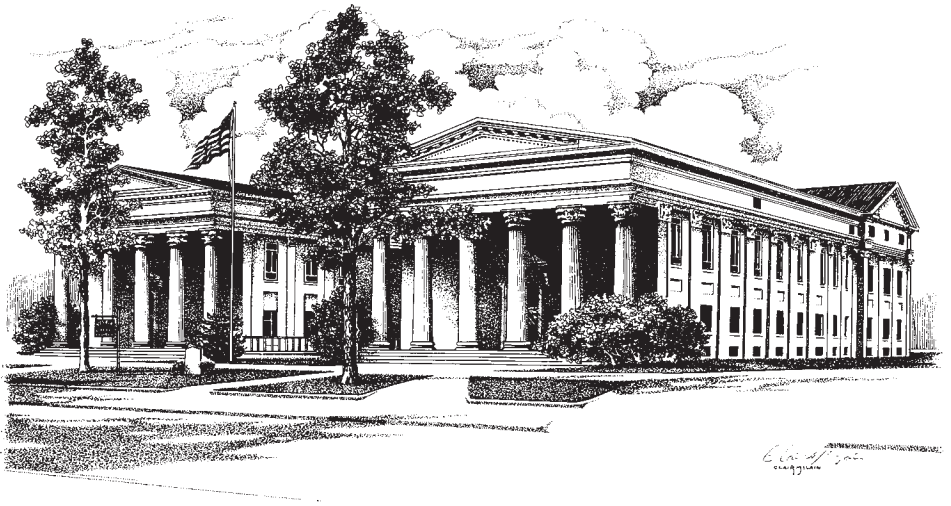


Erie
County
Legal
Journal

June 7, 2019

Vol. 102 No. 23



In the United States District Court for the Western District of Pennsylvania
Martonik v. United of Omaha Life Insurance Company

Erie County Legal Journal

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

Managing Editor: Megan E. Black

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Erie County Bar Association

Calendar of Events and Seminars

FRIDAY, JUNE 14, 2019

Flag Day Holiday
Erie County Courthouse Closed

FRIDAY, JUNE 14, 2019

AKT Kid Konnection Event
8:00 a.m. - 3:45 p.m.
Cleveland

FRIDAY, JUNE 14, 2019

Law Day Committee Meeting
Noon
ECBA Headquarters

TUESDAY, JUNE 18, 2019

Estates Leadership Committee Meeting
Noon
The Will J. Schaaf & Mary B. Schaaf Education Center

MONDAY, JUNE 24, 2019

Judicial Committee Meeting
Noon
ECBA Headquarters

TUESDAY, JUNE 25, 2019

Family Law Section Meeting
with Attorney Marshall Piccinini
Noon
The Will J. Schaaf & Mary B. Schaaf Education Center

WEDNESDAY, JUNE 26, 2019

ECBA Live Morning Seminar
Sealing Criminal Records Through the Clean Slate Law
The Will J. Schaaf & Mary B. Schaaf Education Center
8:00 a.m. - Registration
8:30 a.m. - 10:30 a.m. - Seminar
\$94 (ECBA members/their non-attorney staff)
\$120 (non-members)
2 hours substantive

WEDNESDAY, JUNE 26, 2019

Senior Lawyers Division Event
Chautauqua Institution Lecture Series
The Death and Life of the Great Lakes
Chautauqua Institution Amphitheater
10:45 a.m.
(9:15 a.m. breakfast at Athanaeum Hotel
on Chautauqua's grounds - cost on your own;
Lunch immediately following lecture
at Jim & Alison Steadman's cottage)

THURSDAY, JUNE 27, 2019

AKT Kid Konnection Event
5:30 p.m. - 7:00 p.m.
Get Air

THURSDAY, JUNE 27, 2019

Defense Bar Meeting
4:00 p.m.
ECBA Headquarters



Erie County Bar
Association



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To view PBI seminars visit the events calendar
on the ECBA website
<http://www.eriebar.com/public-calendar>

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

**MOTION COURT DATES FOR JUDGE THOMAS P. AGRESTI
ERIE AND PITTSBURGH DIVISION CASES**

JUNE 2019 NOTICE

The following is a list of *June 2019, July 2019, and August 2019* motion court dates and times to be used for the scheduling of motions pursuant to *Local Rule 9013-5(a)* before **Judge Thomas P. Agresti** in the Erie and Pittsburgh Divisions of the Court. The use of these dates for scheduling motions consistent with the requirements of *Local Rule 9013-5(a)* and Judge Agresti's *Procedure B(1)-(3)* summarized below and on Judge Agresti's webpage at: www.pawb.uscourts.gov. ***The motions will be heard in the Erie Bankruptcy Courtroom, U.S. Courthouse, 17 South Park Row, Erie, PA 16501 and Courtroom C, 54th Floor, U.S. Steel Building, 600 Grant Street, Pittsburgh, PA 15219.***

Counsel for a moving party shall select one of the following dates and times for matters subject to the "self-scheduling" provisions of the *Local Bankruptcy Rules* and the Judge's procedures, insert same on the notice of hearing for the motion, and serve the notice on all respondents, trustee(s) and parties in interest. Where a particular type of motion is listed at a designated time, filers shall utilize that time, *only*, for the indicated motions(s) *unless*: (a) special arrangements have been approved in advance by the Court, or, (b) another motion in the same bankruptcy case has already been set for hearing at a different time and the moving party chooses to use the same date and time as the previously scheduled matter.

SCHEDULE CHAPTER 13 MOTIONS ON:

Select the following times, EXCEPT for the specific matters to be scheduled at 11:30 a.m.:

Wednesday, June 12, 2019	9:30 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, July 10, 2019	10:00 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, August 7, 2019	10:30 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, August 28, 2019	11:00 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
	11:30 a.m.:	Ch. 13 Sale, Financing and Extend/Impose Stay

NOTE: Chapter 12 matters are now scheduled on Ch. 11/7 Motion Court days, only.

SCHEDULE CHAPTERS 12, 11 & 7 MOTIONS ON:

Select the following times, EXCEPT for Ch. 7 Motions to Extend/Impose Stay scheduled only at 11:00 a.m., and, all sale motions and all Ch. 12 matters which are only to be scheduled at 11:30 a.m.:

Thursday, June 20, 2019	9:30 a.m.:	Open for all Erie & Pittsburgh Ch. 11 matters
Thursday, July 18, 2019	10:00 a.m.:	Open for all Erie & Pittsburgh Ch. 11 matters
Thursday, August 1, 2019	10:30 a.m.:	Open for all Erie & Pittsburgh Ch. 7 matters
Thursday, August 22, 2019	11:00 a.m.:	Open for all Erie & Pittsburgh Ch. 7 matters, including all Ch. 7 Motions to Extend/Impose Stay
	11:30 a.m.:	Ch. 11 and 7 Sale Motions and all Ch. 12 matters at this time, only

ALL OF THE ABOVE DATES ARE SUBJECT TO REVISION. Please check each month for any changes in the dates that have been published previously. THIS SCHEDULE CAN BE VIEWED ON PACER (Public Access to Court Electronic Records) and on the Court's Web Site (www.pawb.uscourts.gov).

Michael R. Rhodes
Clerk of Court

June 7

LAW CLERK/JUDGE’S SECRETARY/TIPSTAFF POSITIONS

Judge of the Court of Common Pleas seeks a responsible law school graduate for a challenging clerk position. Job emphasis will be on civil and criminal matters requiring research and opinion drafting. The successful candidate must be able to work independently and demonstrate sound judgment and high professional responsibility. Excellent research and writing skills required, as well as thorough knowledge of applicable legal concepts. Experience in practicing law or in another professional field is desirable.

The Judge’s Secretary Position duties include but are not limited to managing the daily functions of a judge’s office, types orders and opinions, tracks judge’s schedule, etc. Knowledge of Microsoft Word is necessary. Secretarial experience required, legal experience preferred.

The tipstaff position requires organizational skills and the ability to interact with and direct the public and court related personnel in a courteous, responsible and efficient manner. Some supervised clerical duties, including but not limited to filing, and document processing. Flexible scheduling may be required.

All interested applicants can email their resume to Robert Catalde, Esquire, District Court Administrator, at rcatalde@eriecountypa.gov.

Deadline to apply is June 21, 2019

May 31 and June 7, 14

EDITOR’S NOTE: ALL NOTICES FOR THE **JUNE 28 ISSUE OF THE *ERIE COUNTY LEGAL JOURNAL* MUST BE RECEIVED AT THE ERIE COUNTY BAR ASSOCIATION OFFICE BY 3:00 P.M. ON **TUESDAY, JUNE 18.****

KRISTIN MARTONIK, Plaintiff

v.

UNITED OF OMAHA LIFE INSURANCE COMPANY, Defendant

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

Case No. 1:17-cv-00306

OPINION

I. Recommendation

It is respectfully recommended that Plaintiff Kristin Martonik’s Motion for Summary Judgment [ECF No. 22] be GRANTED and Defendant United of Omaha Life Insurance Company’s Motion for Summary Judgment [ECF No. 25] be DENIED.

II. Report

A. Introduction

Plaintiff Kristin Martonik (Martonik) commenced this action against Defendant United of Omaha Life Insurance Company (United) pursuant to § 502(a)(1)(b) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a)(1)(b). Her complaint alleges that United wrongfully denied her claim for long-term disability (LTD) benefits under an employee benefit plan sponsored by her employer, Fransmart, LLC (Fransmart). The ultimate issue before the Court is whether United abused its discretion as the benefit plan administrator when it determined that Martonik was not “disabled” from her regular occupation within the meaning of the plan and denied her claim for LTD benefits for the period June 7, 2016 through May 7, 2018. ECF No. 27 ¶ 3; ECF No. 29 ¶ 3. The parties’ cross-motions for summary judgment are pending before the Court and appropriate for simultaneous disposition. *See Swanberg v. PNC Fin. Servs. Grp., Inc.* 2016 WL 4493684, at *10 (W.D. Pa. Aug. 26, 2016).

B. Factual Background¹

1. Martonik’s Employment

Fransmart, a franchise development company, employed Martonik as a Vice President of Marketing. ECF No. 27 ¶ 4. According to a four-page job description issued by Fransmart, Martonik’s “global responsibilities” and “job functions” consisted of “[m]anag[ing] and direct[ing] the marketing process through strategic planning of advertising and PR opportunities to drive quality lead generation,” including by “[p]artner[ing] with new and existing clients in a consultative capacity,” “[g]enerat[ing] more and better qualified leads for the sales team,” and “[e]nhanc[ing] Fransmart’s position as a franchise/multi-use development industry leader.” ECF No. 24 ¶ 2; ECF No. 38 ¶ 2; ECF No. 26-2, p. 55-57.

2. United’s Short-Term and Long-Term Disability Policies

United issued both a group short term disability policy, policy no. GUG-460A (STD Policy), and a long-term disability policy, policy no. GLTD-460A (LTD Policy), to Fransmart. Each policy provided financial protection to covered employees of Fransmart by paying portions of their salaries during periods of “disability.” ECF No. 27 ¶ 9. The LTD Policy,

¹ Relevant factual background is taken primarily from the parties’ Concise Statements of Material Facts and their responses and exhibits thereto. ECF No. 24; ECF No. 27; ECF No. 29; ECF No. 31. Disputed facts are noted.

which is the policy at issue in the present action, defines “Disability” and “Disabled” as follows:

Disability and **Disabled** means that because of an Injury or Sickness, a significant change in Your [mental or physical functional capacity has occurred in which You are:

(a) *prevented from performing at least one of the Material Duties of Your Regular Occupation on a part-time or full-time basis*, except if You are a pilot, You are unable to perform all the Material Duties of any Gainful Occupation for which You are reasonably fitted by training, education or experience; and

(b) unable to generate Current Earnings which exceed 80% of Your Basic Monthly Earnings due to that same Injury or Sickness...

Id. ¶ 12 (emphasis supplied).²

The LTD Policy defines “Regular Occupation” as:

Regular Occupation means the occupation You are routinely performing when Your Disability begins. *Your Regular Occupation is not limited to the specific position You held with the Policyholder, but will instead be considered to be a similar position or activity based on job descriptions included in the most current volume of the U.S. department of Labor Dictionary of Occupational Titles (DOT).* We have the right, in Our discretion, to substitute or replace the DOT with a service or other information of comparable purpose, with or without notice. To determine Your Regular Occupation, We will look at Your occupation as it is normally performed in the national economy, instead of how work tasks are performed for a specific employer, at a specific location, or in a specific area or region.

Id. ¶ 13 (emphasis supplied).

The LTD Policy defines “Material Duties” as:

Material Duties means the essential tasks, functions, and operations relating to an occupation that cannot be reasonably omitted or modified. In no event will We consider working an average of more than 40 hours per week in itself to be a part of Material Duties.

² The definition of “disability” and “disabled” under the STD Policy is identical in all material respects except that the STD Policy refers to “Material Duties of Your Regular Job” rather than “Material Duties of Your Regular Occupation,” and the STD Policy omits the “pilot” exception. Both Martonik and United have focused their arguments on subparagraph (a) of the definition of disability, and neither has devoted significant attention to subparagraph (b) of the definition.

ECF No. 27-3, pp. 41-42.

The LTD Policy designates United as the “plan administrator” with both the authority to determine eligibility for benefits and the responsibility to pay benefits to employees whose claims are approved. The LTD Policy grants United, as plan administrator, discretionary authority to determine eligibility for benefits and interpret all terms listed therein:

Authority to Interpret Policy

The Policyholder [Fransmart] has delegated to US [United] the discretion to determine eligibility for benefits and to construe and interpret all terms and provisions of the Policy. Benefits under the Policy will be paid only if WE [United] decide, after exercising Our [United’s] discretion, that the Insured Person is entitled to them. In making any decision, We may rely on the accuracy and completeness of any information furnished by the Policyholder, an Insured Person or any other third parties.

ECF No. 27-3, pp. 26, 30.

The LTD Policy provides a maximum benefit eligibility of two years for a disability arising out of a “Mental Disorder.”³ ECF No. 27 ¶ 2.

3. Martonik’s Receipt of Short-Term Disability Benefits

On February 9, 2016, Martonik applied for short term disability benefits under the STD Policy based on Mental Disorders that she experienced following a severe infection that required her hospitalization from November 4, 2015 through November 10, 2015.⁴ ECF No. 26-4, p. 227-230; 290-91. In support of her application, Martonik submitted an “Attending Physicians Statement” completed by her primary care physician, Dr. Navdeep Uppal (“Dr. Uppal”), dated February 4, 2016. *Id.* In the Statement, Dr. Uppal listed Martonik’s diagnoses as c-diff, acute reaction to stress, and post-traumatic stress disorder (PTSD). ECF No. 26-4, p. 290. Dr. Uppal described Martonik’s symptoms as anergia, difficulty concentrating, and anhedonia.⁵ *Id.* As Martonik’s functional limitations and restrictions, Dr. Uppal listed the following: inability to concentrate, inability to perform work at a constant pace, psychomotor retardation, and issues with complex decision making. *Id.* Martonik’s last day of active employment prior to submitting her application for STD benefits was February 7, 2016. ECF No. 24 ¶ 1; ECF No. 27 ¶ 23.

On March 21, 2016, United approved Martonik’s STD claim with benefits to commence as

³ The LTD Policy defines “Mental Disorder” as “any condition or disease, regardless of cause, listed in the most recent edition of the International Classification of Diseases as a Mental Disorder.”

⁴ Medical records describe the infection as a severe clostridium difficile or “C. diff” infection. The American Heritage Medical Dictionary defines clostridium difficile as a “bacterium that causes an infectious form of severe diarrhea especially in elderly people on antibiotic therapy and in hospitalized patients.” The Court may take judicial notice of the meaning of medical terms, abbreviations and acronyms that are readily verifiable from online dictionaries and other sources. *Bishop v. Wexford Health Sources, Inc.*, 2019 WL 500050, at *2 (W.D. Pa. Feb. 8, 2019)(citations omitted); FED. R. EVID. 201(b)-(c)(1) (noting that the court “may take judicial notice on its own.”)

⁵ The Merriam-Webster dictionary defines “anergia” as a “lack of energy” and “anhedonia” as “a psychological condition characterized by inability to experience pleasure in normally pleasurable acts.” The Merriam-Webster dictionary adds that “anergia and anhedonia are “among the negative symptoms common to schizophrenia and depression.” <https://www.merriam-webster.com/medical/anergia>; <https://www.merriam-webster.com/dictionary/anhedonia>.

of February 14, 2016, and to continue through April 7, 2016. ECF No. 27 ¶ 20. On April 7, 2016, United requested additional medical records from Dr. Uppal and Martonik's psychologist, Leslie Rhinehart, PsyD. *Id.* United received those records on April 20, 2016. *Id.* ¶ 22. Thereafter, United extended Martonik's STD benefits through May 7, 2016. *Id.* ¶ 23.

Martonik returned to work at Fransmart on May 2, 2016, and she continued to work until May 24, 2016, when she departed after approximately one hour. ECF No. 27 ¶ 23-25; ECF No. 24 ¶ 23-25. The parties dispute whether Dr. Uppal advised Martonik to leave work that day. *Id.* On June 28, 2016, Martonik followed up with Dr. Uppal, who recorded that she was not able to concentrate or perform work on a constant basis and had issues with complex decision making, memory, and time management. ECF No. 26-5, p. 345. Dr. Uppal's records from the June 28, 2016 appointment are the last of his records included in the administrative record before this Court. By correspondence dated July 5, 2016, United notified Martonik that it had approved her claim for STD benefits to the maximum term authorized under the STD Policy, which ended on June 6, 2016. *Id.* ¶ 29.

4. Consideration of Martonik's claim for LTD Benefits

While not communicated to Martonik until July 5, 2016, United's approval of her STD benefits through June 6, 2016, also triggered Martonik's eligibility for consideration of a claim for benefits under the LTD Policy effective as of June 7, 2016. ECF No. 27, ¶ 32; ECF No. 29, ¶ 32. On July 2, 2016, United interviewed Martonik concerning her application for LTD benefits. ECF No. 27 ¶ 34. Although the parties disagree whether United's typed notes from the interview are complete, ECF Nos. 27, 29, ¶¶ 34-38, they do agree, as recorded in the notes, that Martonik acknowledged during the interview that she was capable of driving, performing household chores, and taking care of her nine-year-old daughter and was able to work from home, that she described her job as stressful and her workplace as "toxic," and that she asserted that she had heart palpitations from the stress. ECF No. 27, 29, ¶¶ 34-37.

On July 6, 2016, Lisa Young, the claims analyst assigned by United to review Martonik's LTD claim, notified Martonik that she had initiated a review of her medical documentation as part of United's consideration of her claim. Young also advised Martonik that she had requested additional information from certain sources, including a request to Dr. Uppal for his records from April 1, 2016 through the current date. Dr. Uppal provided the requested treatment records, including his final treatment note of June 28, 2016. On August 23, 2016, United received records from Martonik's psychologist, Leslie Rhinehart, PsyD., which records included handwritten psychotherapy treatment notes regarding Martonik's PTSD, acute stress disorder, and depressive disorder. ECF No. 29 ¶ 42; ECF No. 26-7, p. 521-525.

Young forwarded the records received from Dr. Uppal and Dr. Rhinehart to an unaffiliated third-party vendor, University Disability Consortium, which assigned Leanne Green, RN, to conduct an independent review and analysis of the records in connection with Martonik's LTD benefits claim. The review did not consider the handwritten notes received from Dr. Rhinehart because those notes were largely illegible. ECF No. 29 ¶ 42; ECF No. 26-7, p. 521-525. Nurse Green issued her report on September 7, 2016. *Id.* ¶ 40-42. Based upon her review of the available records, Nurse Green concluded that "there does not appear to be exam findings to substantiate an impairment from working from 2/7/16 forward." ECF No. 26-7, p. 73. She also observed that the "review does not identify any restrictions and limitations from 2/7/16 forward" and that "[e]xamination information has revealed no significant nor

sustained functional impairment.” *Id.* at p. 74; ECF No. 27 ¶ 41.

By letter dated November 21, 2016, United informed Martonik that it was unable to approve her claim for LTD benefits because her reported symptoms and clinical findings failed to document sustained functional impairments, restrictions, or limitations that precluded her from performing her regular occupation. *Id.* ¶ 48; ECF No. 29 ¶ 48. The letter noted that United had sent a “letter to Dr. Uppal on October 24, 2016, providing the results of [United’s] review and requesting additional medical information and subsequent clarification regarding the basis for any ongoing restrictions and limitations” and advising that “if he disagreed with [United’s] review, he must provide specific symptoms, physical examination findings and diagnostic tests to support the basis for any ongoing restrictions and limitations.” ECF No. 26-7, p. 22. United’s benefits denial letter of November 21, 2016 further noted that Dr. Uppal had not responded to United’s invitation to provide additional information. *Id.* at 23. The letter also advised Martonik regarding her right to appeal the denial of her claim and her right to submit “any additional documentation, records or other information in support of [her] appeal.” *Id.*

Martonik appealed United’s decision on May 9, 2017, and in support of her appeal, she attached a report from Dr. Rhinehart, dated April 24, 2017. ECF No. 27, ¶¶ 49-50. The report stated that Martonik had attended 29 individual sessions of psychotherapy from February 2016 to the date of the letter and detailed the following history and clinical findings:

- Martonik showed fatigue, impaired sleep, and depression. ECF No. 26-5, p. 334.
- Her symptoms included flashbacks, hyper-reactivity, irritability, and distrust which interfered with her ability to function in interpersonal relationships. *Id.*
- “Given the complex decision-making, frequent travel and expectations for high levels of output with clients and coworkers in her position as VP of marketing for a firm located in the District of Columbia, it appeared that [Martonik] could not function at that level without further detriment to her health.” *Id.*
- Martonik returned to work in May 2016, but reported that she could not sustain her performance after a period of weeks and had difficulty tolerating the conditions that fueled her anxiety there. ECF No. 26-5, p. 335.
- In the months following Martonik’s return to work, Martonik “had recurring nightmares, jaw clenching with pain, anger, and hypervigilance. Episodically, she experienced heightened sensitivity to her own mortality, and her apprehension about compromised immune functioning was intensified by two episodes of shingles during August to October 2016.” *Id.*
- During the fall of 2016, Martonik explored “developing productive daily routines and interests while shielding herself from potential threats to her health and wellbeing....” *Id.*
- “During November and December of 2016, [Martonik] reported symptoms of increased distress with impaired appetite and hair loss.” *Id.* She focused “[h]er diminished energy level ... on parenting her daughter and exploring possible employment options that would match her current abilities and resources for coping.” *Id.*
- By January of 2017, she found employment in a less stressful and competitive environment that would afford her a more predictable and manageable daily routine. *Id.*
- As of the date of Dr. Rhinehart’s report, Martonik appeared “to have the capacity to

manage her responsibilities in her present employment setting, with fewer periods of intense anxiety or depression during the past several months” and was “showing fewer periods of debilitating symptoms and greater resilience.” *Id.*

As part of its consideration of Martonik’s appeal, United obtained a third-party psychiatric review of Martonik’s claim file by psychiatrist David Dada, an independent consultant. ECF No. 27 ¶¶ 53-54. After reviewing Martonik’s medical records, including those related to the care provided by Dr. Uppal and Dr. Rhinehart, Dr. Dada concluded that the clinical evidence did not support the conclusion that Martonik was functionally impaired. ECF No. 26-6, p. 397. Dr. Dada noted Martonik’s diagnoses of PTSD, generalized anxiety disorder, and depressed mood secondary to multiple stressors. *Id.* However, he also noted a lack of objective assessment of those disorders, which could be used to rate the degree of functional impairment. *Id.* Further, Dr. Dada noted that Martonik’s PTSD would be triggered in the hospital setting, “not on the job.” *Id.*

On July 27, 2017, United informed Martonik, through her attorney, that it upheld its determination that no LTD benefits were payable. ECF No. 27 ¶ 76. Martonik commenced this action against United on November 10, 2017, alleging that it had violated ERISA by denying her application for long-term disability benefits. ECF No. 1. This Court has subject-matter jurisdiction in this case pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(2). The parties filed cross-motions for summary judgment on November 9, 2018. ECF Nos. 22, 35. Those motions are the subject of this report and recommendation.

C. Standard of Review

The entry of summary judgment pursuant to Fed. R. Civ. P. 56(c) is appropriate when no genuine issue of material fact remains in dispute and the movant is entitled to judgment as a matter of law. When making this assessment, the Court reviews the facts “in the light most favorable to the non-moving party.” *Shook v. Avaya, Inc.*, 625 F.3d 69, 72 (3d Cir. 2010) (quoting *Kossler v. Crisanti*, 564 F.3d 181, 186 (3d Cir. 2009)). To support denial of summary judgment, an issue of fact in dispute must be both genuine and material, i.e., one upon which a reasonable fact finder could base a verdict for the non-moving party and one which is essential to establishing the claim. *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986).

The Court reviews a challenge by a participant to a denial of benefits under ERISA § 502(a)(1)(B) under an arbitrary and capricious standard where, as discussed below, the plan grants the administrator discretionary authority to determine eligibility for benefits. *Miller v. Am. Airlines, Inc.*, 632 F.3d 837, 844-45 (3d Cir. 2011) (citing *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 115-16 (2008); *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989)). An administrator’s decision is arbitrary and capricious “if it is ‘without reason, unsupported by substantial evidence or erroneous as a matter of law.’” *Abnathya v. Hoffmann-La Roche, Inc.*, 2 F.3d 40, 45 (3d Cir. 1993) (quotations and citations omitted).

D. Discussion

1. United’s denial of Martonik’s LTD benefits claim is subject to the “abuse of discretion” standard because the Plan grants United discretionary authority to determine eligibility for benefits.

Section 502(a)(1)(B) of ERISA authorizes a plan participant or beneficiary to bring a suit

“to recover benefits due to h[er] under the terms of h[er] plan, to enforce h[er] rights under the terms of the plan, or to clarify h[er] rights to future benefits under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B). The statute, however, does not specify a judicial standard of review in an action challenging a denial of benefits pursuant to § 502(a)(1)(B). *Mitchell v. Eastman Kodak Co.*, 113 F.3d 433, 437 (3d Cir. 1997). The Supreme Court addressed this issue in *Firestone Tire & Rubber Co. v. Bruch*, and held that “a denial of benefits challenged under [ERISA § 502(a)(1)(B), 29 U.S.C.] § 1132(a)(1)(B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.” 489 U.S. at 115. When the plan invests the administrator with discretionary authority, the Court explained, the reviewing court must review the benefit decision for an abuse of discretion. *Id.* The Court of Appeals for the Third Circuit describes this deferential standard of review interchangeably as the “arbitrary and capricious” standard and the “abuse of discretion” standard. *See Howley v. Mellon Fin. Corp.*, 625 F.3d 788, 793 n. 6 (3d Cir. 2010). As these labels describe essentially the identical standard, *id.*, the Court will refer to them as the “arbitrary and capricious” standard for ease of reference. The parties agree that the arbitrary and capricious standard applies in this case.

As noted above, the arbitrary and capricious standard of review permits a court to overturn a decision of the plan administrator only if it is “without reason, unsupported by substantial evidence or erroneous as a matter of law.” *Abnathya v. Hoffmann-La Roche, Inc.*, 2 F.3d 40, 45 (3d Cir. 1993); *see also Ellis v. Hartford Life and Accident Ins. Co.*, 594 F.Supp.2d 564, 566 (E.D.Pa.2009) (a court applying an arbitrary and capricious standard of review is “not free to substitute its judgment for that of the administrator”). This standard, however, is “not without some teeth.” *McDonald v. Western-Southern Life Ins. Co.*, 347 F.3d 161, 172 (6th Cir. 2003). Rather, it is one that frequently requires consideration of “varied and case-specific factors” dictated by the “many different contexts and circumstances” out of which benefit determinations arise. *Estate of Schwing v. The Lilly Health Plan*, 562 F.3d 522, 526 (3d Cir. 2009)(citing *Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 117 (2008)). These factors include “procedural factors underlying the administrator’s decision-making process, as well as structural concerns regarding how the particular ERISA plan was funded...” *Miller*, 632 F.3d at 845.

“[T]he procedural inquiry focuses on how the administrator treated the particular claimant.” *Miller*, 632 F.3d at 845 (citing *Post v. Hartford Ins. Co.*, 501 F.3d 154, 162 (3d Cir. 2007)). Relevant procedural considerations include whether the plan administrator made inconsistent benefit decisions based upon substantially the same medical evidence. *Haisley v. Sedgwick Claims Mgmt. Servs., Inc.*, 776 F. Supp. 2d 33, 36 (W.D. Pa. 2011). A structural concern arises where the plan administrator both determines eligibility for benefits and funds the payment of benefits, thereby creating a conflict of interest that may affect the objectivity of the plan administrator’s benefits decision. *Estate of Schwing*, 562 F.3d at 525. While no one factor is determinative, when the relevant “factors are closely balanced,” anyone factor “will act as a tiebreaker” depending upon its “inherent or case-specific importance.” *Glenn*, 554 U.S. at 117.

In the present case, Martonik argues that United’s determination that she was not disabled within the meaning of the LTD Policy was arbitrary and capricious based on the following factors: (1) a structural conflict of interest arising from United’s status as both

plan administrator and the funding source for the payment of benefits, (2) inconsistent treatment of the same facts by United (i.e. approving benefits under the STD Policy but denying benefits under the LTD Policy; making an initial payment under the LTD Policy pending a decision on that claim), (3) United's reliance on an initial LTD benefits review by a nurse who rejected the opinions of a physician and licensed psychologist, (4) a defect in the notice of initial denial of benefits and appeal procedures under 29 C.F.R. § 2560.503-1(g) (1), (5) failure to have Martonik examined by a psychiatric professional given the nature of her condition, (6) failure to contact Dr. Rhinehart at any time during the initial review of the record on appeal, and (7) internal inconsistencies in the peer review opinion of Dr. Dada.

United disputes each of Martonik's contentions and argues that the record includes no evidence that it was biased in its LTD claim determination, that it objectively considered all of the evidence in the administrative record in reaching its determination, and that no inconsistencies exist in its claim determinations or the report of Dr. Dada. ECF Nos. 26, 33. United emphasizes that none of Martonik's treating physicians opined that she was disabled between June 7, 2016 and May 7, 2018.⁶ ECF No. 26-1, p. 16-21.

The parties agree that the primary question underlying their dispute is whether Martonik was "disabled" within the meaning of the LTD Policy from June 7, 2016 through May 7, 2018. ECF No. 27 ¶ 3; ECF No. 29 ¶ 3. This question, more specifically, turns on whether Martonik had functional limitations that prevented her "from performing at least one of the Material Duties of [her] Regular Occupation." Of course, while these were the inquiries relevant to United's benefits decision, the question presently before this Court is whether United abused its discretion in answering those questions in the negative. The Court will now examine the factors relevant to this question and the respective contentions of the parties.

2. A structural conflict of interest exists based upon United's status as both the plan fiduciary and the source of funding for approved benefits.

Martonik correctly notes that United's status as both the plan fiduciary and the source of funding for approved benefits creates a structural conflict of interest. As the benefits funding source, United's economic interests are served by the denial of benefit claims. This conflict is a factor in determining whether United abused its discretion. *Firestone*, 489 U.S. at 115. Where such a conflict exists, the Court should consider whether "the administrator has taken active steps to reduce potential bias and to promote accuracy, for example, by walling off claims administrators from those interested in firm finances or imposing management checks that penalize inaccurate decision-making irrespective of whom the inaccuracy benefits." *Glenn*, 554 U.S. at 117.

United acknowledges the structural conflict inherent in its dual roles, but argues that

⁶ The Court should not view the absence of the word "disabled" from the records or reports of any medical provider as dispositive of the ultimate issue in this case. The Court believes the more relevant inquiry is whether the records and reports of the treating professionals documented functional limitations that prevented Martonik "from performing at least one of the Material Duties of [her] Regular Occupation." The Court also notes that Dr. Rhinehart's report included the following assessment: "Given the complex decision-making, frequent travel and expectations for high levels of output with clients and coworkers in her position as VP of marketing ... , it appeared that [Martonik] could not function at that level without further detriment to her health." ECF No. 26-5, p. 334.

the record includes no evidence of bias in its decision-making process. ECF No. 33, pp. 3-7. While the Court agrees that the administrative record includes no direct evidence of bias in this case, the Court rejects United's implication that the absence of such evidence renders the conflict of interest irrelevant. By its very nature, the conflict at issue creates an incentive to decide a claim based upon a consideration other than its merits.⁷ Accordingly, while this factor is not dispositive and does not change the Court's standard of review "from deferential to de novo," *Dowling v. Pension Plan for Salaried Employees of Union Pac. Corp. & Affiliates*, 871 F.3d 239, 250 (3d Cir. 2017), it does weigh in favor of Martonik's position.

3. United's prior approval of STD benefits, standing alone, does not support a finding that its denial of LTD benefits was arbitrary and capricious.

In rejecting Martonik's initial LTD benefits claim, United relied upon the review conclusions of Nurse Green, and in rejecting Martonik's appeal, United relied upon the review findings of Dr. Dada. Each of these third-party consultants found that Martonik's medical records did not include objective assessments or findings of functional impairment sufficient to conclude that she was disabled within the meaning of the LTD Policy. Dr. Dada noted, for example:

In all the documentation, by both Drs. Uppal and Rhinehart there were no mental status examinations done. No objective parameters to measure the improvement of her depression or anxiety in term of Hamilton depression scale scores or anxiety scale scores. There was *no documentation* of estimate on the scale of 1 to 10 where the depression and anxiety is, but subjective improvement and worsening of symptoms only documented. There was no global assessment of functioning of claimant.

ECF No. 26-6, p. 397. (emphasis supplied).

Martonik argues that the conclusions of Dr. Dada and Nurse Green and United's denial of LTD benefits based upon those conclusions are inconsistent with United's prior approval of Martonik's STD benefits. Martonik accurately notes that the medical evidence that Dr. Dada and Nurse Green considered in reviewing the LTD benefits claim did not differ materially from the medical evidence United examined in connection with its review of Martonik's STD

⁷ The record indicates that United may have taken steps to reduce the potential for bias in claims determinations. In the November 21, 2016 notice advising Martonik of the denial of her LTD claim, Lisa Young, the assigned claims analyst for United, stated that she had "not had contact with company actuaries or financial personnel and [had] no information with regard to the effect of this claim handling on company financial results." ECF No. 26-7, p. 24. She further stated that she "did not receive, nor was [she] eligible to receive, any financial or other incentive or penalty based on the denial or approval of [Martonik's] claim." *Id.* These statements indicate that United attempted to mitigate the conflict by walling-off claims administrators from those interested in firm finances and, at least, by not incentivizing the denial of claims. The Court notes, however, that it culled these statements from a letter in the record and that they are not supported or developed by affidavit or deposition testimony. Indeed, United did not include these statements in its Concise Statement of Material Facts or argue their significance in its brief. Accordingly, the Court has not considered them on review of the parties' cross-motions for summary judgment. *Mueller v. Twp. of North Strabane*, 2008 WL 307297, *1 n.2 (W.D.Pa. Aug. 1, 2008)(court declines to consider allegations of fact not included concise statements of material fact).

claim.⁸ Martonik is also correct that the definition of “disability” and “disabled” under the STD Policy is nearly identical to the definition of these terms under the LTD Policy. Given this, Martonik asserts that United reversed its position concerning Martonik’s entitlement to benefits without reasonable or rational justification and thereby abused its discretion.

Martonik’s argument fails, however, for two reasons. First, the independent third-party review findings of Nurse Green and Dr. Dada constituted new information that was not considered when United granted Martonik’s claim for STD benefits. *See Swanberg v. PNC Fin. Servs. Grp., Inc.*, 2016 WL 4493684, at *8 (W.D. Pa. Aug. 26, 2016) (holding that plan permissibly relied upon conclusions of third-party reviews of existing medical records when it reversed a decision to award benefits). The record demonstrates that the primary factor that resulted in different outcomes under the two policies is the fact that United’s review of Martonik’s STD claim was conducted solely by an internal claims analyst at United while the initial and appeal decisions concerning the LTD benefits claim included the claims analyst’s receipt and review of input from two independent third-party consultants, Nurse Green and Dr. Dada. The record is clear that Green’s assessment was a material factor in the denial of Martonik’s initial claim and that Dr. Dada’s assessment materially drove United’s rejection of her appeal.⁹ United did not avail itself of its right to independent third-party review of the medical evidence when it considered Martonik’s STD benefits claim, but chose to do so when Martonik submitted her LTD benefits claim. Although the medical records available to United when it approved Martonik’s STD benefits claim were comparable to the medical records it possessed when it denied her LTD benefits claim, the latter decision was informed by third party review. Where an independent third-party medical consultant identifies deficiencies in the medical evidence submitted in support of a claim, a plan administrator may rationally deny the claim, or even reverse a prior decision to award benefits, based upon that assessment. *Id.* Thus, the conclusions of an independent review may constitute new medical evidence and serve as an appropriate basis for denying or even reversing a decision to award benefits. *Id.*

Second, as United correctly points out, its approval of benefits under the STD Policy did not estop it from denying benefits under the LTD Policy. *See, e.g., Hilbert v. Lincoln National Life Ins. Co.*, 2017 WL 2633503, *7 (M.D. Pa. June 19, 2017). United’s failure to identify potential insufficiencies in the medical evidence submitted in connection with Martonik’s STD claim did not preclude it from doing so when it reviewed her LTD claim; nor did it automatically entitle Martonik to benefits under the separate LTD policy. In the present case, United did not reverse a decision to award benefits without the benefit of new

⁸ Both Dr. Dada and Nurse Green based their conclusions upon the absence of objective medical evidence to support a finding of disability as of July 6, 2016, and, in the case of Dr. Dada, continuing through January 1, 2017. ECF No. 26-6, p. 396. While United requested and ultimately received additional information from certain sources, including records from Dr. Uppal after April 1, 2016, [ECF No. 26-5, p. 345-363], United’s LTD benefits determination letter of November 21, 2016 identified nothing new from those updated medical records to justify denial of LTD benefits. Instead, United reviewed Martonik’s medical history dating back to February 7, 2016, and emphasized the absence of medical evidence to support the existence of a disability from that date forward: “Based on the information reviewed, there does not appear to be exam findings to substantiate impairment from working from February 7, 2016, and going forward.” ECF No. 26-7, p. 22.

⁹ The STD benefits claim and the LTD benefits claim were reviewed by different claims analysts. LaShae Lowery, a claims analyst within United’s “Group Insurance Claim Management,” was the individual who notified Martonik on July 5, 2016 that her STD benefits were approved through June 6, 2016. The next day, July 6, 2016, Lisa Young, a different claims analyst within Group Insurance Claims Management, advised Martonik that she had initiated a separate review of Martonik’s medical documentation in consideration of her claim for LTD benefits.

medical evidence. Rather it denied a *new claim* under a *separate policy* based upon medical records reviews conducted by independent third parties. These facts materially distinguish this case from *Haisley v. Sedgwick Claims Mgmt. Servs., Inc.*, 776 F. Supp. 2d 33, 36 (W.D. Pa. 2011), where the plan administrator reversed its decision to award LTD benefits without receiving any new medical evidence, including an independent third-party review of the existing medical records. “Having approved [plaintiff’s] application,” the *Haisley* Court observed, the plan administrator nevertheless “retroactively determined that an award of LTD benefits was not warranted in the first place.” *Id.* at 49. The *Haisley* Court held that “[s]uch inconsistent treatment of the same medical information is a factor that weights in [plaintiff’s] favor.” *Id.* (citing *Post v. Hartford Ins. Co.*, 501 F.3d 154, 164-65 (3d Cir. 2007) (referring to a “reversal of position without additional medical evidence” as being among “numerous procedural irregularities that can raise suspicion”); *Miller v. American Airlines, Inc.*, 632 F.3d 837, 848 (3d Cir. 2011)(holding that “administrator’s reversal of its decision to award a claimant benefits without receiving any new medical information to support this change in position is an irregularity that counsels towards finding an abuse of discretion”)), The type of unexplained inconsistency that undermined the rationality of the plan administrator’s decision in *Haisley* does not exist in the present case.

Martonik also argues that United acted inconsistently by making an initial payment of benefits to her under the LTD Policy and then issuing its denial of benefits under that same policy. This argument also lacks merit. By letter dated October 14, 2016, United notified Martonik that it was making a single monthly payment under the STD Policy while her claim was under review. United’s notice clearly advised Martonik that its payment of benefits was conditional and subject to United completing its review of her LTD benefits claim:

Your policy states you have a 121 day elimination period. Your date of disability is February 7, 2016. The elimination period extends from February 7, 2016 through June 6, 2016.

Since you have satisfied your elimination period and *we have yet to make our determination*, we are issuing you a single monthly benefit. *This issuance of benefits is not an admission of further liability, nor is it a waiver of any requirements or rights under the Long Term Disability policy.*

ECF 26-1, p. 37 (emphasis supplied). Thus, the record confirms that United did not reverse its position concerning Martonik’s entitlement to LTD benefits. Rather, it extended a single, conditional payment of benefits while it reviewed that claim for ultimate decision.

For the reasons discussed above, the Court finds no inconsistency between United’s approval of Martonik’s STD benefits claim or its initial payment of one month of LTD benefits and its ultimate decision to deny Martonik’s claim for LTD benefits. This finding, however, is limited to the fact that United reached different decisions under the STD Policy and the LTD Policy and merely recognizes that the reports of Nurse Green and Dr. Dada constituted new medical information sufficient to distinguish this case from cases such as *Haisley*. It does not consider the substance, support and internal consistency of the reports upon which United based its LTD benefits decisions. These matters are discussed below.

4. United's initial denial of Martonik's LTD claim without meaningful input from Dr. Rhinehart supports a finding that United's decision was arbitrary.

Martonik asserts that United abused its discretion when it relied upon the review by Nurse Green over the opinions of a physician, Dr. Uppal, and licensed psychologist, Dr. Rhinehart. This argument requires that the Court first determine whether an actual conflict exists between the findings and conclusions of Nurse Green and Martonik's treating medical providers. If such a conflict exists, then the Court must consider whether United had a rational or reasonable basis for accepting Nurse Green's conclusion over those of Dr. Uppal and Dr. Rhinehart. *Black and Decker Disability Plan v. Nord*, 538 U.S. 822, 834 (2003) ("courts have no warrant to require administrators to automatically accord special weight to opinions of a claimant's physician; not many courts impose on plan administrators a discrete burden of explanation when the credit reliable evidence that conflicts with a treating physician's evaluation.").

As previously noted, Nurse Green's report focused on what she perceived to be an absence of "exam findings to substantiate an impairment from working from 2/7/16 forward," and "[e]xamination information [that] revealed no significant nor sustained functional impairment" during that same period. ECF No. 26-7, p. 73. Dr. Uppal described Martonik's functional limitations and restrictions as an inability to concentrate, inability to perform work at a constant pace, psychomotor retardation, and issues with complex decision making. While these conditions certainly would impair Martonik's ability to do her job, Dr. Uppal did not specifically express an opinion or findings concerning whether Martonik's functional limitations prevented her "from performing at least one of the Material Duties of [her] Regular Occupation."

The Court believes that given the ambiguity in the medical record concerning the extent and effect of Martonik's limitations, the appropriate course of action was for United to contact Dr. Uppal for clarification, which United did in a letter to him dated October 24, 2016. This letter provided Dr. Uppal with the results of United's review and requested additional medical information regarding the basis for any ongoing restrictions and limitations, including specific symptoms, physical examination findings and diagnostic tests to support the basis for any ongoing restrictions and limitations. ECF No. 26-7, p. 22. Dr. Uppal did not respond to this inquiry. Under these circumstances, United's reliance on Nurse Green's conclusion that Dr. Uppal's records failed to support functional limitations was rationale and reasonable.

Nurse Green's failure to consider information from Dr. Rhinehart is more problematic. Nurse Green received psychotherapy notes from Dr. Rhinehart, but did not consider them in her report because she found them to be largely illegible. Nothing in the record indicates that Nurse Green or United attempted to contact Dr. Rhinehart to request additional information or clarification at this stage of claim review. Thus, it appears that Nurse Green arrived at her assessment that Martonik's claim lacked objective clinical support knowing that she did not have the benefit of the records of Martonik's treating psychologist. In evaluating the significance of this omission, it is appropriate also to consider whether the additional information from Dr. Rhinehart's records potentially would have provided material information to inform Nurse Green's assessment and United's ultimate decision on Martonik's claim. While such an inquiry would typically involve an element of speculation,

in this case the record provides an answer. Dr. Rhinehart provided additional information and clarification to United in her letter of April 24, 2017, which Martonik submitted in connection with her appeal. This letter included Dr. Rhinehart's statement that "[g]iven the complex decision-making, frequent travel and expectations for high levels of output with clients and coworkers in her position as VP of marketing...., it appeared that [Martonik] could not function at that level without further detriment to her health." The Court regards this statement as Dr. Rhinehart's professional opinion that Martonik's condition prevented her from performing certain of the functions required of her position. The Court also believes that this assessment and other information provided in the letter would have demanded meaningful consideration or at least follow-up communication with Dr. Rhinehart as part of any reasonable claim review. Accordingly, the Court concludes that United's failure to contact Dr. Rhinehart during its initial review of Martonik's LTD benefit claim in order to obtain her input concerning Martonik's potential disability favors a finding that United abused its discretion. This is particularly so given United's knowledge that Dr. Rhinehart had treated Martonik over an extended period of time for the conditions upon which she based her claim but took no meaningful action to obtain the substance of the information included in the therapy notes it found to be illegible. *See, e.g., Donovan v. Eaton Corp.*, 462 F.3d 321 (4th Cir. 2006) (abuse of discretion for plan administrator to fail to consider evidence which favored granting benefits).

5. United's reliance upon Dr. Dada's report despite material inconsistencies within that report and its lack of consideration of input from Dr. Rhinehart further supports a finding that United abused its discretion.

As previously noted, the report issued by Dr. Dada and upon which United relied in denying Martonik's claim does not dispute the diagnoses of her treating physician or treating psychologist, which diagnoses included PTSD, generalized anxiety disorder, and depression. Rather, Dr. Dada determined that Martonik's medical records lacked sufficient evidence of functional limitations to support a finding of disability under the LTD Policy. However, Dr. Dada's report includes statements that are not only materially inconsistent with this conclusion but that arguably support a finding of disability. For example, with respect to Martonik's depression, the report states:

Depression causes poor energy and poor concentration and cognitive dulling. However, claimant seems to have been depressed for a long time. She probably has double depression or Dysthymic disorder with acute exacerbation of her Chronic PTSD and not Acute stress disorder. The anxiety provoking situation worsens her ability to perform her duty as the duties demand.

Conversion disorder is self-limiting and hence claimant improves with physical therapy.

ECF No. 26-6, p. 395. (emphasis supplied).

The foregoing statements appear to acknowledge that Martonik's depression caused her to experience poor energy, poor concentration and cognitive dulling, conditions that reasonably would be expected to impair her ability to perform the functions of her occupation. This conclusion is particularly compelling given Dr. Dada's volunteered diagnosis of double depression or dysthymic disorder.¹⁰

Such observations are even more significant when they are considered in connection with portions of Nurse Green's report. Nurse Green also acknowledged that Dr. Uppal described Martonik as "*markedly limited* in performing" a number of functions, including "attaining set limits/standards, interacting with supervisors, *interacting with the public/customers*, using judgement (sic)/making decisions." ECF No. 26-7, p. 74. She also noted that Dr. Uppal described Martonik "*as unable to perform* at a constant pace, maintain attention/concentration, *perform[] a variety of duties*, understanding/remembering/carrying out complex job instructions, is *unable to concentrate, psychomotor retardation*" *Id.* at p. 74-75. Nurse Green somewhat cavalierly dismissed Dr. Uppal's assessments as unsupported by the records, noting that "on multiple occasions [Martonik's] mood and affect are normal and there are no indications of flight of ideas." *Id.* at p. 75. In the next sentence of his report, she notes the absence of "neuropsychological testing" to provide "further insight in regard to severity of condition and the above stated report of impairment and functional limitations." *Id.* Thus, Nurse Green noted that neuropsychological testing could have provided "further insight" into the extent of the limitations described by Dr. Uppal. Yet, her report went on to conclude that she "did not identify any mental/nervous restrictions and limitations from 2/7/16 forward." *Id.*

Martonik asserts that because neither the LTD Policy nor any other relevant document communicated the need for objective evidence or findings to support or quantify her functional limitations, United's later insistence on such evidence or findings evidences was arbitrary. Martonik's point has merit. United has not directed the Court to any provision of the LTD Policy that requires or specifies the type of objective or measurable evidence necessary to support functional limitations that prevent the claimant from performing at least one of the material duties of her occupation. While the applicable standard of review affords United significant discretion in interpreting the language of the LTD Policy, this discretion does not permit United to alter or make up the rules as it goes along. *Haisley*, 776 F. Supp. 2d at 36. It is true that United's initial denial letter of November 21, 2016 informed Martonik that United was unable to approve her claim for LTD benefits because her reported symptoms and clinical findings failed to document sustained functional impairments, restrictions, or limitations that precluded her from performing her regular occupation. It did not, however, advise her of the type of objective, measurable findings United would later require and that Dr. Dada would ultimately find wanting. And, regarding this issue, United's handling of Martonik's STD claim has some relevance. As discussed above, United's approval of Martonik's STD claim in no way obligated it to approve her LTD claim. But, by requiring unspecified objective evidence of functional limitations to support the LTD claim, United

¹⁰ Double depression is a complication of a psychiatric illness called dysthymic disorder, or dysthymia. Dysthymia is a chronic, depressed mood accompanied by just one or two other symptoms of clinical depression (such as low energy or low self-esteem) that lasts at least two years in adults. <https://www.webmd.com/depression/double-depression#1>. Over time, more than half of people with dysthymia experience worsening symptoms that lead to the onset of a full syndrome of major depression superimposed on their dysthymic disorder, resulting in what is known as double depression. *Id.*

clearly applied a condition that it had not imposed upon the STD claim. United applied this requirement to the LTD claim without tying it to any specific language of the LTD Policy and without any meaningful notice or explanation concerning what Martonik was required to submit to satisfy it.¹¹

A related issue raised by Martonik is whether requiring clinical or objective findings of functional limitations is rational in the context of a mental health-related disability. While certain conditions are not amenable to objective analysis, courts in the Third Circuit have recognized a distinction “between requiring objective proof that the claimant has a condition with [requiring] objective proof that a particular condition is disabling.” *Wernicki-Stevens v. Reliance Standard Life Ins. Co.*, 641 F. Supp. 2d 418, 426 (W.D. Pa. 2009) (listing cases). The relevant inquiry is how a person’s condition renders them unable to perform the essential functions of a job. *See id*; *Lamanna v. Special Agents Mut. Benefits Ass’n*, 546 F. Supp. 2d 261, 296 (W.D. Pa. 2008) (“While the amount of fatigue or pain an individual experiences may be entirely subjective, the extent to which those conditions limit her functional capabilities can be objectively measured.”); *Balas v. PNC Fin. Servs. Grp., Inc.*, 2012 WL 681711 *10 (W.D. Pa. Feb. 29, 2012) (plaintiff who suffered from chronic fatigue syndrome and fibromyalgia failed to demonstrate that her condition rendered her disabled, and it was not arbitrary and capricious for the plan administrator to require “objective evidence of her inability to perform the material duties of her regular occupation”).¹²

Therefore, as a general proposition, a plan administrator does not act arbitrary by requiring “objective evidence” of a claimant’s functional limitations. At the same time, the nature and extent of objective evidence that the plan may reasonably require will vary depending on the nature of the alleged disability and the language of the plan at issue. Where, as here, the plan gives the administrator authority to interpret the plan, judgments applying these considerations will not be disturbed absent an abuse of discretion. In the context of this case, the Court finds that United applied its “objective evidence” requirement in a manner that was arbitrary, both as to procedure and as to substance. Procedurally, neither the LTD Policy nor any correspondence from United provided reasonable notice to Martonik of the type or nature of the clinical tests or assessment tools that United would accept to satisfy this requirement. Substantively, United dismissed the limitations described by Martonik’s treating providers (and recognized to a certain extent by Dr. Dada and Nurse Green) without

¹¹ Again, the Court emphasizes that United was free to scrutinize Martonik’s LTD claim to identify perceived deficiencies in medical support that it did not identify when it reviewed the STD claim, provided it did so in a manner consistent with the LTD Policy. The primary concern presented by United’s treatment of Martonik’s LTD claim in this case is *procedural* in nature. As to that claim, United required what it generally described as “objective evidence” of “functional limitations” without reasonable notice to Martonik concerning the existence of this requirement and what was necessary to satisfy it. This lack of notice to Martonik was exacerbated by the fact that United had not required such proof from Martonik to support her STD benefits claim.

¹² The Court notes that in *Balas*, “there [was] no evidence...that Balas was limited in any of her activities of daily living, she took care of her children, had no limitations of ambulation and she had no driving restrictions.” 2012 WL 681711, at *10. Based upon the absence of such evidence, the Court held that the plan administrator did not abuse its discretion in finding that the claimant had failed to establish that she could not perform her sedentary office position. *Id.* In the present case, although Martonik’s medical providers did not provide clinical findings such as the results of a global assessment of functioning, they did describe symptoms and related limitations that they attributed to mental health conditions that would reasonably be expected to impair an individual’s functioning in a high level marketing occupation. The Court also notes that the definition of “disability” under the plan in *Balas* required that the employee establish that she “cannot perform *each of the material duties* of his or her regular occupation,” *id* at *2, while the STD Policy only required Martonik to show that her condition “prevented from performing *at least one of the Material Duties of Your Regular Occupation.*”

any meaningful evaluation of whether they prevented her from performing at least one of the material duties of her regular occupation. *See, e.g., Lasser v. Reliance Standard Life Ins. Co.*, 344 F.3d 381, 391 (3d Cir. 2003).

In *Lasser*, the Third Circuit also held that “once a claimant makes a *prima facie* showing of disability through physicians’ reports...and if the insurer wishes to call into question the scientific basis of those reports..., then the burden will lie with the insurer to support the basis of its objection.” 344 F.3d 381, 391 (3d Cir. 2003). Martonik argues that the records and reports of her treating medical providers satisfied her burden of offering a *prima facie* showing of disability and that United’s critique of her treating providers’ conclusions is an attack on the scientific basis underlying those conclusions within the meaning of *Lasser*. United disagrees and argues that Martonik’s submissions failed to establish a *prima facie* showing of disability. The Court believes that Martonik’s view is correct. Viewed in their totality, the records and reports of Dr. Uppal and Dr. Rhinehart were sufficient to establish a *prima facie* showing of Martonik’s disability. Accordingly, the burden shifted to United to support the denial of benefits, and given the inconsistencies and ambiguities in the reports of Dr. Dada and Nurse Green, United failed to carry this burden.

6. Based upon the nature of the disability asserted by Martonik and United’s concerns regarding the extent of her functional limitations, United’s failure to obtain an independent examination of Martonik further supports a finding that United abused its discretion.

Another factor weighing in favor of Martonik is that United never asked her to undergo an independent medical examination and, instead, relied exclusively on paper reviews of her medical records. A decision to rely on a paper review of a claim file is not, by itself, arbitrary and capricious. *Wernicki-Stevens v. Reliance Standard Life Ins. Co.*, 641 F. Supp. 2d 418, 425-26 (E.D. Pa. 2009) (citing *Dolfi v. Disability Reinsurance Mgmt. Servs. Co.*, 584 F. Supp. 2d 709, 735 (M.D. Pa. 2008) (finding that insurer’s reliance on a paper review, rather than a physical examination, was not per se arbitrary and capricious)). “Where the plan at issue specifically provides a plan administrator with the authority to request an independent medical examination, [however,] the failure of the plan administrator to procure such an examination before denying a particular claim may ‘raise questions about the thoroughness and accuracy of the benefits determination.’” *Haisley*, 776 F. Supp. 2d at 49 (quoting *Calvert v. Firststar Fin., Inc.*, 409 F.3d 286, 295 (6th Cir. 2005)). The LTD Policy authorized United to have Martonik examined by an independent physician or other medical provider. ECF No. 26-3, p. 209. And, United’s failure to avail itself of this option under the circumstances of this case raises questions regarding the thoroughness of its review of Martonik’s claim. Both Dr. Dada and Nurse Green acknowledged that Martonik’s records supported mental health conditions that were functionally limiting but, in their judgment, lacked objective findings to measure those limitations. To the extent United questioned whether Martonik’s limitations were severe enough to qualify her as disabled, an independent medical examination was an authorized and available means by which it could have addressed this question.

Further “[a]lthough the ERISA does not require a plan administrator to request that a claimant undergo a medical examination before denying his or her claim, the failure to procure

such an examination may be unreasonable where the specific impairments or limitations at issue are not amenable to consideration by means of a file review.” *Id.* (citing *Elliott v. Metro. Life Ins. Co.*, 473 F.3d 613, 621 (6th Cir. 2006); *Lamanna v. Special Agents Mut. Benefits Ass’n*, 546 F.Supp.2d 261, 296 (W.D. Pa. 2008). In a case involving mental health conditions, professional contact with the claimant through an independent examination is often necessary to fairly assess the extent to the claimant’s impairments. *Schwarzwaelder v. Merrill Lynch & Co.*, 606 F. Supp. 2d 546, 559 (W.D. Pa. 2009). In his review of Martonik’s medical records, Dr. Dada repeatedly acknowledged areas where additional assessment would illuminate the extent to Martonik’s limitations. These acknowledgments raise further questions regarding the thoroughness of United’s review and consideration of functional limitations associated with her mental health conditions.

7. United’s letter November 21, 2016 did not provide an adequate description of additional material necessary for Martonik to perfect her claim.

Department of Labor regulations require that a plan administrator provide a claimant with written or electronic notification of an adverse benefit determination. Such notification “must set forth, in a manner calculated to be understood by the claimant,” certain information, including: (i) “[t]he specific reason or reasons for the adverse determination,” (ii) “[r]eference to the specific plan provisions on which the determination is based,” (iii) “[a] description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary,” (iv) “[a] description of the plan review procedure and the time limits applicable to such procedures...,” and (v) “[i]n the case of an adverse benefit determination by a group health plan,...[i]f an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination...” 29 C.F.R. § 2560.503-1(g)(1). Martonik argues that United’s November 21, 2016 denial letter fails to comply with § 2560.503-1(g)(1). ECF No. 23 p. 15. United contends that the letter met all requirements of the regulation.

United’s November 21, 2016 letter denying Martonik’s LTD benefits claim stated the following concerning the reasons for its adverse determination:

on multiple occasions the records documented your mood and affect as being normal with no reported flight of ideas. Examinations have revealed no significant nor sustained functional impairment. no (sic) restrictions and limitations, as clinical findings have failed to provide a description of severe impairments that would preclude you from your Regular Occupation.

ECF No. 26-7, p. 462. Regarding a description of additional material or information necessary for Martonik to perfect her claim and an explanation of why it is necessary, the letter stated that Dr. Uppal could assert his disagreements with United’s determinations and provide “specific symptoms, physical examination findings and diagnostic tests to

support the basis for any ongoing restrictions and limitations.” *Id.* In response to this notice, Martonik submitted her appeal, which included Dr. Rhinehart’s report of April 24, 2017. Dr. Rhinehart’s report set forth the relevant history of Martonik’s illness, symptoms and therapy along with her assessment that Martonik “could not function at th[e] level” necessary to perform the requirements of her position “without further detriment to her health.” United determined that this additional information remained inadequate to support Martonik’s claim because it lacked sufficient objective evidence of functional limitations. The Court finds that United’s November 21, 2016 notification of denial failed to describe in a manner calculated to be understood by Martonik the objective evidence it considered necessary to support her claim. *See Halpin v. W.W. Grainger, Inc.*, 962 F.2d 685, 692-93 (7th Cir. 1992) (termination letter did not satisfy statutory and regulatory requirements when it stated that “no objective medical evidence was contained in [the] claim to substantiate total disability from any gainful occupation”) (cited with approval in *Miller v. Am. Airlines, Inc.*, 632 F.3d 837, 851 (3d Cir. 2011)). The purpose of 29 C.F.R. § 2560.503-1(g)(1)(iii) is to ensure “the procedural fairness” of an adverse benefits decision. *Miller*, 632 F.3d at 852. Vague and confusing descriptions such as those included in United’s letter of November 21, 2016 fail to comply with this regulatory mandate, and the Court finds that this failure further supports the conclusion that United abused its discretion in denying Martonik’s LTD benefits claim in this case.

8. The balance of factors weighs in favor of finding that United abused its discretion.

After careful consideration, the Court finds that “varied and case-specific factors” dictated by the context and circumstances of this case weigh decidedly in favor of Martonik and a finding that United abused its discretion when it denied her claim for LTD benefits. *Estate of Schwing*, 562 F.3d at 526 (citations omitted). While no inherent inconsistency arises where a plan administrator grants a short-term disability claim and later denies a long-term disability claim based upon a third-party’s review of the medical evidence, in this case the third-party reviews, which were uninformed by any independent examination and ignored pertinent medical records, and United’s ultimate determination include too many internal inconsistencies and ambiguities to sustain United’s denial. The procedural and substantive deficiencies in United’s review and determination are material and fundamentally undermine the reasonableness and rationality of its decision.

9. The appropriate remedy is remand to United for reevaluation of Martonik’s LTD claim.

Having determined that United abused its discretion, the Court must consider the appropriate remedy. Typically, the remedy for a wrongful denial of benefits is to remand the claim to the plan administrator for proper consideration in light of the deficiencies identified by the Court. *Miller*, 632 F.3d at 856. There are circumstances, however, where reinstatement or awarding of benefits is authorized and, in this case, Martonik urges the Court to do so for the entire period beginning June 7, 2016 through May 7, 2018. In deciding which remedy is appropriate, “it is important to consider the status quo prior to the unlawful denial or

termination” of benefits. *Id.* (citing *Hackett v. Xerox Corp. Long-Term Disability Income Plan*, 315 F.3d 771, 776 (7th Cir. 2003)). In this regard, an important distinction exists between an initial denial of benefits and a termination of benefits after they were already awarded. *Id.* Where the plan administrator improperly denied benefits at the outset, “it is appropriate to remand to the administrator for full consideration of whether the claimant is disabled.” *Id.* “To restore the status quo, the claimant would be entitled to have the plan administrator reevaluate the case using reasonable discretion.” *Id.* at 856-57. Where the plan administrator is determined to have arbitrarily and capriciously terminated the claimant’s benefits, benefits should be reinstated to restore the status quo. *Id.* at 257.

Martonik argues that the Court should treat this case as one involving a termination of benefits based upon United’s initial payment of one month of LTD benefits. As discussed above, however, United did not make that payment based upon a decision to award benefits but rather as a conditional payment while it was evaluating Martonik’s claim. *Cf. Haisley*, 776 F. Supp. 2d at 56 (awarding reinstatement of benefits where although plan administrator’s notice “made clear that [plan administrator] would need additional information in the future, the import of the letter was that such information would relate solely to Haisley’s entitlement to future benefit payments” and “[t]here was no suggestion that her existing entitlement to LTD benefits was subject to further review”). Accordingly, this matter involves a wrongful denial of benefits and the proper remedy is a remand to United for reevaluation of the claim using reasonable discretion.

E. Conclusion

Therefore, it is respectfully recommended that Plaintiff Kristin Martonik’s Motion for Summary Judgment [ECF No. 22] be GRANTED and that this matter be remanded to United for reevaluation of her claim in light of the factors discussed herein. It is further recommended that Defendant United of Omaha Life Insurance Company’s Motion for Summary Judgment [ECF No. 25] be DENIED.

In accordance with 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72, the parties must seek review by the district court by filing Objections to the Report and Recommendation within fourteen (14) days of the filing of this Report and Recommendation. Any party opposing the Objections shall have fourteen (14) days from the date of service of the Objections to respond thereto. *See* Fed.R.Civ.P. 72(b)(2). Extensions of time will not be granted. Failure to file timely objections may constitute a waiver of appellate rights. *See Brightwell v. Lehman*, 637 F.3d 187, 193 n.7 (3d Cir. 2011); *Nara v. Frank*, 488 F.3d 187 (3d Cir. 2007).

/s/ Richard A. Lanzillo, United States Magistrate Judge

Dated: May 8, 2019

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CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 11450-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Gayle Albert Daniel Steinker to Daniel Albert Steinker.

The Court has fixed the 1st day of July, 2019 at 11:15 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

June 7

DISSOLUTION NOTICE

Notice is hereby given that Johnson & Flick Tire Services, Inc., a Pennsylvania Business Corporation, is in the process of winding up and dissolving its business pursuant to the provisions of the Pennsylvania Business Corporation Law of 1988 as amended. Any claims should be directed to Attorney Colleen R. Stumpf, Quinn, Buseck, Leemhuis, Toohy & Kroto, Inc., 2222 West Grandview Boulevard, Erie, PA 16506.

June 7

FICTITIOUS NAME NOTICE

Pursuant to Act 295 of December 16, 1982 notice is hereby given of the intention to file with the Secretary of the Commonwealth of Pennsylvania a "Certificate of Carrying On or Conducting Business under an Assumed or Fictitious Name." Said Certificate contains the following information:

FICTITIOUS NAME NOTICE

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on May 28, 2019, for Lipchik Demolition at 10860 Donation Road, Waterford, PA 16441. The name and address of each entity interested in the business is Empire Excavation &

Demolition, Inc. at 10860 Donation Road, Waterford, PA 16441. This was filed in accordance with 54 Pa.C.S. 311.

June 7

LEGAL NOTICE

ATTENTION: ANTONIO CHARLES LANG INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF A MINOR FEMALE CHILD (H.G.D.), BORN OCTOBER 11, 2006 42 IN ADOPTION 2019

Antonio Lang you are the parent of the above mentioned child at the insistence of the law office of CARNEY & GOOD, you, laying aside all business issues whatsoever are hereby cited to appear before the Orphans' Court of Erie County, Pennsylvania at the Erie County Court House, Judge Walsh's Court Room Number 217-I, 140 West 6th Street, Erie, Pennsylvania on July 11, 2019 at 2:30 p.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated in accordance with the petition to involuntarily terminate your parental rights and preliminary decree filed by the law office of CARNEY & GOOD. A copy of these documents can be obtained by contacting Kari A. Froess, Esquire at 814-453-5004. 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 maintaining your parental 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 you being present. You have the right to be represented at the hearing by an attorney. You should take this paper to your attorney at once. If you do not have an attorney or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

Family/Orphans' Court Administrator Room 204-205
Erie County Court House
Erie, Pennsylvania 16501
814-451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S §§2731-2742. This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact Kari A. Froess, Esquire at the law office of CARNEY & GOOD at 814-453-5004, or contact your attorney if you have one.

June 7

LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
Orphans' Court Division
No. 126 In Adoption 2018
IN THE MATTER OF THE ADOPTION OF M. N. S.

TO: JOHN DOE/UNKNOWN BIOLOGICAL FATHER

At the instance of ADOPTION BY CHOICE, the petitioner in the above case, you, **JOHN DOE/ UNKNOWN BIOLOGICAL FATHER**, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphans' Court of Erie County, Pennsylvania, at the Erie County Court House, Court Room No. 217-I, the Honorable Joseph M. Walsh, III, City of Erie, Pennsylvania, on **June 19, 2019 at 3:00 p.m.**, and then and there show cause, if any you have, why your parental rights to M. N. S. born September 16, 2018 at UPMC Northwest, Seneca, Pennsylvania, should not be terminated, in accordance with the Petition For Involuntary Termination

Of Parental Rights filed on May 1, 2019 at the above term and number. The Petition alleges you, by conduct continuing for a period of at least six (6) months immediately preceding the filing of the petition, either have evidenced a settled purpose of relinquishing parental claim to the child or have failed or refused to perform parental duties, and that the child was conceived as a result of rape. You hereby are notified that the Confirmation of Consent of the Natural Mother of M. N. S. will take place on June 19, 2019 at 3:30 p.m. before the Honorable Joseph M. Walsh, III.

Your presence is required at the hearing. You are warned that if you fail to appear at the hearing to object to the termination of your rights or fail to file a written objection to such termination with the court prior to the hearing, the hearing will go on without you and your rights may be terminated without you being present.

If it is your intention to contest these proceedings you, or your attorney, are further directed to immediately notify the Family/Orphans' Court Administrator, Room 205, Erie County Court House, Erie, PA 16501 or at (814) 451-6251.

You have the 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.

Lawyers' Referral Service, PO Box 1792, Erie, Pennsylvania 16507, (814) 459-4411

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa.C.S. Sections 2731-2742. This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally

binding. You have the right to consult an attorney concerning your post adoption contact agreement rights. If you do not have an attorney, you can ask for assistance through the Lawyers' Referral Service or Family/Orphans' Court Administrator, as set forth above.

M. Kathryn Karn, Esquire
 4402 Peach Street, Suite 3
 Erie, PA 16509
 Telephone: (814) 882-2974
 Attorney for Petitioner,
 Adoption By Choice

June 7

SHERIFF SALES

Notice is hereby given that by virtue of sundry Writs of Execution, issued out of the Courts of Common Pleas of Erie County, Pennsylvania, and to me directed, the following described property will be sold at the Erie County Courthouse, Erie, Pennsylvania on

**JUNE 21, 2019
AT 10 A.M.**

All parties in interest and claimants are further notified that a schedule of distribution will be on file in the Sheriff's Office no later than 30 days after the date of sale of any property sold hereunder, and distribution of the proceeds made 10 days after said filing, unless exceptions are filed with the Sheriff's Office prior thereto.

All bidders are notified prior to bidding that they MUST possess a cashier's or certified check in the amount of their highest bid or have a letter from their lending institution guaranteeing that funds in the amount of the bid are immediately available. If the money is not paid immediately after the property is struck off, it will be put up again and sold, and the purchaser held responsible for any loss, and in no case will a deed be delivered until money is paid.

John T. Loomis

Sheriff of Erie County

May 31 and June 7, 14

SALE NO. 2

Ex. #30370 of 2019

U.S. Bank National Association, a National Banking Association, as Successor Trustee to State Street Bank and Trust Company, as Trustee for the registered holders of Credit Suisse First Boston Mortgage Securities Corp., commercial mortgage pass-through certificates, series 1998-C1, Plaintiff

v.

Elder Pa. I Delaware Business Trust, a Delaware Business Trust, Defendant

DESCRIPTION

By virtue of a Writ of Execution filed at No. 2019-30370, U.S. Bank National Association, a National

Banking Association, as Successor Trustee to State Street Bank and Trust Company, as Trustee for the registered holders of Credit Suisse First Boston Mortgage Securities Corp., commercial mortgage pass-through certificates, series 1998-C1 v. Elder Pa. I Delaware Business Trust, a Delaware Business Trust, owner of property situated in the Township of Millcreek, Erie County, Pennsylvania being commonly known as the former Bon Ton parcel in the Millcreek Mall, 5800 Peach Street, Erie, PA 16565. Assessment Map No. 33-167-667-46.05

Assessed Value Figure: \$5,191,200
Improvement thereon: Retail
Mark G. Claypool, Esquire
Knox McLaughlin Gornall & Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

May 31 and June 7, 14

SALE NO. 3

Ex. #10073 of 2019

First National Bank of Pennsylvania, Plaintiff

v.

Jeffery R. Huff and Doreen T.

Huff, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 10073-19, First National Bank of Pennsylvania vs. Jeffery R. Huff and Doreen T. Huff, owner(s) of property situated in Millcreek Township, Erie County, Pennsylvania being 1838 Garloch Drive, Erie, PA 16505

Assessment Map number: 1838 Garloch Drive, Erie, PA 16505
Assessed Value figure: \$109,250.00
Improvement thereon: One story frame dwelling
Kristine M. Anthou
One Gateway Ctr, 9 W
Pittsburgh, PA 15222
412-281-7650

May 31 and June 7, 14

SALE NO. 4

Ex. #10113 of 2019

U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE,

FOR THE CIM TRUST 2016-3, MORTGAGE-BACKED NOTES, SERIES 2016-3, Plaintiff

v.

BRENT SALHOFF as Executor of the Estate of Ronald R.

Salhoff, Deceased, Defendant

DESCRIPTION

Parcel one: All that certain piece or parcel of land situate in the Township of Springfield, County of Erie and Commonwealth of Pennsylvania, being part of Tract 593 in said township bounded and described as follows: BEGINNING in the centerline of the highway known as U.S. Route No. 5, formerly the Middle Road, where same intersects the north line of said Tract 593; thence South 88 52' East along the south line of lands now or formerly owned by Louis Perry, four hundred fifty-two and sixty-eight hundredths (452.68) feet to the West Line of land formerly owned by Susie Moore, and now or formerly owned by Anthony Vacco; thence South 00 04' West along said Vacco West line, one hundred seventy-four feet; thence northwesterly in a straight line to a point in their centerline of the aforesaid highway, U.S. Route No. 5, that is seventy (70) feet Southerwestly from the point of beginning; thence Northeasterly, along the centerline of said U.S. Route No. 5, a distance of seventy (70) feet to the place of beginning. ALSO, parcel two: All that certain piece or parcel of land situated in the Township of Springfield, County of Erie and Commonwealth of Pennsylvania, being part of Tract 593 in said township bounded and described as follows: BEGINNING at the Northwesterly corner of the whole piece at an iron survey point in the Northly line of Said tract 593 and southerly line of land now or formerly owned by E.T. Moore, et ux, distant thereon North 88 degrees 52' west, five hundred sixty-six and twenty-seven hundredths (566.27) feet from an old iron pin at its intersection with the center line of the Devore Road at the Northeasterly corner of said Tract 593, said point also being the

Northeasterly corner of land now or formerly owned by Mike Vacco; thence 88 degrees 52' East, along the Northerly line of said Tract 593 and the Southerly line of land now or formerly owned by said E.T. Moore et ux, two hundred ninety and ninety-nine hundredths (290.99) feet to an iron survey point; thence by the residue of the piece south 03 degrees 42', two hundred seventy-two and forty hundredths (377.40) feet to an iron survey point at the Northwesterly corner of land now or formerly leased to Peerless Mineral Products Company; thence along said land south 00 degrees 48' West, one hundred (100.00) feet to an iron survey point in the Northerly line of the right-of-way South 71 degrees 41' west, two hundred eighty-seven and thirty-one hundredths (287.31) feet to an iron survey point at the Southeastly corner; of land now or formerly owned by the aforesaid Mike Vacco; thence along said Vacco land North 00 degrees 04' East, four hundred sixty-seven and seventy-nine hundredths (467.79) feet to the place of beginning and containing two and sixty-nine hundredths (2.690) acres of land. TOGETHER WITH THE FREE AND UNINTERRUPTED RIGHT, Liberty and Privilege of Ingress and Egress and Regress to Second Parties, their heirs, executors, administrators or assigns, tenants, undertonants, workmen and guests, at all times and seasons with every manner of transportation over and across a strip of land twenty (20) feet in width extending out of and from the above described promises to Devore Road along the Northerly line of land leased to Peerless Mineral Products Company so long as said lease shall continue in force and the termination of said lease shall act as an abandonment of said right-of-way and the establishment of the new right-of-way twenty (20) feet in width extending along the Northern line of the right-of-way of the New York, Chicago and St. Louis Railroad company from the Southeastly corner of the above described premises to Devore Road. Parcel #-39009030000700

PROPERTY ADDRESS: 13163 West Lake Road, E Springfield, PA 16411
 KML Law Group, P.C.
 701 Market Street, Suite 5000
 Philadelphia, PA 19106
 215-627-1322

May 31 and June 7, 14

SALE NO. 7

Ex. #12631 of 2017

MIDFIRST BANK, Plaintiff

v.

KRIS L. KOSSBIEL AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Defendants

DESCRIPTION

By virtue of a Writ of Execution No. 12631-17, MIDFIRST BANK, Plaintiff vs. KRIS L. KOSSBIEL AND THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, Defendants
 Real Estate: 1052 WEST 31ST STREET, ERIE, PA 16508
 Municipality: City of Erie
 Erie County, Pennsylvania
 Dimensions: 29.5 x 135
 See Deed Book 1499/0403
 Tax I.D. (19) 6038-232
 Assessment: \$16,200 (Land)
 \$69,470 (Bldg)
 Improvement thereon: a residential dwelling house as identified above
 Leon P. Haller, Esquire
 Purcell, Krug & Haller
 1719 North Front Street
 Harrisburg, PA 17104
 (717) 234-4178

May 31 and June 7, 14

SALE NO. 8

Ex. #10329 of 2019

PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff

v.

ROBIN L. LINDSTROM, Defendant

DESCRIPTION

By virtue of a Writ of Execution No. 2019-10329, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. ROBIN L. LINDSTROM, Defendants
 Real Estate: 431 HURON STREET, ERIE, PA 16502
 Municipality: City of Erie
 Erie County, Pennsylvania

Dimensions: 41.25 X 44
 See Deed Book 1433, page 1481
 Tax I.D. (16) 3022-106
 Assessment: \$5,800 (Land)
 \$0 (Bldg)
 Improvement thereon: a residential dwelling house as identified above
 Leon P. Haller, Esquire
 Purcell, Krug & Haller
 1719 North Front Street
 Harrisburg, PA 17104
 (717) 234-4178

May 31 and June 7, 14

SALE NO. 9

Ex. #13279 of 2015

M&T Bank, Plaintiff

v.

Natalie A. Pacileo a/k/a Natalie Pacileo, Defendant

DESCRIPTION

By virtue of a Writ of Execution filed to No. 13279-15, M&T Bank, Plaintiff v. Natalie A. Pacileo a/k/a Natalie Pacileo, owner of property situated in the City of Erie, Erie County, Pennsylvania being 819 W. 26th Street, Erie, PA 16508
 .1395 Acres
 Assessment Map number: 19-6041.0-208.00
 Assessed Value figure: 86,100.00
 Improvement thereon: Residential Property
 Robert W. Williams, Esquire
 Christina J. Pross, Esquire
 Mattleman, Weinroth & Miller, P.C.
 401 Route 70 East, Suite 100
 Cherry Hill, NJ 08034
 (856) 429-5507

May 31 and June 7, 14

SALE NO. 10

Ex. #13119 of 2018

Mid America Mortgage, Inc., Plaintiff

v.

Stephen M. Landis and Jennifer L. Landis, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 13119-18, Mid America Mortgage, Inc. v. Stephen M. Landis and Jennifer L. Landis, owners of property situated in the City of Erie, Erie County, Pennsylvania being known as 2925 Hampton Road, Erie, Pennsylvania 16508.
 Tax I.D. No. 19-062-037.0-216.00

Assessment: \$89,393.19
 Improvements: Residential Dwelling
 McCabe, Weisberg & Conway, LLC
 123 South Broad Street, Suite 1400
 Philadelphia, PA 19109
 215-790-1010
 May 31 and June 7, 14

SALE NO. 11

Ex. #13577 of 2015
Bank of America N.A., Plaintiff
 v.

Diane M. Bland, Defendant

DESCRIPTION

By virtue of a Writ of Execution filed to No. 13577-15, Bank of America N.A. vs. Diane M. Bland, owners of property situated in Millcreek Township, Erie County, Pennsylvania being 2617 West 24th Street, Erie, PA 16506
 .2386 Acreage
 Assessment Map number: 33051197000600
 Assessed Value figure: \$115,160.00
 Improvement thereon: Residential Dwelling
 Roger Fay, Esquire
 1 E. Stow Road
 Marlton, NJ 08053
 (856) 482-1400
 May 31 and June 7, 14

SALE NO. 12

Ex. #13103 of 2018
Wells Fargo Bank, N.A., Plaintiff
 v.

Ashley L. Gantz, Defendant(s)

DESCRIPTION

By virtue of a Writ of Execution filed to No. 13103-18, Wells Fargo Bank, N.A. vs. Ashley L. Gantz
 Amount Due: \$52,668.45
 Ashley L. Gantz, owner(s) of property situated in ERIE CITY, Erie County, Pennsylvania being 325 East 29th Street, Erie, PA 16504-1017
 Dimensions: 30 X 137
 Square Footage: 1,338
 Assessment Map number: 18050079011600
 Assessed Value: \$61,800.00
 Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP
 One Penn Center at Suburban Station, Suite 1400
 1617 John F. Kennedy Boulevard

Philadelphia, PA 19103-1814
 (215) 563-7000
 May 31 and June 7, 14

SALE NO. 13

Ex. #10491 of 2019
Wells Fargo Bank, N.A., Plaintiff
 v.

Lora N. Ormsbee, Defendant(s)

DESCRIPTION

By virtue of a Writ of Execution filed to No. 10491-19, Wells Fargo Bank, N.A. vs. Lora N. Ormsbee
 Amount Due: \$63,344.58
 Lora N. Ormsbee, owner(s) of property situated in ERIE CITY, Erie County, Pennsylvania being 3912 Raspberry Street, Erie, PA 16509-1324
 Dimensions: 45 X 140
 Assessment Map number: 19061029010300
 Assessed Value: \$61,220.00
 Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP
 One Penn Center at Suburban Station, Suite 1400
 1617 John F. Kennedy Boulevard
 Philadelphia, PA 19103-1814
 (215) 563-7000

May 31 and June 7, 14

SALE NO. 14

Ex. #13403 of 2017
Matrix Financial Services Corporation, Plaintiff
 v.

Patty Reash a/k/a Patty Laniewicz, Defendant(s)

DESCRIPTION

By virtue of a Writ of Execution filed to No. 13403-17, Matrix Financial Services Corporation vs. Patty Reash a/k/a Patty Laniewicz
 Amount Due: \$66,792.79
 Patty Reash a/k/a Patty Laniewicz, owner(s) of property situated in WESLEYVILLE BOROUGH, Erie County, Pennsylvania being 2226 Eastern Avenue, Erie, PA 16510-1718
 Dimensions: 40 X 120
 Acreage: 0.1102
 Assessment Map number: 50004027000800
 Assessed Value: \$85,600.00
 Improvement thereon: residential Phelan Hallinan Diamond & Jones, LLP
 One Penn Center at Suburban

Station, Suite 1400
 1617 John F. Kennedy Boulevard
 Philadelphia, PA 19103-1814
 (215) 563-7000
 May 31 and June 7, 14

SALE NO. 15

Ex. #12351 of 2018
PENNYMAC LOAN SERVICES, LLC, Plaintiff
 v.

DAVID BOWES, SOLELY IN HIS CAPACITY AS PLENARY CO-GUARDIAN OF THE PERSON AND ESTATE OF KRISTIN DEE BOWES A/K/A KRISTIN D. BOWES AN INCAPACITATED PERSON, KELLY BOWES, SOLELY IN HER CAPACITY AS PLENARY CO-GUARDIAN OF THE PERSON AND ESTATE OF KRISTIN DEE BOWES A/K/A KRISTIN D. BOWES AN INCAPACITATED PERSON, Defendants

DESCRIPTION

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATE IN THE CITY OF ERIE, COUNTY OF ERIE AND COMMONWEALTH OF PENNSYLVANIA. BEING KNOWN AS: 1010 DELAWARE AVENUE, ERIE, PA 16505
 PARCEL # (16) 3114-203
 Improvements: Residential Dwelling.
 POWERS KIRN, LLC
 Amanda L. Rauer, Esquire
 Id. No. 307028
 Attorneys for Plaintiff
 Eight Neshaminy Interplex
 Suite 215
 Treose, PA 19053
 (215) 942-2090

May 31 and June 7, 14

SALE NO. 16

Ex. #12789 of 2018
WELLS FARGO BANK, N.A., Plaintiff
 v.

KIRK R. GRIFFITH, Defendant

DESCRIPTION

ALL THAT CERTAIN PIECE OR PARCEL OF LAND SITUATE

IN THE TOWNSHIP OF HARBORCREEK, COUNTY OF ERIE AND STATE OF PENNSYLVANIA.
 BEING KNOWN AS: 828 ELDRED STREET, ERIE, PA 16511
 PARCEL # 27-006-092.0-003.00
 Improvements: Residential Dwelling.
 POWERS KIRN, LLC
 Amanda L. Rauer, Esquire
 Id. No. 307028
 Attorneys for Plaintiff
 Eight Neshaminy Interplex
 Suite 215
 Trevoise, PA 19053
 (215) 942-2090
 May 31 and June 7, 14

SALE NO. 17

Ex. #10357 of 2017
BANK OF AMERICA, N.A.,
SUCCESSOR BY MERGER
TO BAC HOME LOANS
SERVICING LP, FKA
COUNTRYWIDE HOME
LOANS SERVICING LP C/O
PENNYMAC LOAN SERVICES,
LLC, Plaintiff
 v.
JAMES W. PYLE, JR., TONY A.
PYLE, Defendants

DESCRIPTION

All that certain piece or parcel of land situate in McKean Township, Erie County, Pennsylvania.
 BEING KNOWN AS: 9152 SHADDUCK ROAD, MCKEAN, PA 16426
 PARCEL # (31) 13 -47 -17
 Improvements: Residential Dwelling.
 POWERS KIRN, LLC
 Amanda L. Rauer, Esquire
 Id. No. 307028
 Attorneys for Plaintiff
 Eight Neshaminy Interplex
 Suite 215
 Trevoise, PA 19053
 (215) 942-2090
 May 31 and June 7, 14

SALE NO. 18

Ex. #11985 of 2018
New Penn Financial, LLC d/b/a
Shellpoint Mortgage Servicing,
Plaintiff
 v.
Unknown Heirs, Successors,

Assigns and All Persons, Firms or Association Claiming Right, Title or Interest from or Under Harry L. Hawthorne, Jr, Christopher J. Hawthorne in his capacity as heir of Harry L. Hawthorne, Jr, Deceased and Julie M. Hawthorne in her capacity as heir of Harry L. Hawthorne, Jr, Deceased, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 2018-11985, New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing vs. Unknown Heirs, Successors, Assigns and All Persons, Firms or Association Claiming Right, Title or Interest from or Under Harry L. Hawthorne, Jr, Christopher J. Hawthorne in his capacity as heir of Harry L. Hawthorne, Jr, Deceased and Julie M. Hawthorne in her capacity as heir of Harry L. Hawthorne, Jr, Deceased, owner(s) of property situated in Erie County, Pennsylvania being 1018 PLUM STREET, ERIE, PA 16502
 Assessment Map Number: 16030046020400
 Assessed Value Figure: \$0.00
 Improvement thereon: Single Family Home -0sq. ft.
 Richard M. Squire & Associates, LLP
 Jennie C. Shnyder, Esq.
 (PA I.D. #315213)
 Attorneys for Plaintiff
 May 31 and June 7, 14

SALE NO. 20

Ex. #13443 of 2016
HSBC Bank USA, National Association, as Indenture Trustee for People's Choice Home Loan Securities Trust Series 2005-4 c/o Ocwen Loan Servicing, LLC, Plaintiff
 v.
Scott M. Bone, Michele R. Bone, Defendants

DESCRIPTION

ALL THAT CERTAIN piece or parcel of land situate in the Township of Millcreek (Tract 77), County of Erie and State of Pennsylvania, being all of Lot No. Sixteen (16) of Brentwood Hills Subdivision No. 1, as appears upon a map of said subdivision recorded

in Erie County Map Book 6, page 84, and rerecorded in Erie County Map Book 6, page 117 on February 12, 1963. Said lot having a frontage of Eighty-two and Two hundredths (82.02) feet on the easterly line of Lansing Way, with a depth of One Hundred Twenty (120) feet extending eastwardly therefrom.
 PROPERTY ADDRESS: 3619 Lansing Way, Erie, PA 16506
 PARCEL 33079325002200
 BEING the same premises which Howard N. Kemp and Nancy Ann Kemp, his wife by Deed dated December 27, 1993, and recorded December 28, 1993, in the Office of the Recorder of Deeds in and for Erie County in Deed Book 0311, Page 1632, granted and conveyed unto Scott M. Bone and Michele R. Bone, his wife, as Tenants by the Entireties with the Right of Survivorship.
 ANDREW J. MARLEY, ESQUIRE
 STERN & EISENBERG, PC
 1581 Main Street, Suite 200
 The Shops at Valley Square
 Warrington, PA 18976
 (215) 572-8111
 May 31 and June 7, 14

SALE NO. 21

Ex. #10192 of 2019
Pennsylvania Housing Finance Agency, Plaintiff
 v.
Theodore J. Kelly, Jr., Defendant

DESCRIPTION

By virtue of a Writ of Execution filed to No. 10192-19, Pennsylvania Housing Finance Agency vs. Theodore J. Kelly, Jr., owner of property situated in Borough of Girard, Erie County, Pennsylvania being:
 Dimensions: Square Feet: 1102
 Acreage: 0.3983
 Assessment Map Number: (23)-004-038.5-030.00
 Assess Value figure: \$101,600.00
 Improvement thereon: Single Family Dwelling
 Lois M. Vitti, Esquire
 Attorney for Plaintiff
 333 Allegheny Avenue, Suite 303
 Oakmont, PA 15139
 (412) 281-1725
 May 31 and June 7, 14

SALE NO. 22

Ex. #10038 of 2019

Pennsylvania Housing Finance Agency, Plaintiff

v.

Karen M. Nimelli, Defendant

DESCRIPTION

By virtue of a Writ of Execution filed to No. 10038-19, Pennsylvania Housing Finance Agency vs. Karen M. Nimelli, owner of property situated in Borough of Lake City (formerly Borough of North Girard), Erie County, Pennsylvania being:

Dimensions: Square Feet: 1026

Acreage: 0.4242

Assessment Map Number: (28)-013-023.0-007.00

Assess Value figure: \$76,600.00

Improvement thereon: Single Family Dwelling

Lois M. Vitti, Esquire

Attorney for Plaintiff

333 Allegheny Avenue, Suite 303

Oakmont, PA 15139

(412) 281-1725

May 31 and June 7, 14



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Joseph P. Maloney, CPA, CFE • James R. Scarpitti, CPA
Rick L. Clayton, CPA • Christopher A. Elwell, CPA • Ryan Garofalo, CPA

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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

**COLE, EDNA J.,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Executrix: Barbara J. Poirier, c/o Robert C. Ward, Esq., 307 French Street, Erie, Pennsylvania 16507-1129
Attorney: Robert C. Ward, Esq., 307 French Street, Erie, Pennsylvania 16507-1129

**HOUSE, RICHARD A., a/k/a
RICHARD ALAN HOUSE, a/k/a
RICHARD HOUSE,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Kristin Best, 60 Ridge Road, New Rochelle, New York 10804
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**JOHNSON, ALFRED J., a/k/a
ALFRED JOHNSON,
deceased**

Late of the City of Erie, County of Erie, State of Pennsylvania
Executrix: Margaret L. Hart, c/o 337 West 10th Street, Erie, PA 16502
Attorneys: THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

**MAINZER, FRANCIS K.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Kristen M. Gillespie, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**MARKLEY, ELAINE S., a/k/a
ELAINE SCHUBEK MARKLEY,
a/k/a ELAINE MARKLEY,
deceased**

Late of Millcreek Township, Erie County, Pennsylvania
Executor: Jonathan Markley, c/o Robert C. Ward, Esq., 307 French Street, Erie, Pennsylvania 16507-1129
Attorney: Robert C. Ward, Esq., 307 French Street, Erie, Pennsylvania 16507-1129

**MILANO, CARLA D.,
deceased**

Late of City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Jennifer Milano Burns, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Michael A. Agresti, Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**PIOTROWSKI, KAY L., a/k/a
KAY L. BRIGGS,
deceased**

Late of Harborcreek Township, Erie County, Erie, PA
Co-Executors: Holly M. Lopez and Richard L. Piotrowski, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**WEIDLER, PATRICK, a/k/a
PATRICK E. WEIDLER,
deceased**

Late of the Township of Springfield, County of Erie, Commonwealth of Pennsylvania
Executor: John Weidler, 11950 Lucas Road, East Springfield, PA 16411
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

SECOND PUBLICATION

**BULISHAK, CHONG KIM,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Andrea Mientkiewicz, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**CONTI, THERESA J.,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Barbara Presser
Attorney: David J. Rhodes, Esquire, ELDERKIN LAW FIRM, 150 East 8th Street, Erie, PA 16501

**FIOLEK, EDWARD B.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Patty A. Lanich, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

**HOENES, RICHARD M.,
deceased**

Late of the Township of Harborcreek, County of Erie and State of Pennsylvania
Administrator: Derek Hoenes, c/o Justin L. Magill, Esq., 821 State Street, Erie, PA 16501
Attorney: Justin L. Magill, Esquire, 821 State Street, Erie, PA 16501

**JAROSKI, KATHLEEN S.B.,
a/k/a KATHLEEN S. BRENNAN
JAROSKI,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Jamie Brennan, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**LANGAN, HELEN A.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Richard M. Hatch c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**MILLER, GLADYS C.,
deceased**

Late of Venango Township, Erie County, Wattsburg, PA
Executor: Richard L. Miller, Jr., c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**MOZDY, CHRISTOPHER E.,
deceased**

Late of Township of Millcreek, Erie County, Pennsylvania
Administrator: Belinda M. Mozdy, c/o Jeffrey J. Cole, Esq., 2014 West 8th Street, Erie, PA 16505
Attorney: Jeffrey J. Cole, Esq., 2014 West 8th Street, Erie, PA 16505

**SHELINE, KARL R., a/k/a KARL
RAYMOND SHELINE,
deceased**

Late of the City of Erie, County of Erie, PA
Administratrix: Joyce S. Dias, c/o Mary Alfieri Richmond, Esquire, 150 East 8th Street, Floor 1, Erie, PA 16501
Attorney: Mary Alfieri Richmond, Esquire, 150 East 8th Street, Floor 1, Erie, PA 16501

**WILLIAMS, DONALD D., JR.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Co-Executors: Mary Ellen Demyanovich and John T. Williams, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**WILLIAMS, ROBERT F.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Mary Ellen Demyanovich, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

THIRD PUBLICATION

**BLACK, DONNA L.,
deceased**

Late of Summit Township, Erie County
Administratrices: Lisa M. Will and Wendy Antalek
Attorney: John F. Mizner, 311 West Sixth Street, Erie, PA 16507

**COLONNA, MARK A., a/k/a
MARK COLONNA,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Administrator: Silvio Satelli, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**DiMATTIO, CAROLYN C.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Michael J. DiMattio, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Melissa L. Larese, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**FITZGERALD, PATRICK M.,
a/k/a PATRICK FITZGERALD,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Administrator C.T.A.: Ronald McVoy, 2501 West Center Street, Ashtabula, OH 44004
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**FORSMAN, RONALD L., a/k/a
RONALD LEO FORSMAN,
deceased**

Late of Fairview Township, Erie County, Commonwealth of PA
Executor: David R. Forsman, c/o Frances A. McCormick, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Frances A. McCormick, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**GRANAHAN, JOHN H.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Co-Executors: Kathleen Hamilton Sleeper and Mark E. Granahan, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**HEASLEY, TIMOTHY, a/k/a
TIMOTHY J. HEASLEY,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Francis B. Heasley, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

**IANNELLO, ANGELINE
MARIE, a/k/a ANGELINE M.
IANNELLO, a/k/a
ANGELINE M. IANELLO,
deceased**

Late of Erie, Erie County, Pennsylvania
Executor: Joseph J. Colao, c/o Peter J. Sala, Esquire, 731 French Street, Erie, PA 16501
Attorney: Peter J. Sala, Esquire, 731 French Street, Erie, PA 16501

**KINEM, WILLIAM PAUL, a/k/a
WILLIAM P. KINEM,
deceased**

Late of the Township of Harborcreek, Commonwealth of Pennsylvania
Administratrix: Barbara Leone, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

**LANGHURST, ROBERT,
a/k/a ROBERT FRANCIS
LANGHURST,
deceased**

Late of 10745 Rt. 18, Albion, PA
Executrix: Janet Felsing, 289 Bear Creek Rd., Sarver, PA 16055
Attorney: Laurel Hartshorn, Esq., 254 West Main Street, PO Box 553, Saxonburg, PA 16056

**NEW, LAWRENCE L., a/k/a
LARRY L. NEW,
deceased**

Late of Township of Fairview, Erie County, Commonwealth of Pennsylvania
Executor: Gloria A. New, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**ROBERTSON, LEE H.,
deceased**

Late of City of Erie, Erie County, Pennsylvania
Executor: Scott M. Robertson, c/o Jeffrey J. Cole, Esq., 2014 West 8th Street, Erie, PA 16505
Attorney: Jeffrey J. Cole, Esq., 2014 West 8th Street, Erie, PA 16505

**ROEHM, SHIRLEY,
deceased**

Late of City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Fred Roehm, c/o W. Atchley Holmes, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: W. Atchley Holmes, Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**ROSE, SALLY A.,
deceased**

Late of Fairview, County of Erie and Commonwealth of Pennsylvania
Executor: Michelle A. Tarr, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**SAUERS, NORMAN L., a/k/a
NORMAN LEON SAUERS,
deceased**

Late of the Township of Washington, County of Erie and State of Pennsylvania
Co-Executrices: Nicole Marie Varee and Heather Lee Blore, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

**SCHWAB, ELAINE M., a/k/a
ELAINE MARIE SCHWAB,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Kathryn Bush Aciri, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

**SCOTT, NANCY J., a/k/a
NANCY JEAN SCOTT,
deceased**

Late of the Township of Summit
Executor: Lawrence G. Scott
Attorney: Andrew J. Sisinni,
Esquire, 1314 Griswold Plaza,
Erie, PA 16501

**SENETA, MARY, a/k/a
MARY ELIZABETH SENETA,
a/k/a MARY E. SENETA,
deceased**

Late of the Borough of Edinboro,
County of Erie, Commonwealth of
Pennsylvania
Executrix: Jane Frawley, 10570
Milgrove Road, Springboro,
Pennsylvania 16435
Attorney: Grant M. Yochim, Esq.,
24 Main St. E., P.O. Box 87,
Girard, PA 16417

**STASZAK, JOHN J., SR., a/k/a
JOHN J. STASZAK,
deceased**

Late of Township of Fairview,
Erie County, Commonwealth of
Pennsylvania
Attorney: Frances A. McCormick,
Esq., Knox McLaughlin Gornall
& Sennett, P.C., 120 West Tenth
Street, Erie, PA 16501

**TATE, PATRICIA ANN, a/k/a
PATRICIA A. TATE,
deceased**

Late of Township of Millcreek,
Erie County, Commonwealth of
Pennsylvania
Administratrix: Barbara Dennison,
c/o Knox Law Firm, 120 W. 10th
St., Erie, PA 16501
Attorney: Christine Hall McClure,
Esq., Knox McLaughlin Gornall &
Sennett, P.C., 120 West 10th Street,
Erie, PA 16501

**TREJCHEL, PATRICIA L.,
deceased**

Late of the Township of Millcreek,
County of Erie and Commonwealth
of Pennsylvania
Executrix: Julie A. O'Hara, c/o
Vlahos Law Firm, P.C., 3305
Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos,
Esq., Vlahos Law Firm, P.C., 3305
Pittsburgh Avenue, Erie, PA 16508

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

CATHY M. LOJEWSKI814-871-2965
3228 Florida Avenue
Erie, PA 16504*cmlojewski@yahoo.com*

New fax number

TINA M. FRYLING.....814-240-5616

ATTENTION ALL ATTORNEYS

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