and that, in any event, they are entitled to qualified immunity because the constitutional right asserted by the Plaintiffs was not clearly established. Defendant York County and

Defendants Chronister and Niederer assert that the Plaintiffs have failed to establish *Monell* liability for failure to train and for unconstitutional customs and policies. We first address the claims against the individual defendants.

A. Individual Defendants

The Plaintiffs constitutional claims against Defendant Gladfelter-Watts and Defendant Hedgcock are two-fold: first, the Plaintiffs assert a procedural due process claim against the Defendants for coercing them into signing a safety plan absent any procedural safeguards and, second, the Plaintiffs assert a substantive due process claim against the Defendants for engaging in a grossly negligent child abuse investigation and making false reports of child abuse. The Defendants respond that no constitutional violation has occurred and that they are thus entitled to qualified immunity.

1. Qualified Immunity Standard

The Third Circuit has succinctly set forth the standard for analyzing a qualified immunity claim:

> Determining whether a state actor is entitled to the affirmative defense of qualified immunity generally involves two inquiries: (1) do the facts alleged show that a state actor violated a constitutional right, and (2) was the constitutional right clearly established so that a reasonable person would know that the conduct was

> unlawful? A right is clearly established if there is "sufficient precedent at the time of the action . . . to put [the] defendant on notice that his or her conduct is constitutionally prohibited. Courts are accorded 'discretion in deciding which of the two prongs of the qualified immunity analysis should be address first in light of the circumstances in the particular case at hand."

Wilson v. Zielke, 382 Fed. Appx. 151, 152 (3d. Cir. Feb. 9, 2010) (quoting *Pearson v. Callahan*, 555 U.S. 223 (2009); *McKee v. Hart*, 436 F.3d 165, 171 (3d Cir. 2006)) (internal citations omitted). Thus, even where sufficient proof of a constitutional violation has been submitted to survive summary judgment, a plaintiff must also demonstrate that the official "violate[d] a clearly established statutory or constitutional right of which a reasonable person" would have been aware in order to defeat a qualified immunity defense. *Harlow v. Fitzgerald*, 457 U.S. 800, 806 (1982).

2. Substantive Due Process

We turn first to the Defendants' qualified immunity defense as it relates to the Plaintiffs' substantive due process claims. Consistent with the discretion afforded to district courts in determining which qualified immunity prong to address first, *see Pearson*, 555 U.S. at 236, and in light of the form of the parties' arguments, we elect to first query whether the right allegedly violated is a "clearly

established right" before considering if there exist genuine issues of fact as to whether that right has been violated.

a. Do the Plaintiffs Assert a Clearly Established Right?

The Defendants correctly state that there is no constitutionally protected right to be free from child abuse investigations. (Doc. 61, p. 12 (citing *Croft v. Westmoreland Cnty. Children & Youth Servs.*, 103 F.3d 1123, 1125 (3d Cir. 1997)). This is true and consistent with the courts' general understanding that, at times, social workers are placed in difficult situations where time is of the essence in determining whether a child is at risk of harm and some emergency measures are needed to assure the child's safety. The Third Circuit has recognized the delicate nature of these situations and has explained that as a general rule, mere negligence of a social worker is insufficient to constitute a violation of substantive due process rights. *See Miller v. City of Phila.*, 174 F.3d 368, 376-77 (3d Cir. 1999) (citing *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998)).

However, parents do have a constitutionally cognizable right to remain free from objectively unreasonable child abuse investigations or interference with the care, custody, and management of their children. *Croft*, 103 F.3d. at 1126. The *Croft* court stated that "a state has *no* interest in protecting children from their parents unless it has some reasonable and articulable evidence giving rise to a

reasonable suspicion that the child has been abused or is in imminent danger of abuse." *Id.* at 1126. In order to find that a parent's substantive due process rights were violated, the Third Circuit has stated that a plaintiff must demonstrate that the actions of the social worker were "so clearly arbitrary that it can properly be said to shock the conscience." *Studli v. Children & Youth & Families Cent. Reg'l Office*, 347 Fed. Appx. 804, 812 (3d Cir. 2009). Precedent clearly establishes, and the Defendants apparently do not dispute, that interference with the parental right to the care, custody, and management of children, if unsupported by an objectively reasonable evidentiary basis, is a violation of substantive due process rights.

b. Did the Defendants Violate a Clearly Established Right?

Having concluded that the right to be free from unreasonable and unsupported child abuse investigations is clearly established by the law of this Circuit, we must next determine whether the Defendants have violated the Plaintiffs' right on this record. In determining whether the Plaintiffs have established a violation of their constitutional rights, we must ask whether the Defendants actions were "so clearly arbitrary that [they] can properly be said to shock the conscience." *Studli*, 347 Fed. Appx. at 812. Put another way, we must determine whether there exists any reasonable and articulable objective evidence justifying the Defendants' interference with the Plaintiffs' familial integrity. *Croft*,

103 F.3d. at 1126. Even viewing all evidence in a light most favorable to the Plaintiffs, we conclude that sufficient evidence of abuse existed to provide the Defendants with an objectively reasonable basis for making child abuse reports.

As a threshold matter, we note that none of the actions which the Plaintiffs assert violated their substantive due process rights involved Defendant Gladfelter-Watts. Indeed, the Plaintiffs concede that Defendant Gladfelter-Watts was out of the country at the time that the indicated report of child abuse was filed and that Defendant Hedgcock signed Defendant Gladfelter-Watts' name for her, without asking permission or whether she agreed with the decision to indicate. (Doc. 48, p. 20). Because the Plaintiffs' substantive due process claim is based on the decision to file an indicated report of child abuse, and because Defendant Gladfelter-Watts was uninvolved in the ultimate decision to file the report, we must conclude that Defendant Gladfelter-Watts did not violate the Plaintiffs' substantive due process rights and is thus entitled to qualified immunity as to Count IV.

We next turn to the actions of Defendant Hedgcock, who made the ultimate decision to file an indicated report of child abuse and signed the indicated child abuse report with Defendant Gladfelter-Watts' name. The report, filed on October 20, 2012, states, in pertinent part, as follows: "Child had subdural hematoma and retinal hemorrhaging. Injuries could be associated with shaken baby syndrome. . . .

Based on medical evidence, it appears as if abuse occurred causing the injuries." (Doc. 48-4, Ex. AA). The Plaintiffs contend that the Defendant's investigation was so lacking in precision and her report so unfounded in evidence that it could be said to shock the conscience and thus violated the Plaintiffs' substantive due process rights. (Doc. 48, pp. 20-21). We disagree.

The Third Circuit has stated that "[f]or purposes of a substantive due process claim, negligence is not enough to shock the conscience under any circumstances." *Schieber v. City of Phila.*, 320 F.3d 409, 419 (3d Cir. 2004) (citing *Lewis*, 320 F.3d at 853)). In circumstances as here, where the children are out of danger at the time the report is filed and the social worker has sufficient time to exercise "unhurried judgment," we employ a "deliberate indifference" standard to measure the constitutionality of the social worker's decisions. *See Sanford v. Stiles*, 456 F.3d 298, 306, 309 (3d Cir. 2006) (expounding upon the standards articulated in *Lewis* for conscience-shocking behavior and noting that deliberate indifference standard applies in circumstances where defendant had time to engage in "actual deliberation"). We must thus query whether Defendant Hedgcock acted with such a deliberate indifference toward the Plaintiffs' due process rights as to disregard a substantial risk of constitutional harm. *See id.*

The Plaintiffs liken Defendant Hedgcock's conduct to the actions of the social worker in *Croft*, who was found to have violated a parent's substantive due process rights by implementing a safety plan and removing the suspected parent from the family home where the only evidence of abuse was an unsubstantiated sixth-level hearsay allegation from an anonymous source. *Croft*, 103 F.3d at 1126. There, the social worker "after the interviews . . . had no opinion one way or the other whether . . . abuse had occurred" and had relied solely on the uncorroborated sixth-level hearsay statement of an anonymous informant; the court emphasized that no other evidence of abuse existed and ultimately found that the social worker "lacked objectively reasonable grounds to believe the child had been . . . abused or was in imminent danger of . . . abuse" and that her actions could thus be said to be an "arbitrary abuse of government power." *Id.* at 1126-27.

The landscape here is entirely distinguishable from *Croft* with respect to the substantive due process allegations. Upon examination of A.S., two hospitals filed reports of suspected child abuse based on the presence of subdural hematoma and retinal hemorrhages, both of which are associated with shaken baby syndrome, and based on the doctors' beliefs that A.S.'s injuries were inconsistent with the parents' explanation. (Doc. 53-1, ¶¶ 11-12; Doc. 50, ¶¶ 14-15). A criminal child abuse investigation was undertaken as a result. (Doc. 50, ¶ 34; Doc. 59, ¶ 34). Both Drs.

Mark Dias and Laura Duda advised the Defendant that it was more likely than not that A.S.'s injuries were the result of abuse but that they simply could not rule out, with absolute certainty, that other medical conditions had caused the injuries. (Doc. 50, ¶¶ 40-43; Doc. 59, ¶¶ 40-43). A third physician reported to the Defendant that cortical thrombosis could explain A.S.'s injuries. (Doc. 53-1, ¶ 54). Dr. Dias ultimately reported that a condition known as benign extraaxial collections of infancy might have caused the injuries and that he remained "suspicious" for abuse but felt "uncomfortable saying so" to a "medical certainty." (*Id.* ¶ 56).

Viewing these facts in a light most favorable to the Plaintiffs, we conclude that this is simply not a case of an unstudied and thus unconstitutional decision to interfere with parental rights. The record demonstrates that the Defendants engaged in a thorough and considered investigation of the child abuse reports before filing an indicated report of child abuse. The Defendants continued their investigation for several months, receiving and considering medical opinions from numerous physicians and convening cross-disciplinary meetings, and only after numerous doctors had indicated a suspicion of child abuse arrived at the decision to file the report. We cannot conclude that Defendant Hedgcock, armed with this evidence, "lacked objectively reasonable grounds to believe the child had been . . . abused" or that her actions could be said to be an "arbitrary abuse of government power."

Croft, 103 F.3d at 1127. Because we find that the Plaintiffs have failed to establish the violation of a constitutional right, we conclude that both Defendants Gladfelter-Watts and Hedgcock are entitled to qualified immunity on this claim.

2. Procedural Due Process

We turn next to the Plaintiffs' procedural due process claim against Defendants Hedgcock and Gladfelter-Watts. The Plaintiffs assert that it was constitutional error for the Defendants to force the Plaintiffs to agree to the terms of a safety plan, without procedural safeguards, under threat that if they refused, their children would be taken into county custody. The Plaintiffs assert that because such a plan alters and interferes with the parents' rights to custody, care, and management of their children, procedural safeguards were required. The Defendants respond that the agreement was voluntary and that they are thus entitled to qualified immunity.

a. Do the Plaintiffs Assert a Clearly Established Right?

As above, in considering the Defendants' qualified immunity defense, we elect to first consider whether the right allegedly violated is clearly established. The Defendants contend that "no judicial determination existed [at the time the Defendants acted] that the use of voluntary safety plans was a violation of constitutional rights under the circumstances of this case." (Doc. 51, p. 3). To the

contrary, and as we noted at length in our partial denial of the Defendants' Motion to Dismiss, the Third Circuit more than a decade ago either directly or constructively put the Defendants on notice that coercing parents to sign a safety plan under threat that the county or state will otherwise take emergency custody of their children raises procedural due process concerns. (*See* Doc. 28, pp. 17-20 (discussing *Croft*)).

"'Clearly established rights' are those with contours sufficiently clear that a reasonable official would understand that what he is doing violates that right." *McLaughlin v. Watson*, 271 F.3d 566, 571 (3d Cir. 2001). That is, there must be "sufficient precedent at the time of the action . . . to put [the] defendant on notice that his or her conduct is constitutionally prohibited." *Id.* at 572. It has long been established that the "procedural component of procedural due process . . . requires rigorous adherence to procedural safeguards anytime the state seeks to *alter*, terminate, or suspend a parent's right" to the care, custody and management of his children. *McCurdy v. Dodd*, 352 F.3d 820, 827 (3d Cir. 2003) (emphasis added). However, the Supreme Court has often emphasized that our inquiry "'must be undertaken in light of the specific context of the case, not as a broad general proposition.'" *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004). We thus must query not whether the particular facts of this case can be melded into some established

general principle of due process precedent, but instead whether the particular action taken in this case has previously been declared unconstitutional. We conclude that it has.

As previously noted, more than ten years before the conduct at issue here occurred the Third Circuit decided *Croft v. Westmoreland Cnty. Children & Youth Servs.*, 103 F.3d 1123 (3d Cir. 1997), a substantive due process case involving strikingly similar facts to those before the Court today. While *Croft* addressed the substantive due process concerns raised when implementing a safety plan and removing a child or parent from a home without an objective and reasonable basis to do so, the Circuit also noted that "the policy of removing the suspected parent from the family home during the pendency of child abuse investigations absent any procedural safeguards raises a *procedural* due process issue." *Id.* at 1125 n.3. The Circuit chastised the defendants' characterization of a similar safety plan as a "voluntary" agreement where, in fact, the parents only "agree" to the terms of the plan under threat that they will otherwise lose custody of their child. *Id.* at 1125 n.1. The Defendants offer no compelling argument with regard to *Croft* and instead simply ignore its existence, contending that "there are no cases which are on-point to the circumstances alleged in Plaintiffs' Complaint, and, quite frankly, none which are clearly analogous and support Plaintiff's [sic] claims." (Doc. 51, p. 21).

In our decision granting in part and denying in part the Defendants' Motion to Dismiss, we concluded that "precedent, particularly *Croft*, puts [the] Defendants on notice that procedural *and* substantive due process are triggered where a parent is removed from a home without any procedural safeguards." (Doc. 27, p. 29). We held there that the Defendants have been on notice for more than ten years that such safety plan procedures raise constitutional concerns. This holding is both consistent with *Croft* and with the general principle that "due process . . . requires rigorous adherence to procedural safeguards anytime the state seeks to *alter*, terminate, or suspend a parent's right" to the care, custody and management of his children. *McCurdy*, 352 F.3d at 827 (emphasis added). Our view is unchanged at this summary judgment stage and is indeed now the law of the case. We thus conclude that the right allegedly violated here—that is, the right to procedural due process protections when implementing a safety plan—is and has been clearly established within this Circuit.

b. Did the Defendants Violate a Clearly Established Fourteenth Amendment Right?

We next consider whether the Defendants violated this clearly established procedural due process right. The Plaintiffs contend that the Defendants

implemented the safety plan at issue here absent any notice of the right to an attorney or to challenge the safety plan. The Defendants maintain that the Plaintiffs voluntarily agreed to the terms of the safety plan and that procedural safeguards were unnecessary, an argument that we have rejected *supra*. The Defendants further contend that even if such protections were required, their August 23, 2010 letter to Plaintiffs in connection with the indicated report of child abuse suffices to satisfy those requirements.

We first address the Defendants' argument that no constitutional right has been violated because the "process is voluntary" and the Department of Public Welfare authorizes the use of these "voluntary safety plans." (Doc. 51, p. 7). The Defendants rely heavily on the Seventh Circuit's decision in *Dupuy v. Samuels*, 465 F.3d 757 (7th Cir. 2006), where that court held that a state does not "force" a safety plan on parents but "merely offers it." *Id.* at 761. The *Dupuy* court held that because a safety plan is completely voluntary, offered to the parents in lieu of the social services agency pursuing a valid legal option, the failure to provide notice or a hearing before offering such a plan to parents does not amount to a procedural due process violation. *Id.*

Dupuy might be instructive if this were an issue of first impression in this Circuit.[1] As it is, however, and as we have held *supra*, this issue has already been addressed by the Third Circuit and by at least one district court within this Circuit. *See Croft*, 103 F.3d at 1125 nn.1-2; *Doe v. Fayette Cnty. Children & Youth Servs.*, 2010 U.S. Dist. LEXIS 123637, *45-50 (W.D. Pa. Nov. 22, 2010). With respect to the argument that safety plans are "voluntary" and do not require procedural due process protections, the Third Circuit stated as follows:

> [The child welfare defendants] have characterized's [the father's] decision to leave as 'voluntary. This notion we explicitly reject. The threat that unless [the father] left his home, the state would take his four-year-old daughter and place her in foster care is blatantly coercive. The attempt to color his decision in this light is not well taken.

Croft, 103 F.3d at 1125 n.1. While only the substantive due process aspect of the case was before it on appeal, the Circuit emphasized in a footnote that "the policy of removing the suspected parent from the family home during the pendency of child abuse investigations *absent any procedural safeguards* raises a procedural due process issue." *Id.* at 1125 n.3 (emphasis added).

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[1] The Defendants quote at length from the Seventh Circuit's decision in *Dupuy v. Samuels*, 465 F.3d 757 (7th Cir. 2006) as support for their contention that safety plans are voluntary and not entitled to procedural due process protections. We expressly reject *Dupuy* and its holding as it is directly inconsistent with the Third Circuit's express admonition in *Croft*.

Thereafter, in *Doe*, Judge Ambrose of the Western District applied *Croft* on similar facts and held that a failure to offer an opportunity to be heard when implementing a safety plan constituted a definite constitutional violation. *Doe*, 2010 U.S. Dist. LEXIS 123637, at*46-50. The *Doe* court held that despite the defendants' assertions, "*some* sort of procedural safeguard is required" in cases involving safety plans. *Id.* at *48-49 (citing *Croft*, 103 F.3d at 1126, n.3). It is thus the law of this Circuit that removing a suspected parent from his family absent *any* procedural safeguards constitutes a violation of constitutional guarantees of procedural due process. As in both *Croft* and *Doe*, the plan here was presented to the Plaintiffs under threat that the Defendants would take custody of A.S. and M.S. if the Plaintiffs did not sign it. (*See* Doc. 50, ¶ 28 (Defendants conceding that they told Plaintiffs "they would seek a court order if Plaintiffs did not agree to [the] voluntary safety plan.")). Accordingly, under the law of *Croft* and *Doe*, as well as the law of this case, there is no genuine dispute with regard to whether some level of procedural protection was required here.

We thus must query whether "some level" of procedural protection was afforded to the Plaintiffs here. The Plaintiffs contend that there were no notices of the right to an attorney or right to a hearing contained in the safety plan itself or in correspondence following the plan's implementation; indeed, the Plaintiffs assert

that they were never made aware of their rights with respect to the safety plan. The Defendants assert that even if such notice was required, that requirement was satisfied by Defendant Gladfelter-Watts' August 23, 2010 letter to the Plaintiffs which provided, in pertinent part, as follows:

> Please be advised that on August 22, 2010, our Agency received a report of suspected physical child abuse concerning your child . . . in which [redacted] [redacted] was named as the alleged perpetrator. The "Child Protective Services Law" (Act 151) requires our Agency to conduct an investigation on this report. The purpose of the law is not to interfere with parental rights, but to provide help for children and their parents during a difficult period of time. While we can understand that you would find such a report upsetting, we are required under the Child Protective Services Law to look into the situation.
>
> We want to assure you that all information obtained concerning this report will be kept in strict confidence and will be made available only to those person authorized to receive it under the law. If the report proves to be unfounded, all identifying information will be destroyed. The law requires the destruction of the identifying information within one year of the report. You need to know that in certain situations we are required to report information to law enforcement officials. Also, if you are a subject in an indicated or founded report of abuse, your ability to obtain employment in a childcare facility or program may be adversely affected.
>
> While we can't tell you who made the report or the names of any person who cooperated with our investigation, you can receive, upon written request, a copy of the report filed with the Central Registry in

> Harrisburg. If you feel that the information provided to us is not true, you can request a hearing through the Secretary of the Department of Public Welfare. The Hearing can be held for the purpose of determining whether any of the information we received should be destroyed or changed.
>
> Of course, you have the right to obtain an attorney to represent you. If you cannot afford legal counsel, the court will appoint an attorney; if for some reason we might have to schedule a hearing and file a petition with the Court.

(Doc. 50-10, p. 1).

Critically, the letter makes no mention of the safety plan or the Plaintiffs' rights in connection therewith. Indeed, the letter is limited to discussion of the Plaintiffs' rights with respect only to the report of child abuse. Even viewing this letter in a light most favorable to the Defendants, there can be no genuine dispute that the letter fails to provide any notice of the right to an attorney or to a hearing in conjunction with *the safety plan*. Further, the safety plan itself is facially devoid of any such notices or other procedural protections. (Doc. 48-3, Exs. H, N). The plan itself contains only the names of the children and parents, the action to be taken, the person to be responsible for the children in the interim, how the plan will be monitored, the duration of the plan, and the signatures of the parents, the responsible guardian, and Defendants Hedgcock and Gladfelter-Watts. (*See id.*).

Viewed in the light most favorable to the Defendants, we find that there is no genuine issue of material fact as to whether the Plaintiffs were offered any procedural protections with respect to the safety plan. Here there were never *any* procedural safeguards in place by which the Plaintiffs could challenge the safety plan. Pursuant to *Croft*, *Doe*, and the law of this case, and based on the undisputed record facts, we find that Defendants Hedgcock and Gladfelter-Watts deprived the Plaintiffs of a fundamental liberty interest absent any procedural protections in violation of clearly established Fourteenth Amendment rights. Accordingly, we conclude that the Defendants are not entitled to qualified immunity and will enter summary judgment in Plaintiffs' favor and against Defendants Gladfelter-Watts and Hedgcock on this count.

C. *Monell* Liability

The Plaintiffs also assert *Monell* claims against Defendant York County and Defendant Chronister for having an official policy and custom of coercing safety plans onto parents without requisite procedural safeguards and against Defendant York County and Defendants Chronister and Niederer for having an official policy of indicating parents for abuse based on a constitutionally deficient standard of care. We address each of these claims in turn.

1. *Monell* Standard of Review

In *Monell v. N.Y.C. Dep't of Social Servs.*, 436 U.S. 658 (1978), the Supreme Court held that a municipality is only liable where the plaintiff can show that the municipality itself, by implementing a municipal policy, regulation, or decision either formally adopted or informally adopted through custom, actually caused the alleged constitutional transgression. *Id.* at 691. As we stated in our September 21, 2011, opinion and order, a plaintiff must plead facts which demonstrate that the defendants "are responsible for either enacting, implementing or widespreadly engaging in a practice which constitutes or causes a constitutional violation." (Doc. 28, p. 24 (citing *Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008)).

2. Safety Plans

In Counts I and II, the Plaintiffs assert *Monell* claims against Defendant York County and Defendant Chronister for adopting or acquiescing in a policy which violates constitutional guarantees of procedural due process and failing to train employees with respect to the requisite procedural safeguards when altering or attempting to alter a parent's right to the care, custody, and management of their children. (Doc. 40, ¶¶ 49-67). We have already held *supra* that to alter or attempt these rights by imposing a safety plan absent due process protections is a violation of procedural due process and that Defendants Hedgcock and Gladfelter-Watts, by

doing just that, are liable individually to the Plaintiffs under Section 1983. Our *Monell* inquiry thus need not consider whether the actions at issue are indeed unconstitutional; instead, we query only whether a municipal policy or failure to train caused the constitutional violation. We find that the answer to both inquiries is in the affirmative.

The Defendants maintain that they do not train employees with respect to the procedural protections required when implementing safety plans and that no such protections are contained within such plans because it is their view that the plans are voluntary and not subject to due process requirements. (Doc. 61, pp. 5-6). While the Defendants do not concede *Monell* liability and in fact rely upon copious general principles of Section 1983 municipal liability in their briefs, it cannot be gainsaid that the Defendants admit that they do not train their employees with respect to procedural safeguards in the context of safety plans and that such plans indeed contain no procedural safeguards. While this concession in and of itself ostensibly supports *Monell* liability, we briefly address the failure to train and custom or policy claims *seriatim*.

Turning first to the failure to train claim, it is well established that a plaintiff must demonstrate deliberate indifference on the part of the municipality or its officer in order to establish failure to train liability. *See Robert S. v. City of Phila.*,

2000 U.S. Dist. LEXIS 4020, *14-15 (E.D. Pa. Mar. 30, 2000). Such deliberate indifference requires a showing that "(1) municipal policymakers know that employees will confront a particular situation; (2) the situation involves a difficult choice . . . ; and (3) the wrong choice by an employee will frequently cause a deprivation of constitutional rights." *Id.* at *14 (citing *Carter v. City of Phila.*, 181 F.3d 339, 357 (3d Cir. 1999)). Typically, in the context of a failure to train claim, *Monell* and its progeny require some showing by the plaintiff that a specific, alternative training exists which would have reduced the risk of a constitutional violation. *Herman v. Clearfield Cnty.*, 836 F. Supp. 1178, 1187 (W.D. Pa. Oct. 12, 1993) (requiring plaintiff to "identify specific training not provided that could reasonably be expected to prevent [the injury]" and "demonstrate that the risk reduction associated with the proposed training is so great and so obvious that the failure of those responsible for the content of the training program to provide it can reasonably be attributed to a deliberate indifference to whether [the injury occurs.]").

Under these circumstances, it is already conceded that no training regarding procedural safeguards in the context of safety plans is provided. In light of this fact, the reasonable inference is that *any* training with respect to the constitutional rights at issue, specifically the necessity of including procedural safeguards when

implementing safety plans, would have alleviated or reduced to nothing the likelihood of a constitutional deprivation. Indeed, in the wake of *Croft*, which held more than ten years ago that procedural due process concerns are triggered when implementing safety plans absent any procedural safeguards, we cannot but conclude that the municipality's total failure to address *Croft*'s concerns and train employees regarding requisite procedural safeguards constitutes a deliberate indifference for the due process rights of parents like the Plaintiffs.

The same is true of the Plaintiffs' unconstitutional custom or policy claim. To succeed on a policy or custom claim, "a plaintiff must show that execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy" and that said policy or custom "caused the constitutional injury." *Robert S.*, 2000 U.S. Dist. LEXIS 4020 at *16. We emphasize that the Defendants have not demonstrated that procedural safeguards are implemented in connection with *any* safety plans. Indeed, the Defendants maintain that the same are not provided because they are not required. The record thus establishes a municipal policy in the negative—a policy of, admittedly, failing to provide procedural protections when implementing safety plans. On this record, even if we were to view all facts in the light most favorable to the Defendants, we would conclude that the municipal Defendants have entirely

failed to train their employees regarding a critical and specific constitutional right and have likewise adopted a municipal policy of failing to protect important constitutional rights.

3. Indicated Child Abuse Reports

In Count V, the Plaintiffs assert a substantive due process *Monell* claim against Defendant York County and Defendants Chronister and Niederer for allegedly instituting a policy of indicating parents for abuse based on a constitutionally deficient "best interests of the child" standard of care rather than the statutory standard of "substantial evidence of abuse." (Doc. 40, ¶¶ 95-133). The Plaintiffs rely on Defendant Hedgcock's testimony that she discussed her decision and what was "in the best interests of the children" with Defendant Chronister, the top administrative official with York County Children and Youth Services, and Defendant Niederer, Defendant Hedgcock's manager, and that both were in agreement with her ultimate decision to file an indicated report of child abuse. (Doc. 48, p. 31).

Even under the deferential standard of review applicable to the Defendants' Motion, and viewing the evidence in a light most favorable to the Plaintiffs as we must, the record is devoid of evidence of an institutional custom or policy of applying an incorrect legal standard when filing indicated reports of abuse. The

only evidence put forth by the Plaintiffs to support their contention that the Defendant County has an unconstitutional policy of applying a "best interest of the children" standard in lieu of the requisite "substantial evidence of abuse" standard is a brief excerpt from Defendant Hedgcock's deposition testimony, relayed in pertinent part as follows:

> A: We discussed the case at length. We discussed what disposition we should give this case. And what we would all feel comfortable with the safety, what the best interests of the children, what decisions we should make in this case.
>
> Q: So is that the consideration you had during that meeting, was what was in the best interests of the children?
>
> A: Um-Hmm. The safety of the children.

(Doc. 48, p. 31 (citing Doc. 53-1, ¶ 67)). The Plaintiffs contend that this testimony establishes that an erroneous standard of review was applied in making the ultimate decision to file an indicated report of child abuse and that Defendants Niederer and Chronister, in agreeing with the ultimate decision to indicate, effectively acquiesced in and adopted an unconstitutional municipal policy.

The Plaintiffs rely on *St. Louis v. Praprotnik*, 485 U.S. 112 (1988) for the proposition that when "authorized policymakers approve a subordinate's decision and the basis for it, their ratification would be chargeable to the municipality

because their decision is final." *Praprotnik*, 485 U.S. at 127. The *Praprotnik* Court ultimately concluded that because the plaintiff did not demonstrate that "anyone in city government ever promulgated, or even articulated, such a policy," and failed to prove that such unconstitutional actions ever occurred outside of this single circumstance, the municipality could not be subject to *Monell* liability.

Here, as in *Praprotnik*, there is a dearth of record evidence to support the Plaintiffs contention that a widespread municipal policy of applying an incorrect standard existed. The Plaintiffs attempt to stretch a single statement from one mid-level employee's deposition into an unconstitutional municipal policy imputable to Defendants Chronister and Niederer because they approved her ultimate decision and to Defendant York County because Defendants Chronister and Niederer are purportedly municipal policymakers. However, under *Praprotnik*'s rationale, even if an employee herself did apply an unconstitutional standard, such an error in her judgment, without evidence establishing a widespread or recurring policy, such evidence is insufficient to impute Section 1983 liability to municipal defendants. We will thus grant summary judgment on this *Monell* claim in favor of Defendant York County and Defendants Chronister and Niederer.[2]

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[2] Additionally, we harbor doubts as to whether Defendant Niederer, as a mid-level managerial official, could be said to be a municipal "policymaker" subject to *Monell* liability. Indeed, there are no facts of record at this time from which a jury could reasonably conclude that by virtue of her status, Defendant Niederer was empowered to create or effect municipal policies.

D. Punitive Damages

Lastly, we address the issue of punitive damages. The Defendants move for summary judgment on the issue of punitive damages to the extent the Plaintiffs seek such damages against Defendant York County and the individual Defendants to the extent they are sued in their official capacities. Neither party has moved for summary judgment on the issue of punitive damages against the individual Defendants in their personal capacities.

In our Order granting in part and denying in part the Defendants' Motion to Dismiss, we dismissed the punitive damages claims against Defendant York County and against Defendants Chronister, Hedgcock, and Gladfelter-Watts, to the extent they are named in their official capacities, because the Supreme Court has held and the Third Circuit has maintained that "[p]unitive damages cannot be recovered from defendants in their official capacities." (Doc. 28, p. 32 (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 (1985); *Gregory v. Chehi*, 843 F.2d 111, 120 (3d Cir. 1988)). Thus, to the extent that the Plaintiffs have sued the individual Defendants in their official and individual capacities, they cannot seek punitive damages against these individuals in their official capacities. The Plaintiffs may

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Nevertheless, because we have found that the Plaintiffs have failed to establish a genuine issue of fact with regard to whether an unconstitutional policy of filing deficient child abuse reports even existed, we need not address this issue.

nonetheless continue to seek punitive damages against Defendants Chronister, Hedgcock, and Gladfelter-Watts, to the extent the Plaintiffs raise claims against them in their personal capacities.

The Supreme Court has held that where an individual defendant has violated a clearly established constitutional right, he or she may be subject to punitive damages. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 267-68 (1981). Where the defendant's conduct "is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others," punitive damages may be assessed. *Smith v. Wade*, 461 U.S. 30, 56 (1983). We have already concluded *supra* that Defendants Chronister, Hedgcock, and Gladfelter-Watts have violated the Plaintiff's procedural due process rights. As noted, however, neither party has moved the Court for summary judgment with respect to the issue of punitive damages against the Defendants in their personal capacities and thus this issue is not properly before the Court at this summary judgment stage. *See, e.g.*, *Para v. City of Scranton*, 2008 U.S. Dist. LEXIS 53854, *60-64 (M.D. Pa. July 10, 2008) (finding that individual defendant sued in personal capacity was subject to punitive damages liability and submitting punitive damages inquiry to jury). We will thus grant the Defendant's Motion to the limited extent it seeks preclusion of punitive damages against the Defendants in their

official capacities. We will deny the Motion to the extent it seeks dismissal of all punitive damages claims, permitting limited discovery on the issue of damages and thereafter conducting a pretrial conference regarding this issue.

V. CONCLUSION

Consistent with our above discussion, we will grant in part and deny in part both Motions, as set forth more fully hereinabove and as follows.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Defendants' Motion for Summary Judgment (doc. 49) is granted in part and denied in part to the following extent:
   a. The Motion is **GRANTED** as to Counts IV and V and judgment is **ENTERED** in favor of all Defendants named in said counts. The Motion is further **GRANTED** to the extent it seeks a determination that punitive damages are unavailable as against Defendant York County and the individual Defendants to the extent said Defendants are sued in their official capacities.
   b. The Motion is **DENIED** in all other respects.
2. The Plaintiffs' Motion for Summary Judgment (doc. 47) is granted in part and denied in part to the following extent:

a. The Motion is **GRANTED** as to Counts I, II, and III and judgment is **ENTERED** in favor of the Plaintiffs and against each Defendant named in said counts.

b. The Motion is **DENIED** in all other respects.

3. With judgment as to liability having been entered on all Counts, the matter shall proceed to trial on the limited issue of damages. A telephonic conference call **IS SCHEDULED** for January 15, 2013 at 10:30 a.m. for the purpose of discussing whether damages discovery is necessary and in order to chart a course for pretrial proceedings. Counsel for the Plaintiffs **SHALL** initiate the said call to Chambers at (717) 221-3983. At the time the call is placed, all counsel shall be on the line and prepared to proceed.

s/ John E. Jones III
John E. Jones III
United States District Judge