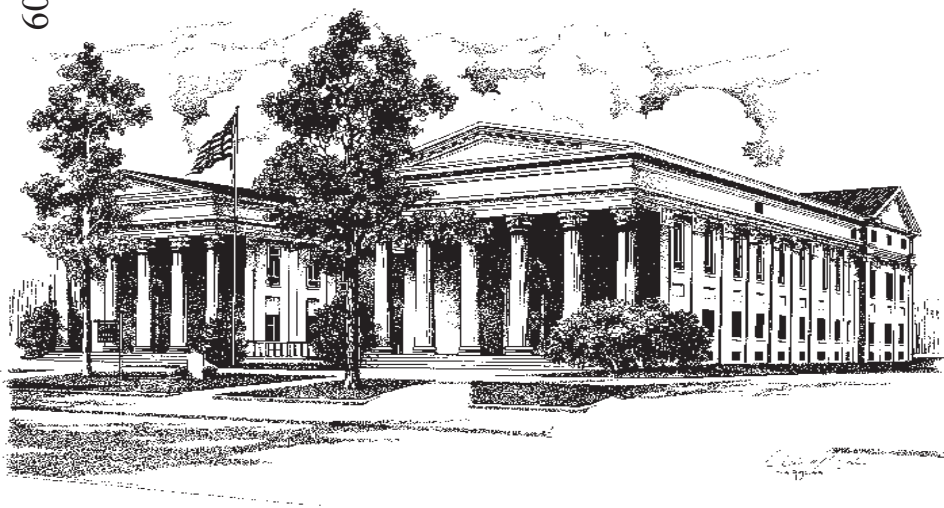


*Erie  
County  
Legal  
Journal*

November 20, 2009

Vol. 92 No. 47

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92 ERIE 266 - 276

Erie Insurance Exchange v. Price

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# Erie County Legal Journal

*Reporting Decisions of the Courts of Erie County  
The Sixth Judicial District of Pennsylvania*

Managing Editor: Paula J. Gregory

Associate Editor: Heidi M. Weismiller

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# Erie County Bar Association

## Calendar of Events and Seminars

### TUESDAY, NOVEMBER 24, 2009

*Privacy and Data Security: 2009 and Beyond*  
PBI Video Seminar  
Bayfront Convention Center  
9:00 a.m. - 1:30 p.m. (8:30 a.m. reg.)  
\$129 (member) \$149 (admitted after 1/1/05)  
\$149 (nonmember)  
3 hours substantive / 1 hour ethics

### TUESDAY, NOVEMBER 24, 2009

*101 Seminar - Professional Relationships*  
ECBA Live Seminar  
Bayfront Convention Center  
3:00 p.m. - 5:00 p.m. (2:30 reg.)  
\$54 (member) \$79 (nonmember)  
Free (new admittees)  
2 hours ethics

### TUESDAY, DECEMBER 1, 2009

*E-Commerce: Legal and Practical Issues*  
PBI Groupcast Seminar  
Bayfront Convention Center  
9:00 a.m. - 4:30 p.m. (8:30 a.m. reg.)  
\$274 (member) \$254 (admitted after 1/1/05)  
\$294 (nonmember)

*Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:*  
\$249 (member) \$229 (admitted after 1/1/05) \$269 (nonmember)  
6 hours substantive

### WEDNESDAY, DECEMBER 2, 2009

*Ethics Potpourri: Harry Potter and the Lawyer's Curse*  
PBI Video Seminar  
Bayfront Convention Center  
9:00 a.m. - 10:00 a.m. (8:30 a.m. reg.)  
\$39 (member) \$49 (nonmember)  
1 hour ethics

### THURSDAY, DECEMBER 3, 2009

*Functional Capacity Evaluation*  
PBI Groupcast Seminar  
Bayfront Convention Center  
9:00 a.m. - 1:15 p.m. (8:30 a.m. reg.)  
\$224 (member) \$204 (admitted after 1/1/05)  
\$244 (nonmember)

*Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:*  
\$199 (member) \$179 (admitted after 1/1/05) \$219 (nonmember)  
4 hours substantive

### TUESDAY, DECEMBER 8, 2009

*Identity Theft 2009*  
PBI Video Seminar  
Bayfront Convention Center  
9:00 a.m. - 1:30 p.m. (8:30 a.m. reg.)  
\$129 (member) \$109 (admitted after 1/1/05)  
\$149 (nonmember)  
4 hours substantive

### THURSDAY, DECEMBER 10, 2009

*From the Silver Screen to the Courtroom: Interpretation and Advice on Trial Techniques Used in the Best Law-Related Films Ever Made.*  
ECBA Live Seminar; 1:45 - 3:45 p.m.  
2 hours substantive; \$54 (ECBA members) \$79 (nonmembers)

### *Avoiding Malpractice*

ECBA Live Seminar; 4:00 - 5:00 p.m.  
1 hour ethics; \$54 (ECBA members) \$79 (nonmembers)

*ECBA Membership Meeting/Holiday Cocktail Party/Annual Dinner with Judge Bozza's Portrait Unveiling/Steelers v. Browns Football Game*

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for additional pricing options, please contact the ECBA office or go to [www.eriebar.com](http://www.eriebar.com) - member center

### FRIDAY, DECEMBER 11, 2009

*Anatomy for Lawyers: Mastering Medical Records*  
PBI Groupcast Seminar  
Bayfront Convention Center  
8:30 a.m. - 3:45 p.m. (8:00 a.m. reg.)  
includes lunch  
\$304 (member) \$284 (admitted after 1/1/05)  
\$324 (nonmember)

*Early Registration - If you register more than 2 days before this presentation you will qualify for this Early Registration Fee:*  
\$279 (member) \$259 (admitted after 1/1/05) \$299 (nonmember)  
5 hours substantive / 1 hour ethics

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Nov. 20, 27 and Dec. 4, 11

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**ECBA OFFICER NOMINATIONS**

Pursuant to Article V, Section 4 of the Erie County Bar Association By-Laws, the Nominating Committee intends to propose for nomination at the Annual Meeting, to be held Thursday, December 10, 2009, the following:

**Second Vice President:** Donald F. Fessler, Jr.  
**Treasurer:** Thomas J. Buseck  
**Board Members (3 year terms):** Brian J. Krowicki  
Richard A. Lanzillo  
John M. "Jack" Quinn, Jr.

Nov. 20

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**NOTICE**

**In Re: Court Closure**

Please be advised that both the Pittsburgh Division and the Erie Division of this Court will be closed Thursday and Friday, November 26 and 27, 2009, in observance of Thanksgiving.

John J. Horner  
Clerk of Court

Nov. 20

**ERIE INSURANCE EXCHANGE, a Pennsylvania reciprocal insurer, Plaintiff**

v.

**DEBORAH PRICE and JAMES PRICE, her husband, Defendants**

*Editor's Note: This Opinion and Order were vacated July 24, 2009 - see Order on page 276*

*CIVIL PROCEDURE / MOTION FOR SUMMARY JUDGMENT*

A motion for summary judgment can be granted at the close of the pleadings if the court finds either (a) there is no genuine issue of any material fact concerning a necessary element of the action/defense, or (b) upon the completion of discovery, including exchange of expert reports, the party who bears the burden of proof has failed to produce evidence of essential facts that would require the issue be submitted to a jury.

*CIVIL PROCEDURE / MOTION FOR SUMMARY JUDGMENT*

As a general rule, a movant is entitled to judgment as a matter of law when the non-moving party fails to produce sufficient evidence establishing the existence of an essential element to his/her case.

*CIVIL PROCEDURE / MOTION FOR JUDGMENT ON PLEADINGS*

A court ruling on a motion for judgment on the pleadings should limit itself to the complaint, answer, reply to new matter, and any attached exhibits.

*JUDGMENTS / COLLATERAL ESTOPPEL*

As a general rule, the doctrine of collateral estoppel only applies where: (1) The identical issue in controversy has already been decided in a prior adjudication; (2) there exists a final judgment on the merits; (3) party against whom the doctrine is asserted was a party or in privity with a party to the prior adjudication; (4) party opponent has had a full and fair opportunity to litigate the issue in question in the prior action; and (5) determination of the prior suit was essential to the judgment.

*JUDGMENTS / COLLATERAL ESTOPPEL*

Doctrine of collateral estoppel does not apply when prior adjudication on a similar issue did not constitute a final judgment on the merits and was issued by court of parallel jurisdiction.

*INSURANCE / AUTOMOBILE INSURANCE / FINANCIAL RESPONSIBILITY LAW*

Based upon the current state of the law in Pennsylvania, a provision in an insurance contract requiring an insured to submit to reasonable medical examinations as a condition precedent to insurance coverage is enforceable notwithstanding 75 Pa.C.S.A. §1796(a) of the Motor Vehicle Financial Responsibility Law.

*INSURANCE / AUTOMOBILE INSURANCE / FINANCIAL  
RESPONSIBILITY LAW*

The purpose of 75 Pa.C.S.A. §1796(a) of the Motor Vehicle Financial Responsibility Law is to ensure that claimants seeking first party benefits are not forced to submit to unnecessary examinations sought in bad faith and an insurance policy clause that is at odds with the statutory provision, cannot stand since it would violate public policy.

*INSURANCE / AUTOMOBILE INSURANCE / FINANCIAL  
RESPONSIBILITY LAW*

Section 1796 of the Motor Vehicle Financial Responsibility Law does not grant an insurance carrier the ability to draft contractual agreements that give them complete and unlimited control over the IME process inasmuch as such provision derogates from the underlying public policy of the Act.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,  
PENNSYLVANIA                      CIVIL DIVISION                      NO. 13274 OF 2008

Appearances:     James D. McDonald, Jr., Esquire, Attorney for Plaintiff  
                               John W. McCandless, Esquire, Attorney for Defendants

**OPINION AND ORDER**

DiSantis, Ernest J., Jr., J

This case comes before the Court on the Defendants' Motion For Judgment on the Pleadings and the Plaintiff's Motion For Partial Summary Judgment.<sup>1</sup> Argument was conducted on June 1, 2009.

I. BACKGROUND OF THE CASE

On or about January 13, 2004, Deborah Price was involved in a motor vehicle collision during which the Ford F-150 truck she was driving was struck from behind by another motor vehicle in the 400 block of East Tenth Street in Erie, Pennsylvania. At the time of the incident, she and her husband, James Price, were the named insureds on an insurance policy issued by the plaintiff (Q11 1304955 E). On or about January 25, 2004, Mrs. Price submitted an application to plaintiff for first party medical and wage loss benefits under the policy. On or about October 11, 2004, she and her husband submitted a claim to the plaintiff for uninsured motorist benefits under the policy.

After the incident, the Prices retained John W. McCandless, Esquire to represent them relative to an uninsured motorist claim against plaintiff. Plaintiff retained the services of William C. Wagner, Esquire to represent it on the uninsured motorist claim. As of September 13, 2005, the full \$15,000.00 wage loss benefit had been paid and the policy limits were

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<sup>1</sup> Defendants' Motion for Protective Order will be addressed in a separate order.

exhausted. The first party medical benefit and the uninsured motorist benefit claim were ongoing.

On or about August 13, 2007, Attorney Wagner requested, without court approval, that Deborah Price submit to an independent medical examination ("IME") in accordance with the policy.<sup>2</sup> All relevant correspondence from Attorney Wagner regarding the medical evaluation referenced only the UIM Claim. On or about March 6, 2008, Mrs. Price submitted to the IME which was performed by Paul S. Lieber, M.D. As a result of that examination, on or about April 2, 2008, Kathleen Hart, plaintiff's Medical Management Specialist, notified Attorney McCandless that plaintiff would discontinue further payment of Mrs. Price's medical bills under the first party medical benefits provisions of the policy. Furthermore, plaintiff did not advise the Prices that they intended to use the results of the IME to deny Mrs. Price first party medical benefits.

On or about April 9, 2008, Attorney McCandless notified plaintiff that in his opinion, discontinuance of first party medical benefits, based upon the results of the IME, was improper because plaintiff had not sought court approval for the IME as required by 75 Pa.C.S.A. § 1796(a) of the Motor Vehicle Financial Responsibility Law ("MVFRL").

On July 9, 2008, plaintiff filed the instant declaratory judgment action, asserting that a genuine dispute exists between the parties as to:

- (a) Whether EIE is entitled to consider the results of an independent medical examination in the evaluation of all pending first party claims, including the first party medical benefit claim as well as the uninsured motorist claim;
- (b) whether EIE is precluded from considering the results of an independent medical examination in the evaluation of a first party medical benefit claim because the independent medical examination was secured to the language of the Policy rather than court approval pursuant to Section 1796(a) of the MVFRL;
- (c) whether Section 1796(a) of the MVFRL provides the exclusive vehicle to secure an independent medical examination which may be considered in the evaluation of a first party medical benefit claim; and

---

<sup>2</sup> IMEs related to first party benefits may be required under ¶ 13 of the Rights and Duties - General Policy Conditions of the agreement. *See*, Insurance Policy, attached to Defendants' Motion for Judgment on the Pleadings as Exhibit "A". That provision states:

When there is an accident or loss, **anyone we protect** will...

d. at **our** request; .....

8) submit to physical and mental examination by doctors **we** choose as often as **we** reasonably require. (We will pay for these examinations);...

*Id.* at p. 12.

- (d) whether EIE was required to ignore the existence of the independent medical examination by Paul S. Lieber, M.D. and seek an additional independent medical examination by petition under Section 1796(a) of the MVFRL for the purpose of evaluation of the first party medical benefit claim.

Plaintiff's Complaint - Action for Declaratory Judgment, at ¶ 20 (a) - (d).

On March 16, 2009, Defendants filed a Motion for Judgment on the Pleadings and supporting brief. They argued that the plaintiff is collaterally estopped from utilizing the IME because it did not seek court approval under Section 1796(a) of the MVFRL. In support, Defendants rely primarily on the case of *Erie Ins. Exchange v. Dzdony*, 39 Pa.D. & C. 3d 33 (Allegheny Cty. 1986)(Wettick, J.). In addition, they assert that when first party benefits are at issue, Section 1796(a) is the sole authority for conducting an IME. Accordingly, they contend that plaintiff's actions were in violation of Section 1796(a) and public policy.

In reply, Plaintiff counters that it had the contractual authority to request an IME of Mrs. Price, notwithstanding Section 1796(a). It further argues that collateral estoppel does not apply.

On April 16, 2009, Plaintiffs filed a Motion for Partial Summary Judgment and supporting brief. In essence, it contends that collateral estoppel is not applicable and that it has a clear right to the relief sought in its Complaint.

Although there are a number of issues before the Court, they are all interrelated.

## II. LEGAL DISCUSSION

### A. The Legal Standards

#### 1. Summary Judgment

Summary judgment should only be granted in a case that is clear and free from doubt. *Toy v. Metro Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007). Additionally, summary judgment can be granted at the close of the pleadings:

- (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which would be established by additional discovery or expert report, or
- (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa.R.Civ.P. 1035.2.



Pa.R.Civ.P. 1035.3 provides, in part:

(a) the adverse party may not rest upon the mere allegations or denials of the pleadings but must file a response within thirty (30) days after service of the motion identifying

(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or from a challenge to the credibility of one or more witnesses testifying in support of the motion, or

(2) evidence in the record establishing the facts essential to the cause of action or defense which the motions cite as not having been produced.

The Pennsylvania Supreme Court has stated that:

Where the non-moving party has failed to produce sufficient evidence to establish the existence of an element essential to the case, in which he bears the burden of proof, the moving party is entitled to judgment as a matter of law.

*Ertel v. Patriot-News Company*, 674 A.2d 1038, 1042 (Pa.1996).

The purpose of the summary judgment rule "is to eliminate cases prior to trial where a party cannot make out a claim or defense". *Miller v. Sacred Heart Hospital*, 733 A.2d 829, 833 (Pa. Super. 2000). The Court must examine the record in the light most favorable to the non-moving party and resolve all doubt against the moving party. *Aetna Casualty and Surety Company v. Roe*, 650 A.2d 94, 97 (Pa. Super. 2004).

## 2. Judgment On The Pleadings

A motion for judgment on the pleadings should only be granted where the pleadings demonstrate that no genuine issue of fact exists, and the moving party is entitled to judgment as a matter of law. *See* Pa.R.C.P. 1034. On a motion for judgment on the pleadings, which is similar to a demurrer, the court accepts as true all well-pleaded facts of the non-moving party and only the facts specifically admitted by the non-moving party may be used against it. *Mellon Bank v. National Union Ins. Company of Pittsburgh*, 768 A.2d 865 (Pa. Super. 2001).

In ruling on a motion for judgment on the pleadings, a court should confine itself to the pleadings, such as the complaint, answer, reply to new matter and any document or exhibit properly attached to them. *Kelly v. Nationwide Ins. Co.*, 606 A.2d 470, 471 (Pa. Super 1992). Such a motion may only be granted in cases where no material facts are at issue and the law is so clear that a trial could be a fruitless exercise. *Ridge v. State Employees Retirement Board*, 690 A.2d 1312, 1314 n.5 (Pa.Cmwlth. 1997).

### B. Whether the Doctrine of Collateral Estoppel Applies?

The doctrine of collateral estoppel only applies in those situations

where:

1. the issue decided in a prior adjudication is identical with one presented in the later action;
2. there was a final judgment on the merits;
3. the party against whom the plea is asserted was a party or in privity with a party to the prior adjudication;
4. the party against whom it is asserted has had a full and fair opportunity to litigate the issue in question in a prior action; and
5. the determination of the prior suit was essential to the judgment therein.

*Matson v. Housing Authority of the City of Pittsburgh*, 473 A.2d 632, 634 (Pa. Super. 1984); *Banker v. Valley Forge Ins. Co.*, 585 A.2d 504, 509 (Pa. Super. 1991).

Here, defendants assert that under *Dzadony*, the plaintiff is collaterally estopped from asserting its current claim. In that case, in response to the Dzadonys' claims for payment of medical bills allegedly incurred as a result of an automobile collision, Erie Insurance Exchange filed a petition to compel a physical examination by a physician it selected. *Dzadony*, at 34. In rejecting Erie's contention that the Dzadonys should be compelled to undergo the examination, Judge Wettick noted:

First, the policy provision upon which Erie relies should not be enforced because it is inconsistent with the obligations imposed upon an insurance company to pay benefits under the Motor Vehicle Financial Responsibility Law. The Motor Vehicle Financial Responsibility Law is comprehensive legislation governing the rights and obligations of the insurance company and the insured under liability insurance policies covering motor vehicles.... Provisions within an insurance contract which impose additional burdens on an insured before the insured may recover these benefits to which the insured is statutorily entitled, are inconsistent with this legislative scheme. Thus, we will not enforce a provision within an insurance policy that would make payment of benefits dependent upon the insured appearing for a physical examination that the law does not require.

*Id.* at 36.

Judge Wettick further noted that, "[i]f the Motor Vehicle Financial Responsibility Law had not dealt with the issue of when an insured may be compelled to submit to a physical examination, this matter could perhaps be governed by the insurance contract. *Id.* at 36-37. Judge Wettick then concluded "the clause which Erie seeks to enforce is inconsistent with Erie's obligation to pay benefits whenever the insured

submits reasonable proof supporting his or her claim." *Id.* at 38.

This Court finds that although the issue addressed by Judge Wettick is similar to the one presented here, it was addressed in a different procedural context and involved a separate contract. Judge Wettick's decision did not constitute a final judgment on the merits of a declaratory judgment action. Moreover, Judge Wettick's interpretation of § 1796 is not precedential. Given the learned reputation of that jurist, his opinions are often persuasive. However, this Court is not bound by the statutory interpretation of another judge of a parallel jurisdiction. Therefore, the doctrine of collateral estoppel does not apply.

C. Whether 75 Pa.C.S.A. § 1796(a) Exclusively Provides That Court Approval Is Necessary For An Independent Medical Examination of a Claimant?

75 Pa.C.S.A. § 1796(a) provides that:

Whenever the mental or physical condition of a person is material to any claim for medical, income loss or catastrophic loss benefits, a court of competent jurisdiction or the administrator of the Catastrophic Loss Trust Fund for catastrophic loss claims may order the person to submit to a mental or physical examination by a physician. The order may only be made upon motion for good cause shown. The order shall give the person to be examined adequate notice of the time and date of the examination and shall state the manner, conditions and scope of the examination and the physician by whom it is to be performed. If a person fails to comply with an order to be examined, the court or the administrator may order that the person be denied benefits until compliance.

In interpreting § 1796, this Court is mindful that, "[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S.A. § 1921 (a). Furthermore, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. § 1921 (b).

After review of the language of § 1796 and relevant legal authority, this Court finds that nothing contained in the statutory language specifically precludes an IME that is required pursuant to an insurance contract. If the intent of the Pennsylvania General Assembly was to render § 1796 the exclusive vehicle for IMEs related to first party benefits, it would (or could) have said so.

In *Fleming v. CNA Insurance Companies*, 597 A.2d 1206 (Pa. Super. 1991), a trial court granted CNA's Motion To Compel A Medical

Examination directing the Flemings to submit to an independent medical examination by a physician of CNA's choosing. *Id.* at 1206. The Flemings appealed, asserting that the trial court had wrongfully compelled the medical exam when CNA had failed to show "good cause" as specified under § 1796.

On appeal, the *Fleming Court* was not asked to determine whether § 1796 is the exclusive method for obtaining an IME when first party medical benefits are at issue. However, given that court's analysis, it is highly unlikely that it would have. *Id.* at 1207 - 1208.

In *Williams v. Allstate Insurance Company*, 595 F.Supp.2d 532 (E.D. Pa. 2009), the United States District Court for the Eastern District of Pennsylvania had an opportunity to analyze the relationship of § 1796 and a similar insurance contract provision regarding a physical examination. Although the case is not precedential, the District Court's analysis is worth considering. As it stated:

Defendant Allstate premises its motion on the theory that because the precise policy terms condition payment of benefits on Plaintiff's submission to medical examinations as often as Allstate may "reasonably require", Plaintiff's undisputed refusal to submit to a medical examination regarding her gastrointestinal injuries constitute a breach of contract, entitling Allstate to curtail continued payment of benefits.

*Id.* at 537. In assessing Williams' argument that the medical examination provision of the policy was rendered unenforceable by § 1796, the District Court framed the issue this way:

In light of these conflicting arguments, the Court must determine whether an insurance policy that permits an insured to demand reasonable examinations of its insured as a condition precedent to coverage is valid and enforceable in light of § 1796 (a) of the MVFRL.

*Id.*

The District Court first concluded that the submission of the claim to the insurance carrier, not the institution of legal proceedings, triggers the insurance company's right to file a petition with the court requiring the insured to submit to a physical examination. *Id.* Continuing, it noted that: "the Pennsylvania Supreme Court has yet to opine on the breadth of this statute and whether it forecloses conflicting policy provisions". *Id.* at 538. *Citing Fleming*, the District Court stated that: "The Pennsylvania Superior Court, however, explicitly discussed the interplay between section 1796 and a policy of insurance that permits and insurance company to unilaterally compel medical examinations, without a showing of 'good cause'". *Id.* at 538, *citing Fleming*, at 1206.

Approving *Fleming*, the District Court said that:

As this Court is bound to accord significant weight to rulings of an intermediate appellate court in the absence of a "persuasive indication that the highest state court would rule otherwise," we decline to reject the fundamental premise of *Fleming*.

*Id.* at 541 - 542 (citation omitted).

It found that the MVFRL was passed "to foster financial responsibility for damages caused to individuals on the roadways". *Id.* at 542, *citing, Donegal Mut Ins. Co. v. Long*, 387 Pa. Super. 574, 564 A.2d 937, 944 (1989), *aff'd.*, 528 Pa. 295, 597 A.2d 1124 (1991). *Id.* at 542 In its estimation, the specific of purposes of § 1796 were to prevent harassment, untoward intrusion and unwarranted examination and to insure that the insured could not ignore reasonable limitations on treatment by continuing treatment without validation or justification. *Id.* at 542 - 543. Therefore, a contractual provision requiring the insured to attend the medical examination as a prerequisite to benefits does not violate these purposes. *Id.*

*Williams* suggests that a more plausible interpretation of § 1796 is that it was intended to govern a situation where an insurance contract does not address the right to a medical examination, or when a party outside the insurance contract making a claim for medical or wage loss benefits is involved. As it stated: "In short, based on the current state of the law in Pennsylvania, this court predicts that the Pennsylvania Supreme Court would find that a contractual provision, which requires an insured to submit to reasonable medical examinations as a condition preceded to insurance coverage, is enforceable, notwithstanding section 1796 of the MVFRL." *Id.* at 545.

The District Court also noted that, "[s]econd, both Judge Wettick's and Plaintiff's efforts to distinguish *Fleming* on public policy grounds are meritless." *Id.* at 542. The *Williams'* Court recognized "heavy burden required to declare an unambiguous provision of an insurance contract void as against public policy". *Id.*

In the case at bar, the defendants, unlike *Fleming* but like *Williams*, assert that the actions taken here by the plaintiff and the contract provision are against public policy.<sup>3</sup> Their argument must be addressed in light of the purpose of § 1796. The fact that case law (particularly *Fleming*) suggests that § 1796 does not preclude the parties from contractually agreeing to an IME does not mean that the statute can be ignored. The purpose of that act is to insure that claimants seeking first party benefits should not be forced to submit to unnecessary examinations sought

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<sup>3</sup> The *Fleming* Court specifically noted: "appellants did not challenge this policy provision as being void as against public policy or void as unconscionable...." *Id.* at 1208.

in bad faith. *Horne v. Centry Ins. Co.*, 588 A.2d 546, 548 (Pa. Super. 1991). Furthermore, an insurance policy clause that is at odds with a statutory provision cannot stand because it would violate public policy. See, *Pennsylvania National Mutual Casualty Company v. Black*, 916 A.2d 569 (Pa. 2007) and *Prudential Property and Casualty Insurance Company v. Colbert*, 813 A.2d 747 (Pa. 2002).

This Court finds persuasive the decision in *Miller v. United States Fidelity & Guarantee Company*, 909 S.W.2d 339 (Ky. App. 1995). In that case, the Kentucky Court of Appeals addressed a circuit court's ruling that required Miller to submit to an independent medical examination in an action where the insurance company contested the necessity of treatments. The company refused to pay Miller's medical bills without an independent examination. Both the policy provision and the relevant Kentucky statute are similar to those before this Court. In particular, KRS 304.39-270(1) contains a "good cause" requirement just as § 1796(a) does.

Miller argued that the insurance contract "imposed upon a basic reparation insured a requirement much broader than any that the legislature saw fit to impose...." *Id.* at 10. The Kentucky Court of Appeals, addressing the public policy issue consideration, stated:

In this case we have been confronted with that very issue and have decided, in light of the purposes of the MVRA, that the policy provision simply may not be enforced as being clearly violative of the public policy underlying our statute.

*Id.* at 12. Importantly, it found that the public policy underlying the statute precluded the insurance company from enforcing an "overreaching policy provision...in clear derogation of the statutory language." *Id.* at 11. The Kentucky Court of Appeals left open the question of whether an insurance policy provision, differently worded, could comport with the requirements of the statute.

This Court is confronted with contrasting views and the absence of any clear appellate authority. On the one hand, it has Judge Wettick's Opinion in *Dzadony* that, if followed to its logical conclusion, would render § 1796 the sole authority for IMEs. On the other hand, the language of § 1796 and the opinions in *Fleming*, *Williams* and *Miller* do not foreclose the parties' ability to contractually agree to IMEs as long as those contracts do not violate the language and intent of § 1796, as well as the public policy upon which the statute is based.

Assuming our appellate courts would allow contractual agreements related to IMEs, it is doubtful that they would approve of the policy provision at issue because it gives plaintiff complete, unlimited control over the IME process. Clearly, § 1796 does not grant the insurance carrier such authority. Therefore, as currently drafted, the provision derogates

from the underlying public policy of the act. To the extent *Fleming* and *Williams* imply otherwise, this Court respectfully diverges from the rationale of those learned courts.<sup>4</sup>

**ORDER**

**AND NOW**, this 1st day of July 2009, for the reasons set forth in the accompanying opinion, it is hereby **ORDERED** that the Defendants' Motion For Judgment on the Pleadings is **GRANTED** and the Plaintiff's Motion For Partial Summary Judgment is **GRANTED** as to the Collateral Estoppel issue, only. In all other respects, Plaintiff's Motion for Partial Summary Judgment is **DENIED**.

**BY THE COURT:**

/s/ **ERNEST J. DISANTIS, JR., JUDGE**

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<sup>4</sup> Whether the plaintiff may use the results of the IME is a question to be resolved at a later time because it involves, among other things, the defendants' possible consent and/or waiver.

*Editor's Note: This Opinion and Order were vacated per the Order below:*

**ORDER**

**AND NOW**, this 24th day of July 2009, after review of the plaintiff's Application For Reconsideration Of Order Entered July 1, 2009 Pursuant To Rule 1701 (b)(3) of the Pennsylvania Rules of Appellate Procedure, and argument of counsel conducted today, it is hereby **ORDERED** that this Court's Opinion and Order of July 1, 2009 are hereby **VACATED**.

**BY THE COURT:**

/s/ **Ernest J. DiSantis, Jr., Judge**



**INCORPORATION NOTICE**

Pizza ErJenCi, Inc. has been incorporated under the provisions of the Business Corporation Law of 1988.  
John P. Leemhuis, Jr., Esq.  
Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc.  
2222 West Grandview Boulevard  
Erie, Pennsylvania 16506-4508

Nov. 20

**LEGAL NOTICE**

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA

JACK E. GRAYER and  
SUSAN E. GRAYER

v.

CHRISTINE KAY HODGES  
NO. 14338-2009  
TO: CHRISTINE KAY HODGES

**IMPORTANT NOTICE**

You are in default because you have failed to take action required of you in this case. Unless you act within ten days from the date of this notice, a judgment may be entered against you without a hearing and you may lose your property or other important rights. You should take this notice to a lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the following office to find out where you can get legal help:

Lawyer's Referral Service  
Box 1792, Erie, PA 16507  
Tel. 814-459-4411  
Mon. - Fri. 8:30 a.m. - 3:00 p.m.  
Jack E. Grayer, Esq.  
Attorney for Plaintiff(s)  
PO Box 1825  
Erie, PA 16507  
814-218-0345  
PA ID# 20349

Nov. 20

**LEGAL NOTICE**

ATTENTION: UNKNOWN  
BIOLOGICAL FATHER  
INVOLUNTARY TERMINATION  
OF PARENTAL RIGHTS  
IN THE MATTER OF THE  
ADOPTION OF MINOR CHILD  
(R.R.R.); DOB: 02-18-09  
#82 IN ADOPTION, 2009

If you could be the parent of the above mentioned child, at the

instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Bozza, Court Room No. 1, City of Erie on December 10, 2009, at 1:30 p.m. and then and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-6647.

Your presence is required at the Hearing. If you do not appear at this Hearing, the Court may decide that you are not interested in retaining your rights to your child and your failure to appear may affect the Court's decision on whether to end your rights to your child. You are warned that even if you fail to appear at the scheduled Hearing, the Hearing will go on without you and your rights to your child may be ended by the Court without your being present.

You have a right to be represented at the Hearing by a lawyer. You should take this paper to your lawyer at once. If you do not have a lawyer, or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Family/Orphan's  
Court Administrator  
Room 204 - 205  
Erie County Court House  
Erie, Pennsylvania 16501  
(814) 451-6251

Nov. 20

**LEGAL NOTICE**

MARSHAL'S SALE: By virtue of a Writ of Execution issued out of the U. S. Court for the W. D. of PA at suit of the USA at Civil No. 1:09-cv-110, I shall expose to public sale the real property of Sharon C. Saunders known as 89 Grahamville Street, North East, PA 16428, being

fully described in the Deed dated November 25, 1998 and recorded in the Recorder's Office of Erie County in Deed Book Volume 0602, Page 1160.

TIME AND LOCATION OF SALE: Friday, December 18, 2009 at 10:00 A.M. at the Erie County Sheriff's Office, 140 West Sixth Street, Erie, PA 16501.

TERMS OF SALE: Successful bidder will pay ten percent (10%) by cashier's check, certified check or bank money order at the time of the sale and the remainder of the bid within thirty (30) days from the date of the sale and in the event bidder cannot pay the remainder, the property will be resold and all monies paid in at the original sale will be applied to any deficiency in the price at which the property is resold. The successful bidder must send payment of the balance of the bid directly to the U.S. Marshal's Office c/o Ms. Sheila Blessing, Room 241, U.S. Post Office & Courthouse, Pittsburgh, PA 15219. Notice is hereby given that a Schedule of Distribution will be filed by the Marshal's Office on the thirtieth day after the date of sale, and that distribution will be made in accordance with the Schedule unless exemptions are filed thereto within ten (10) days thereafter. The successful bidder takes the real estate subject to, and shall pay all taxes, water rents, sewer charges, municipal claims, and other charges and liens not divested by the sale. Purchaser must furnish State Realty Transfer Tax Stamps, and stamps required by the local taxing authority. Purchaser shall furnish Marshal with Grantee information at the time of the sale. Marshal's costs, fees and commissions are to be borne by seller. Thomas M. Fitzgerald, United States Marshal. For additional information visit [www.resales.usda.gov](http://www.resales.usda.gov) or contact Ms. Kimberly Williamson at 314-457-5513.

Nov. 13, 20, 27 and Dec. 4



**ESTATE NOTICES**

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

**FIRST PUBLICATION**

**BACHMAIER, THEODORE H., a/k/a THEODORE BACHMAIER, deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executor:* James T. Bachmaier, 3514 Everton St., Silver Spring, MD 20906  
*Attorney:* None

**BIELSKI, FRANCES S., deceased**

Late of the City of Erie  
*Executor:* Henry G. Brzostowski, 23765 Westside Dr., Canadohta Lake, PA 16438  
*Attorney:* None

**CIRILLO, EVA M., deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Freida P. Fickenworth, c/o 504 State Street, 3rd Floor, Erie, PA 16501  
*Attorney:* Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**DeDIONISIO, ERMA, a/k/a ERMA Z. DeDIONISIO, deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executor:* William F. DeDionisio  
*Attorney:* David J. Rhodes, Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

**KAUFFMAN, GERALDINE C., deceased**

Late of Millcreek Township, Erie County, PA  
*Executor:* Christine A. Palotas, 22124 Daisy Ave., Meadville, PA 16335  
*Attorney:* Lisa Pepicelli Youngs, Esq., Pepicelli, Youngs and Youngs PC, 363 Chestnut Street, Meadville, PA 16335

**KESSELHON, SYLVIA E., deceased**

Late of Harborcreek Township  
*Executor:* William J. Heard, Jr., 4304 Aaron Road, Erie, PA 16511-1311  
*Attorney:* Jerome C. Wegley, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**KOWALSKI, MARY T., deceased**

Late of Harborcreek Township, Erie County, Erie, Pennsylvania  
*Executrix:* Kathleen A. McCabe, c/o Robert J. Jeffery, Esq., 33 East Main Street, North East, Pennsylvania 16428  
*Attorney:* Robert J. Jeffery, Esq., Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**LANGOWSKI, HENRY, deceased**

Late of the Township of Greene, County of Erie and Commonwealth of Pennsylvania  
*Administratrix C.T.A.:* Eleanor Gleichsner, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508  
*Attorney:* Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**LINK, LEO J., deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executor:* Robert P. Link, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508  
*Attorney:* Scott L. Wallen, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**LONG, JOHN L., deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania  
*Administrator:* Jonathan C. Long  
*Attorney:* David J. Rhodes, Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

**McGINTY, THOMAS M., deceased**

Late of Edinboro, Washington Township, County of Erie, Commonwealth of Pennsylvania  
*Administrator:* Melanie McGinty, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
*Attorney:* Scott L. Wallen, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**MIENTKIEWICZ, DEAN C., deceased**

Late of the Township of Edinboro Borough, County of Erie, and Commonwealth of Pennsylvania  
*Executrix:* Tina M. Mientkiewicz  
*Attorney:* James D. McDonald, Jr., Esq., The McDonald Group, L.L.P., P.O. Box 1757, Erie, PA 16507-1757

**MORROW, ROBERT H., SR.,  
deceased**

Late of the Township of Harborcreek  
*Executrix:* Susan P. Resinger, c/o James S. Bryan, Esq., 11 Park Street, North East, PA 16428  
*Attorney:* James S. Bryan, Esq., Knox McLaughlin Gornall & Sennett, P.C., 11 Park Street, North East, PA 16428

**MURRAY, ERIC RYAN,  
deceased**

Late of the Township of Harborcreek, County of Erie and State of Pennsylvania  
*Administratrix:* Mary Bennett  
*Attorney:* Philip B. Friedman, Esquire, Conner Riley Friedman & Weichler, 17 West 10th Street, Erie, Pennsylvania 16501

**NIESZIELSKI, MARY ANN,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executrix:* Kimberly A. Lucas, c/o 504 State Street, 3rd Floor, Erie, PA 16501  
*Attorney:* Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

**REEDY, VINETTE MARIE,  
deceased**

Late of Wayne Township, County of Erie, Commonwealth of PA  
*Administrator:* James J. Goldner, II, c/o Joan M. Fairchild, Esq., 132 N. Center St., Corry, PA 16407  
*Attorney:* Joan M. Fairchild, Esq., 132 N. Center St., Corry, PA 16407

**RICCI, MICHAEL L., JR.,  
deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania  
*Executrix:* Michael L. Ricci, Sr., and Diane Ricci, c/o Acquista Law Office, 2525 West 26th Street, Erie, PA 16506  
*Attorney:* Lee S. Acquista, Esquire, Acquista Law Office, 2525 West 26th Street, Erie, PA 16506

**ROBIE, ELEANOR,  
deceased**

Late of Millcreek Township, County of Erie, and Commonwealth of Pennsylvania  
*Executrix:* William K. Robie, 7202 Cherry Laurel Drive, Port Richey, FL 34668  
*Attorney:* Thomas S. Kubinski, Esquire, The Gideon Ball House, 135 East 6th Street, Erie, PA 16501

**WOOD, ROBERT W.,  
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania  
*Co-Executors:* Robert Hamilton Wood, 9935 Dominion Drive South, Mobile, AL 36695 and Betty Wood Cornman, 741 East Grandview Boulevard, Erie, PA 16504  
*Attorneys:* MacDonald, Illig, Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**SECOND PUBLICATION**

**AYMONG, ANGELA ROSE,  
a/k/a ANGELA R. AYMONG,  
a/k/a ANGELA AYMONG,  
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania  
*Executrix:* Nicole M. Keller, 5919 Greenbriar Drive, Fairview, PA 16415  
*Attorney:* Ronald J. Susmarski, Esq., 4030-36 West Lake Road, Erie, PA 16505

**BARTOSZEK, HELEN,  
deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania  
*Executrix:* Joan N. Andrews, 2159 Indigo Creek Avenue, Henderson, NV 89012  
*Attorney:* Thomas S. Kubinski, Esquire, The Gideon Ball House, 135 East 6th Street, Erie, PA 16501

**BROWN, FRED W., JR., a/k/a  
FRED WILLIAM BROWN, JR.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executor:* James M. Brown  
*Attorney:* David J. Rhodes, Esquire, Elderkin, Martin, Kelly & Messina, 150 East 8th Street, Erie, PA 16501

**CLEMENTE, GENE G.,  
deceased**

Late of the City of Erie, County of Erie  
*Administrator:* Peter Clemente, 949 West 27th Street, Erie, PA 16508  
*Attorney:* Barbara J. Welton, Esquire, 2530 Village Common Drive, Ste B, Erie, PA 16506

**GREISHAW, MARION J.,  
deceased**

Late of the City of Erie, County of Erie  
*Executrix:* Suzan M. Glenn, 1020 Western Lane, Erie, Pennsylvania 16505  
*Attorney:* W. Richard Cowell, Esquire, Carney & Good, 254 West Sixth Street, Erie, Pennsylvania 16507

**GRUCZA, WILLIAM E.,  
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Anne Marie Mazza, 1137 West 8th Street, Erie, PA 16502  
*Attorney:* John E. Gomolchak, Esq., 3854 Walker Blvd., Erie, PA 16509

**HAYNES, RODNEY K.,  
deceased**

Late of Harborcreek Township, Erie, Pennsylvania  
*Executrix:* Suzanne M. Haynes, c/o Thomas C. Hoffman II, Esq., 120 West 10th Street, Erie, PA 16501  
*Attorney:* Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**HIXENBAUGH, THOMAS R.,  
deceased**

Late of the City of Erie, County of Erie  
*Executor:* Jeffrey Charles Hixenbaugh, 5710 Glenwood Park Avenue, Erie, Pennsylvania 16509  
*Attorney:* John Mir, Esquire, 2530 Village Common Drive, Suite B, Erie, Pennsylvania 16506

**HOGE, RALPH J.,  
deceased**

Late of the Township of Summit, County of Erie and Commonwealth of Pennsylvania  
*Administratrix D.B.N.:* Darlene M. Vlahos, Esquire c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508  
*Attorney:* Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**HOLL, JANE ELLEN,  
deceased**

Late of the City of Erie  
*Administratrix:* Lisa Ann Norton, 2621 Bird Drive, Erie, PA 16510  
*Attorney:* Jerome C. Wegley, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**IRISH, JANET B.,  
deceased**

Late of the City of Corry, County of Erie, Commonwealth of Pennsylvania  
*Co-Executors:* Barry J. Warnshuis and Candace D. Wells, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407  
*Attorney:* Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**JIMENEZ, HECTOR S.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Administratrix:* Donna M. Comelius  
*Attorney:* Stephen H. Hutzelman, Esq., 305 West Sixth Street, Erie, PA 16507

**STRENIO, DIANNA M.,  
deceased**

Late of the County of Erie, Commonwealth of Pennsylvania  
*Administrator:* Thomas S. Talarico, Esquire, 558 West Sixth Street, Erie, PA 16507  
*Attorney:* Thomas S. Talarico, Esquire, Talarico & Niebauer, 558 West Sixth St., Erie, PA 16507

**TACCONI, GENEVIEVE T.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Co-Executors:* Anthony S. Alecci and Anthony Tacconi, c/o 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508  
*Attorney:* Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**TYSON, HAROLD KENNETH,  
a/k/a HAROLD K. TYSON,  
deceased**

Late of the Township of Fairview, County of Erie and Commonwealth of Pennsylvania  
*Executrix:* Carol A. Pirrello, c/o Pittsburgh Avenue, Erie, Pennsylvania 16508  
*Attorney:* Darlene M. Vlahos, Esquire, 3305 Pittsburgh Avenue, Erie, Pennsylvania 16508

**THIRD PUBLICATION**

**BROOKS, DAVID L.,  
deceased**

Late of Erie County  
*Executor:* Bryan Brooks  
*Attorney:* Stanley G. Berlin, Esquire, Shapira, Hutzelman, Berlin, Ely, Smith and Walsh, 305 West 6th Street, Erie, PA 16507

**BROOKS, STEVEN T.,  
deceased**

Late of Erie County  
*Executor:* Bryan Brooks  
*Attorney:* Stanley G. Berlin, Esquire, Shapira, Hutzelman, Berlin, Ely, Smith and Walsh, 305 West 6th Street, Erie, PA 16507

**COLEGRANDE, PAMELA J.,  
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania  
*Administratrix:* Frances Colegrande, 2166 South Manor Drive, Erie, PA 16505  
*Attorney:* Edwin W. Smith, Esq., Shapira, Hutzelman, Berlin, Ely, Smith & Walsh, 305 West Sixth Street, Erie, PA 16507

**COOK, ANNAGRACE EILEEN,  
a/k/a ANNAGRACE E. COOK,  
deceased**

Late of Erie, Pennsylvania  
*Executor:* Kevin V. Cook, 9940 North Clear Fork Road, Prescott, AZ 86305  
*Attorney:* Todd A. Fuller, Brenlove & Fuller, LLC, P.O. Box 36, 401 Washington Avenue, Bridgeville, PA 15017

**ELLETSON, GERALDINE N.,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Administrator:* John S. Stein Sr., c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507  
*Attorneys:* Marsh, Spaeder, Baur, Spaeder & Schaaf, LLP, Attorneys-at-Law, Suite 300, 300 State Street, Erie, PA 16507

**JACKSON, CAROL D.,  
deceased**

Late of the City of Erie  
*Co-Executors:* Daniel Peplinski and Sharon Peplinski  
*Attorney:* Lawrence L. Kinter, Esquire, 3820 Liberty Street, Erie, PA 16509

**MARSHALL, WILMA M.,  
deceased**

Late of the City of Erie, Erie County, Pennsylvania  
*Executor:* Richard E. Marshall, c/o 3209 East Avenue, Erie, PA 16504  
*Attorney:* Cathy M. Lojewski, Esq., 3209 East Avenue, Erie, PA 16504

**MIKOLAJCZAK, MICHAEL R.,  
deceased**

Late of the City of Erie, Erie County, Pennsylvania  
*Executor:* Michele L. Nowacki, 158 Shanor Heights, Butler, PA 16001  
*Attorney:* Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., , 120 West Tenth Street, Erie, PA 16501

**MITCHELL, RICHARD L.,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Administrator:* Christian A. Mitchell  
*Attorney:* Stephen H. Hutzelman, Esq., 305 West Sixth Street, Erie, PA 16507

**MOCZULSKI, MARY M.,  
deceased**

Late of the City of Erie, Erie County, Pennsylvania  
*Executrix:* Diane M. Sanfilippo, c/o 3209 East Avenue, Erie, PA 16504  
*Attorney:* Cathy M. Lojewski, Esq., 3209 East Avenue, Erie, PA 16504

**MURPHY, DOROTHY M.,  
deceased**

Late of the City of Erie, Erie County, Pennsylvania  
*Executrix:* Marilyn A. Allegretto, c/o Thomas A. Tupitza, Esq., 120 W. 10th St., Erie, PA 16501  
*Attorney:* Thomas A. Tupitza, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**SCHLOSSER, CALVIN PAUL,  
deceased**

Late of the Township of Millcreek, County of Erie, and Commonwealth of Pennsylvania  
*Executor:* John C. Schlosser, 4024 Donahue Road, Erie, PA 16506  
*Attorney:* Gregory P. Sesler, Esquire, Sesler and Sesler, 109 East Tenth Street, Erie, PA 16501

**SIMONETTI, FRANCIS R.,  
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania  
*Executor:* Ronald R. Simonetti, 871 West 50th Street, Erie, PA 16509  
*Attorney:* Timothy D. McNair, Esquire, Law Offices of Timothy D. McNair, 821 State Street, Erie, PA 16501

**SWANEY, RITA,  
deceased**

Late of Millcreek Township, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Carol McCall, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508  
*Attorney:* Scott L. Wallen, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**SZCZESNY, KATHERINE,  
deceased**

Late of Millcreek Township, Erie County, Pennsylvania  
*Administrator:* Walter Nesgoda, c/o Edward Orton, 33 East Main Street, North East, Pennsylvania 16428  
*Attorney:* Edward Orton, Esq., Orton & Jeffery, P.C., 33 East Main Street, North East, Pennsylvania 16428

**WAISLEY, MERNA V.,  
deceased**

Late of the Township of McKean, County of Erie, Commonwealth of Pennsylvania  
*Executor:* Bernard H. Teodorski, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
*Attorney:* James F. Toohey, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**WEBB, CAROLYN O.,  
deceased**

Late of the Township of Union, County of Erie, Commonwealth of Pennsylvania  
*Co-Executors:* Kenyon D. Webb and Keith J. Webb, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407  
*Attorney:* Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

Notice is hereby given of the administration of the Trust set forth below. All persons having claims or demands against the decedent are requested to make known the same and all persons indebted to said decedent are requested to make payment without delay to the trustee named below.

**PIPOLY, RUTH V.,  
deceased**

Late of the Township of Millcreek, County of Erie, and Commonwealth of Pennsylvania  
*Trustee:* Terrence J. Pipoly, 11942 Dynamite Lane, Kuna, ID 83634  
*Attorneys:* MacDonald, Illig, Jones & Britton, LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

## CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

**James L. Moran** ----- (814) 838-3255  
West Ridge Commons ----- (f) (814) 838-3256  
3939 West Ridge Road, Suite B-27  
Erie, PA 16506 ----- [jimlmoran@yahoo.com](mailto:jimlmoran@yahoo.com)

**David A. Schroeder** ----- (814) 461-7876  
1001 State Street, Suite 1429 ----- (f) (866) 756-0133  
Erie, PA 16501 ----- [counsel99@aol.com](mailto:counsel99@aol.com)

### *Case #11: Legal Records vs. Water Damage*

This winter, a water main break, frozen pipes or melting ice could severely damage important records and interrupt business operations.

Business Records Management can help restore water-damaged documents and turn would-be losses back into assets. BRM is also equipped to handle your needs with Document Storage, Certified Shredding and Email Archiving services.

Contact BRM and mention the *Erie County Legal Journal* for a free assessment of your practice.

***Verdict: Choose BRM!***



## BUSINESS RECORDS MANAGEMENT



823 East 8<sup>th</sup> Street, Erie, PA 16503

**877-DIAL-BRM**

[www.businessrecords.com](http://www.businessrecords.com)



# Erie County Bar Association

## Videoconferencing Services

**ECBA** ——— Your connection to the world of communication.

### WHAT IS VIDEOCONFERENCING?

Technology that allows you to conduct business face-to-face with others who are in a different city, state or country - as if they were in the room with you. The audio and video are crisp, clear and immediate.

### WHAT ARE THE BENEFITS OF VIDEOCONFERENCING?

Saving time and money while adding convenience. For example, a two hour meeting with someone in Denver, Colorado takes two hours by videoconference. Traveling to and from Denver takes at least 24 hours, if not more, along with the expense of air fare and hotel accommodations.

Videoconferencing also eliminates time away from family as well as catching up on work, phone calls, and E-mail when you return - thus, eliminating stress and increasing productivity.

### WHO MAY USE THIS SERVICE?

**Rates**, including scheduling, location of distant site, set up, testing, room rental, and conference

Members of the Erie County Bar Association should contact the ECBA office regarding member rates.

For the Public, the Erie County Bar Association charges \$215/hour during business hours of Monday-Friday, 8:30 a.m. - 5:00 p.m. Rates are \$270/hour for conferences within 2 hours before or 4 hours after regular business hours. These rates are for the ECBA receiving a videoconference call initiated by the another site. If we initiate the call, add \$75/hour.

*Optional services/fees:*

\$25 - VHS tape of conference

\$25/hour - use of conference room before and/or after videoconference

It is available to our members and to the business community.

### WHAT CAN VIDEOCONFERENCING BE USED FOR?

Depositions, examination of expert witnesses, job interviews, business meetings and seminars are common examples.

### HOW DO I FIND A VIDEOCONFERENCING SITE IN THE CITY WHERE THE OTHER PARTY IS LOCATED?

The ECBA will do this for you, and can provide you with that site's hourly rate.

### DO I HAVE TO OPERATE ANY EQUIPMENT DURING A VIDEOCONFERENCE?

No. The ECBA staff will handle everything.

---

*Contact the Erie County Bar Association for further details or to schedule a demonstration. (814) 459-3111 or [admin@eriebar.com](mailto:admin@eriebar.com)*

For over 50 years, **USI Affinity** has been administering insurance and financial programs to attorneys and other professionals.

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 **DENNIS & ASSOCIATES, INC**  
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