

# Erie County Legal Journal

March 29, 2019

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102 ERIE 32 - 53  
Commonwealth v. LeClair

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# 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

### MONDAY, APRIL 1, 2019

In-House Counsel Division  
Leadership Committee Meeting  
Noon  
ECBA Headquarters

### FRIDAY, APRIL 5, 2019

ECBA Live Seminar  
*Everything You Ever Wanted To Know About  
Impaired Lawyers... \* (...but were to afraid to ask)*  
The Will J. Schaaf & Mary B. Schaaf Education Center  
8:00 a.m. - Registration  
8:30 a.m. - 9:30 a.m. - Seminar  
\$47 (ECBA members/their non-attorney staff)  
\$60 (non-members)  
1 hour ethics

### THURSDAY, APRIL 11, 2019

ECBA Live Seminar  
*Memory Skills for Lawyers: A seminar for  
any lawyer who has ever forgotten anything*  
The Will J. Schaaf & Mary B. Schaaf Education Center  
8:00 a.m. - Registration  
8:30 a.m. - Noon - Seminar  
\$140 (ECBA members/their non-attorney staff)  
\$180 (non-members)  
2 hours substantive, 1 hour ethics

### MONDAY, APRIL 22, 2019

ECBA Live Seminar  
*Understanding and Navigating Medicare:  
What you need to know when advising clients and  
when making personal, pre-retirement decisions*  
The Will J. Schaaf & Mary B. Schaaf Education Center  
8:00 a.m. - Registration  
8:30 p.m. - 1:15 p.m. - Seminar  
\$179 (ECBA members/their non-attorney staff)  
\$240 (non-members)  
4 hours substantive

### THURSDAY, APRIL 25, 2019

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

### MONDAY, APRIL 29, 2019

ECBA Board of Directors Meeting  
Noon  
ECBA Headquarters

### THURSDAY, MAY 2, 2019

AKT Kid Connection Kick Off Event  
5:30 p.m. - 7:00 p.m.  
ExpERIENCE Children's Museum



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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**

**APRIL 2019 NOTICE**

The following is a list of *April 2019, May 2019, and June 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](http://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, April 17, 2019	9:30 a.m.: Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, May 15, 2019	10:00 a.m.: Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, June 12, 2019	10:30 a.m.: Open for all Erie & Pittsburgh Ch. 13 matters
	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, April 4, 2019	9:30 a.m.: Open for all Erie & Pittsburgh Ch. 11 matters
Thursday, April 25, 2019	10:00 a.m.: Open for all Erie & Pittsburgh Ch. 11 matters
Friday, May 10, 2019	10:30 a.m.: Open for all Erie & Pittsburgh Ch. 7 matters
Thursday, May 30, 2019	11:00 a.m.: Open for all Erie & Pittsburgh Ch. 7 matters, including all Ch. 7 Motions to Extend/Impose Stay
Thursday, June 20, 2019	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](http://www.pawb.uscourts.gov)).

Michael R. Rhodes  
Clerk of Court

Mar. 29



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Tuesday, April 16, 2019  
Westin Convention Center Hotel  
1000 Penn Ave.

## **Harrisburg**

Friday, May 03, 2019  
Sheraton Harrisburg Hershey Hotel  
4650 Lindle Rd.

## **Philadelphia**

Tuesday, May 21, 2019  
Philadelphia 201 Hotel  
201 N. 17<sup>th</sup> St.



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COMMONWEALTH OF PENNSYLVANIA

v.

CHRISTOPHER LECLAIR

STATUTES / CONSTRUCTION

Legislative intent controls when interpreting a statute. When the meaning of a statute is clear, it must be given effect in accordance with its plain and common meaning.

STATUTES / AMENDMENT

No statute shall be construed to be retroactive unless *clearly and manifestly* intended by the General Assembly. Portions of an amended statute not altered by the amendment shall be construed as effective from the time of the original enactment, while new provisions shall be construed as effective only from the date when the amendment became effective.

STATUTES / CONSTRUCTION

A federal agency, such as the United States Coast Guard, that has suffered injury as a direct result of a crime is a “victim” under the plain language of 18 Pa. C.S.A. § 1106 (effective January 31, 2005 to October 23, 2018), and the agency is entitled to restitution for those damages which would not have occurred “but for” defendant’s criminal conduct.

STATUTES / CONSTRUCTION

It is appropriate and equitable to utilize both the Administrative Code and the Crime Victims Act definitions of “victim” to fairly encompass the class entitled to restitution.

STATUTES / CONSTRUCTION

Section 479.1 of the Administrative Code of 1929 (71 P.S. § 180-9.1, *now repealed*) defined “victim” as “a person against whom a crime is being or has been perpetrated or attempted.” The Statutory Construction Act (1 Pa. C.S.A. § 1991) defines “person” as “a corporation, partnership, limited liability company, business trust, other association, *government entity (other than the Commonwealth)*, estate, trust, foundation or natural person.”

CRIMINAL PROCEDURE / SENTENCING / RESTITUTION

The purpose of restitution is two-fold: to compensate a victim and to rehabilitate a defendant by instilling that it is his responsibility to compensate the victim.

CRIMINAL PROCEDURE / SENTENCING / RESTITUTION

Pursuant to 18 Pa. C.S.A. § 1106 (effective January 31, 2005 to October 23, 2018), upon conviction wherein a victim suffers injury directly resulting from the crime, a court shall order full restitution, regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss.

CRIMINAL PROCEDURE / SENTENCING / RESTITUTION

When restitution is ordered as a direct sentence, the injury to property or person for which the restitution is ordered must result directly from the crime. The amount of restitution must be supported by the record and must not be speculative or arbitrarily excessive.

CRIMINAL PROCEDURE / SENTENCING / RESTITUTION

Damages which occur as a direct result of the crime are those which would not have occurred “but for” the defendant’s criminal conduct.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION  
DOCKET NO. 2693-2017

Appearances: Elizabeth Hirz, Esquire and Paul Sellers, Esquire on behalf of the Commonwealth  
Bruce Sandmeyer, Esquire on behalf of Christopher LeClair

**MEMORANDUM OPINION AND ORDER**

Trucilla, P.J.

February 12, 2019

This matter comes before the Court on Defendant's Post Sentence Motion as it pertains exclusively to the issue of restitution. Following a separate hearing on the issue and after reviewing the parties' post-hearing memoranda of law and supplemental exhibits, the Court finds the following:

**I. ISSUE:**

**WHETHER \$705,974.80 IN RESTITUTION SHOULD BE AWARDED TO THE UNITED STATES COAST GUARD IN RECOMPENSE FOR ITS SEARCH AND RESCUE OPERATION RESULTING FROM DEFENDANT'S FALSE REPORT THAT HIS WIFE HAD FALLEN OVERBOARD INTO LAKE ERIE?**

**II. FACTS:**

On October 12, 2018, following a five day jury trial, Christopher LeClair (hereinafter "Defendant") was convicted of First Degree Murder, Abuse of a Corpse, Tampering With Evidence, Possessing Instruments of a Crime, Firearms not to be Carried Without a License, and False Reports to Law Enforcement Authorities.<sup>1</sup> The jury found Defendant guilty of shooting his wife, Karen LeClair, in the head while aboard his commercial fishing boat, the "Doris M" on Lake Erie. He wrapped her body in fishing net, tied her body to an anchor, and pushed her body overboard. On June 11, 2017, Defendant falsely reported to the United States Coast Guard (hereinafter "USCG") that his wife fell overboard.

On December 11, 2018, this Court sentenced Defendant to a mandatory life sentence without the possibility of parole on the murder conviction and separate consecutive terms of imprisonment on the remaining counts. Germane to the issue *sub judice* is the sentence imposed at count 7 of the Information. Specifically, count 7 is False Reports to Law Enforcement Authorities. 18 Pa. C.S.A. §4906(b)(1). At sentencing, Defendant was sentenced to pay lab fees and costs to the County of Erie and Pennsylvania State Police, and restitution in the amount of \$710,418.26. (Sentencing Order of 12/11/18). In the sentencing address, the Court incorporated the Presentence Investigative Report as well as the exhibits submitted by the Commonwealth supporting its request for the imposition of costs and restitution. The court found that Defendant's false report of his wife falling overboard caused the response by the USCG. Having satisfied this "but for" test, discussed *infra*, Defendant was deemed

<sup>1</sup> 18 P.S. §2501(a); 18 P.S. §5510; 18 P.S. §4910(1); 18 P.S. §907(a); 18 P.S. §6106(a)(1); 18 P.S. §4906(b)(1), respectively.

responsible for the restitution payable to the USCG in the amount of \$705,974.80. This specific amount was premised on the itemized costs set forth by the Commonwealth in Courtroom Exhibit 2 at the time of sentencing and Exhibit 1 attached to the Commonwealth's Memorandum Of Law In Response To Defendant's Post Sentence Motion. (See attached)

On January 9, 2019, this Court amended the Sentencing Order and directed Defendant to pay \$1,952.00 to the Pennsylvania State Police as costs, pursuant to Pa.R.Crim.P. §706, 42 Pa.C.S.A. §9721(c), and 42 Pa.C.S.A. §303.14. The Court continued, and awarded restitution to the Crime Victims Compensation Board in the amount of \$4,443.46, pursuant to Pa.R.Crim.P. §1106(c)(1)(ii)(B) and §1106(h). The remaining issue, and the one now before the Court, is whether it was lawful to award the USCG \$705,974.80 in restitution for the expenses it incurred as a result of Defendant's false report. Defense counsel conceded that the costs awarded by the Court to the Pennsylvania State Police and the restitution for funeral expenses as paid by the Crime Victims Fund were appropriate and therefore were not challenged. Subsequently, because of the complexity of this issue, the Court conducted another hearing on restitution on January 9, 2019. Following legal arguments by counsel, the Court gave the parties until January 23, 2019 to supply further legal authority for their respective positions.

The Commonwealth submitted a memorandum dated July 27, 2017 from J.A. Erickson, LT, CG Sector Buffalo, of the USCG. This document contained the estimated "Costs of Search and Rescue Efforts for Karen LeClair on June 11, 2017 - June 12, 2017." *See*, Commonwealth Post Sentence Motion Hearing Exhibit "2". The list includes unspecified costs for operating several airplanes (presumably) multiplied by the number of hours the planes were used. The list also includes the costs of certain officers and "units" times the number of hours these officers and units were engaged in the search (presumably). What the report does not make clear is whether these manpower hours and plane operation hours/expenses would have been incurred regardless of the search operation (as daily costs of operation) or whether, "but for" Defendant's false claim, these hours/expenses would not have been incurred. This matter will be addressed, *infra*.

The Commonwealth's Memorandum of Law in Response to Defendant's Post Sentence Motion argues that the USCG, as a non-Commonwealth government agency, is entitled to restitution as a direct "victim" as defined by the Administrative Code, 71 P.S. §180-9.1, and the Statutory Construction Act definition of "person," 1 Pa.C.S.A. §1991. The Commonwealth submitted additional documentation in support of the USCG's expenses. *See* Response to Post Sentence Motion Exhibit "1". This exhibit is a list of "Reimbursable Standard Rates" which appears to be taken from a USCG Manual ("Commandant Instruction 7310.1R") and includes "inside and outside" rates for "Cutters, Boats, and Aircraft," and "Personnel," as well as "Canine Teams," and "Dive Teams." The tables provided therein are not specific to this case, but appear to be in support of Commonwealth Post Sentence Hearing, Exhibit "1," referenced above. Again, the issue of whether these stated expenses are reimbursable is to be determined.

On January 25, 2019, the Defendant filed a Memorandum of Law in support of his Post Sentence Motion. Defendant argues that the USCG cannot be defined as a "victim" pursuant to the ruling in *Commonwealth v. Veon*, 150 A. 3d 435 (Pa. 2016) (a Commonwealth agency, although directly impacted by Defendant's criminal fraud, is not considered a "victim" under

18 Pa.C.S.A §1106, the restitution statute). The Commonwealth counters that Defendant's reliance on *Veon* is misplaced because the issue in *Veon* pertained only to whether a Commonwealth agency was a victim under the facts of that case. The Commonwealth argues that because the USCG is not a Commonwealth agency, it is not excluded as a victim, and, therefore, *Veon* is distinguishable and limited to its facts. The question of whether restitution was properly ordered to be paid to the USCG as a "victim" of Defendant's false report will now be discussed.

### III. DISCUSSION

The statutory authority for restitution in sentencing appears in both the Crimes Code, 18 Pa.C.S.A. §1106, and the Sentencing Code, 42 Pa.C.S.A. §9721(c). The Sentencing Code compels a sentencing court to award mandatory restitution, ordering the defendant "to compensate the victim of his criminal conduct for the damage or injury that he has sustained." 42 Pa.C.S.A. §9721(c). The Crimes Code also requires that mandatory restitution be ordered "so as to provide the victim with the fullest compensation for the loss." 18 Pa.C.S.A. §1106(c)(i). Of particular application in this case, restitution is to be ordered "regardless of the current financial resources of the defendant." 18 Pa.C.S.A. §1106(c)(1)(i). Consequently, despite the fact that Defendant is serving a life sentence, this is not a bar to Defendant's responsibility to pay his lawful obligation of restitution.

Restitution may be imposed either as a direct sentence, as in this case, or as condition of probation or parole. 42 Pa.C.S.A. §9721(c). *See also*, 18 Pa. C.S.A. §1106 (direct sentence); 42 Pa.C.S.A. §9754 (condition of probation). Whether imposed as a direct sentence or as a condition of probation, an order of restitution is a sentence. *Commonwealth v. Dinoia*, 801 A.2d 1254, 1257 n.1 (Pa. Super. 2002). "When imposed as a [direct] sentence, the injury to property or person for which restitution is ordered must directly result from the crime." *In the Interest of M.W.*, 725 A.2d 729, 732 (1999). The sentencing court must apply a "but for" test imposing restitution. "[D]amages which occur as a direct result of the crime are those which [would] not have occurred but for the defendant's criminal conduct." *Commonwealth v. Gerulis*, 616 A. 2d 686, 697 (Pa. Super. 1992). Because restitution is a sentence, the amount ordered must be supported by the record; it may not be speculative or arbitrarily excessive. *Commonwealth v. Wright*, 722 A.2d 157, 159 (Pa. Super. 1998); *Commonwealth v. Poplawski*, 158 A.3d 671, 674 (Pa. Super. 2017) ("The amount of a restitution order is limited by the loss or damages sustained as a direct result of defendant's criminal conduct and by the amount supported by the record.") Ordering a defendant to pay restitution serves two purposes. "While the payments may compensate the victim, the sentence is also meant to rehabilitate the defendant by instilling in [his] mind *that it is [his] responsibility* to compensate the victim." *Commonwealth v. Boyles*, 595 A.2d 1180, 1188 (Pa. Super. 1991); *Commonwealth v. Balisteri*, 478 A.2d 5, 9 (Pa. Super. 1984).

The Court is also fully aware of the Federal statutory remedy that allows the Coast Guard to pursue Defendant for "all costs the Coast Guard incurs" when an individual "knowingly and willfully communicates a false distress message to the USCG or causes the USCG to attempt to save lives and property when no help is needed." 14 U.S.C. §88(c)(3). However, the Pennsylvania Restitution Statute specifically preserves alternative remedies. *See* 18 Pa.C.S.A. §1106(g) (No order of restitution shall debar the owner of property ... to recover from the offender as otherwise provided by law ..."). Thereby, the existence of alternative

remedies does not act to preclude an award of restitution by this Court. *See Commonwealth v. LeBarre*, 961 A.2d 176, 181 (Pa. Super. 2008) (The possible existence of civil remedies does not prevent recovery through restitution. Any subsequent remedy must be reduced by a victim's recovery through restitution. *See also* §1106(g). Therefore, there is no concern about double recovery and 14 U.S.C. §88(c)(3) does not bar the USCG recovery for restitution in this case.

In the case *sub judice*, the Commonwealth seeks restitution for the USCG as a direct victim of Defendant's crime of "False Reports to Law Enforcement." At Count 7, the Commonwealth asserts that the USCG was a victim because it encountered pecuniary loss as a result of its search and rescue efforts in the form of man hours, airplane operation and fuel costs, and other expenses associated with the futile search for Karen LeClair. The Defendant counters that §1106 does not contemplate the USCG as a victim and, even if it does, the restitution sought by the Commonwealth for recovery is duplicative and unfounded.

An issue flow chart is beneficial for the opinion reader because there are a number of critical issues for this Court to address in determining whether restitution is appropriate. The first legal hurdle to surmount is which version of §1106 should apply to Defendant. This Court must consider whether to apply the version in effect at the time of his crime of making a false report to the USCG on June 11, 2017 (§1106 effective January 31, 2005 to October 23, 2018) or the amended version in effect at the time of his sentencing on December 11, 2018 (§1106 effective October 24, 2018). Subsequent to resolving which version of §1106 applies this Court must then determine whether the USCG falls under the statutory umbrella of a "victim" as identified in §1106. Finally, if the USCG is a victim, the Court must delineate what recompense sought by the Commonwealth on behalf of the USCG directly resulted from Defendant's criminal act and whether each and every expense was incurred "but for" Defendant's false report to the USCG. *See Poplawski*, 158 A.3d at 674.

**A. THE VERSION OF THE RESTITUTION STATUTE IN EFFECT AT THE TIME OF THE CRIME MUST BE APPLIED.**

The Restitution Statute found in the Crimes Code at 18 Pa. C.S.A. §1106 governs restitution for injuries to person or property. There are two versions of this statute which could potentially be applied to the Defendant. The version of the statute in place at the time the false report was made (June 11, 2017) was effective from January 31, 2005 to October 23, 2018. After October 23, 2018, the new version of the restitution statute became immediately effective. [18 Pa. C.S.A. §1106, 2018, Oct. 24, P.L. \_\_, No. 145, §1 imd. Effective]. The new version was in effect at the time of Defendant sentencing on December 11, 2018.<sup>2</sup>

In order to ascertain which version to apply, we first look to 1 Pa.C.S.A. §1926 of the Statutory Construction Act, which provides:

**§1926. Presumption against retroactive effect.**

No statute shall be construed to be retroactive unless *clearly and manifestly* so intended by the General Assembly.

1 Pa.C.S.A. §1926 (emphasis supplied). There is nothing in the language of the post October 24, 2018 amendment to §1106, that indicates an intention by the General Assembly to apply the October 23, 2018 amendments retroactively. Therefore, we approach this inquiry with the presumption that we are to apply the statute in effect at the time of the offense (pre October

<sup>2</sup> For clarity, the Court will refer to the amendments to §1106 as pre October 24, 2018 and post October 24, 2018.



24, 2018). “[I]n the absence of clear language to the contrary, statutes must be construed to operate prospectively only.” *Budnick v. Budnick*, 615 A.2d 80 (Pa. Super. 1992). The term “retrospective” has been defined as applying to “events occurring before its enactment.” *Weaver v. Graham*, 450 U.S. 24 (1981). A law is only retroactive in its application when it relates back and gives a previous transaction a legal effect different from that which it had under the law in effect when it transpired. 1 Pa.C.S.A. §1926; *McMahon v. McMahon*, 612 A.2d 1360 (Pa. Super. 1992).

Moreover, § 1953 of the Statutory Construction Act further clarifies the application of amended statutes:

**§1953. Construction of amendatory statutes.**

... the portions of the [amended] statute which were not altered by the amendment shall be construed as effective from the time of their original enactment, and *the new provisions shall be construed as effective only from the date when the amendment became effective.*

1 Pa.C.S.A. §1953(emphasis supplied). “Amendatory statutes are construed retroactively only if such construction is clearly indicated under the provisions of the statute.” *Commonwealth v. Scoleri*, 160 A.2d 215, 227 (Pa. 1960) (newly enacted statute which precluded evidence of prior convictions at trial was not retroactive and did not require a new trial since it was not effective as of the time of defendant’s trial); *See also Commonwealth v. Hoetzel*, 426 A.2d 669, 672 (Pa. Super. 1981) (trial court should have applied version of amphetamines statute in effect at the time of defendant’s arrest and conviction, rather than later amended statute); *Commonwealth v. Scoleri* 160 A. 2d 215 (Pa. 1960) (with respect to an evidentiary rule, “[A]mendatory statutes are construed retroactively only if such construction is clearly indicated under the provisions of the statute.”); *Commonwealth v. Luciani*; 2018 WL 6729854 (Pa. Super. December 24, 2018) (under *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017), the Sexual Offender Registration Act (SORNA) may not be applied retroactively to sexual offenses which took place prior to the enactment of SORNA).<sup>3</sup>

Lending further support to use of the statute in effect on the date of the offense are the Sentencing Guideline Standards. Recognizing this authority is not controlling, when read *in pari materria* with §1106 and the Statutory Construction Act, its language does support the Court’s use of the statute in effect at the time of Defendant’s criminal act. The Sentencing Guidelines Standards provide:

**§303.1 Sentencing guidelines standards.**

<sup>3</sup> We acknowledge that applying the October 24, 2018 version of 18 Pa.C.S.A. §1106 would not implicate *ex post facto* concerns, as in *Muniz*, since Pennsylvania has repeatedly recognized that restitution is not punitive. *Commonwealth v. Kline*, 695 A.2d 872 (Pa. Super. 1997) (Restitution is not punishment for purposes of *ex post facto* clause, so that application of amended restitution statute did not violate clause). *Kline* applied an amended version of §1106 to a criminal act that predated the amendment in an effort to expand the provision of restitution to an insurance company. This Court finds *Kline* distinguishable since its sole focus was the *ex post facto* issue. Moreover, in affirming the trial court’s approach, the Superior Court in *Kline* allowed, but did not mandate, the application of the subsequent version of §1106. We further note that *Commonwealth v. Layhue*, 687 A.2d 382 (Pa. Super. 1996), also affirmed the trial court’s application of a post-crime version of §1106, but did not mandate such an approach. The concurring opinion in *Layhue* aptly observed that “Statutory changes enacted subsequent to defendant’s crime are irrelevant.” *Id.* at 96 (concurring opinion).



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(c) The sentencing **guidelines shall apply to all offenses committed on or after the effective date of the guidelines. Amendments to the guidelines shall apply to all offenses committed on or after the date of the amendment becomes part of the guidelines.**

(1) When there are current multiple convictions for offenses that overlap two sets of guidelines, the former guidelines shall apply to offenses that occur prior to the effective date of the amendment and the later guidelines shall apply to offenses that occur on or after the effective date of the amendment...

204 Pa. Code §303.1(c).

Accordingly, for the reasons set forth above, this Court concludes that the pre October 24, 2018, version of the Restitution Statute at 18 Pa.C.S.A. §1106, shall be applied in this case. This pre October 24, 2018 version of the §1106 was in effect at the time Defendant made his false report to the USCG on June 10, 2017. Inevitably, the Court must now confront the task of determining whether the USCG is a “victim” in accordance with §1106.

**B. THE USCG QUALIFIES AS A “VICTIM” AND A “PERSON” ACCORDING TO APPLICABLE STATUTORY AUTHORITY AND CASE LAW.**

The question of whether the USCG is a direct victim pursuant to 18 Pa.C.S.A. §1106 (the pre October 24, 2018 statute) appears to be a question of first impression. This Court notes the existence of varying interpretations of legislative intent by both the Pennsylvania Superior Court and the Pennsylvania Supreme Court. Yet careful scrutiny reveals no precedential case law addressing the precise facts of our case: i.e. whether a federal agency of the government can receive restitution as a direct victim of a crime. After an exhaustive review of the statutory history, evolving case law, and an examination of legislative intent, the Court concludes that the USCG is a “victim” of Defendant’s crime and is deserving of compensation because the plain language of §1106 in effect at the time of the commission of the offense warrants finding the USCG qualifies as a “victim” for purposes of receiving restitution.

In reaching this conclusion, this Court first examined the plain language of the Restitution Statute. Section §1106 provides, in relevant part, as follows:

**§1106. Restitution for injuries to person or property**

(a) **General rule.**--Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

\*\*\*

**(c) Mandatory restitution.—**

(1) The court shall order full restitution:

(i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other governmental agency but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government agency in addition to or in place of the board....

(ii) If restitution to more than one **person** is set at the same time, the court shall set priorities of payment. However, when establishing priorities, the court shall order payment in the following order:

**(A) The victim.**

**(B) The Crime Victim's Compensation Board.**

**(C) Any other government agency which has provided reimbursement to the victim as a result of the defendant's criminal conduct.**

**(D) Any insurance company which has provided reimbursement to the victim as a result of the defendant's criminal conduct.**

18 Pa.C.S.A. §1106 (emphasis added).

In §1106(h), victim is defined as:

**“Victim.”** [1] As defined in section 479.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929. (71 P.S. §180-9.1). The term includes [2] the Crime Victim's Compensation Fund if compensation has been paid by the Crime Victim's Compensation Fund to the victim and [3] any insurance company that has compensated the victim for loss under an insurance contract.

§1106(h) (enumeration provided for clarity). The second and third definitions of victim do not apply to the USCG. Accordingly, this Court must closely examine the first definition, which directs that the definition of victim can be found in the Administrative Code of 1929. Section 479.1 of the Administrative Code of 1929, formerly codified at 71 P.S. §180-9.1, originally defined a victim as “a person against whom a crime is being or has been perpetrated or attempted.” However, because the Administrative Code of 1929 gave no definition of

“person”, this Court is compelled to turn to The Statutory Construction Act, 1 Pa.C.S.A. §1991 for the definition. In the Act, “person” is defined as “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth),<sup>4</sup> estate, trust, foundation or natural person.” *Id.* A plain reading therefore compels the conclusion that the USCG, as a federal agency, is “a government entity that is other than the Commonwealth.” *See* §479.1 of the Administrative Code and 71 P.S. §180-9.1. Therefore, the USCG would be a victim under this version of §1106.

The plain language of the statute as written, without importing any definitions from statutes not specifically referenced by the legislature, would include the USCG as a “person” because it is a “government entity” which is not a Commonwealth agency. *See* pre October 24, 2018 version of 18 Pa.C.S.A. §1106. As such, the Coast Guard fits within the definition of “victim” as explicitly provided by the Legislature. The Court is also persuaded by the reasoning in *Commonwealth v. Steffey*, 2018 WL 41406224 (Pa. Super. August 30, 2018), although it is recognized that this authority is not binding. In *Steffey*, three non-profit agencies, who were the object of the Defendant’s criminal theft and forgery, were included in the definition of “person” pursuant to the Statutory Construction Act, 1 Pa. C.S.A. §1991. Therefore, the court concluded not further statutory construction analysis was necessary, and the non-profit entities were entitled to restitution.

The Court is cognizant that the conclusion that the USCG is a direct victim of Defendant’s criminal conduct is buffeted by multifaceted, artful arguments to the contrary based on the fact that in 1998, §479.1 of the Administrative Code was repealed and recodified in the Crime Victims Act, 18 P.S. 11.103 (hereinafter “CVA”). Under the CVA, the definition of victim is drastically different. The CVA defines “victim,” *inter alia*, as “a direct victim,” which the CVA defines as “an individual.” 18 P.S. §11.103. The Statutory Construction Act defines “individual” as a “natural person.” 1 Pa.C.S.A. §1991. However, notably, even after §479.1 of the Administrative Code was repealed in 1998 and recodified in the CVA, the legislature specifically used §479.1 of the Administrative Code’s definition in subsequent versions of §1106.<sup>5</sup>

Pennsylvania’s appellate courts have decisively split over which definition to employ. This Court is well aware of the seismic rumblings between the Pennsylvania Superior Court and the Pennsylvania Supreme Court.<sup>6</sup> To prognosticate further can be perilous. It certainly appears that both the courts and the legislature are trending toward a larger net of inclusion for those victims of crimes who may qualify to receive restitution. However, research in this area fails to disclose any decisions directly on point with the issue at hand. A brief

<sup>4</sup> The post October 24, 2018 §1106 now includes the Commonwealth in its definition of a victim when it is an affected government agency.

<sup>5</sup> After the Administrative Code was repealed in November of 1998, the Restitution Statute at 18 Pa.C.S.A. §1106, was amended on December 3, 1998 and again on November 30, 2004. §1106 continued to reference §479.1 of the Administrative Code and its definition of “victim” as a person and “person” is further defined at 1 Pa.C.S.A. §1991 to include a “corporation, ... or government entity (other than the Commonwealth).”

<sup>6</sup> Decisions in favor of applying the definitions in §479.1 of the Administrative Code, include: *Commonwealth v. Runion*, 662 A.2d 617 (Pa. 1995); *Commonwealth v. Brown*, 981 A.2d 893 (Pa. 2009); *Commonwealth v. Steffey*, 2018 WL 4140624 (Pa. Super. August 30, 2018). Decisions in favor of applying the recodification found at 18 P.S. § 11.103, the Crime Victims Act include: *Commonwealth v. Holmes*, 155 A.3d 69 (Pa. Super. 2017) (*en banc* divided opinion) (opinion in support of affirmance only); *Commonwealth v. Veon*, 150 A.3d 435 (Pa. 2016). No decision as to which definition governs in *Commonwealth v. Hall*, 80 A.3d 1204 (Pa. 2013) (“To properly decide this case, we need not resolve the question of the interplay, if any, between the Crime Victims Act and Section 1106 of the Crimes Code.”)

review of the key decisions on this topic is illuminative, though not necessarily clarifying. What is clear is a pattern of constant expansion, ever enlarging the pool of entities entitled to restitution.<sup>7</sup> Even in cases where the judiciary finds a particular entity excluded from restitution (such as *Commonwealth v. Veon*, 150 A.2d 435 (Pa. 2016), which specifically excluded the Commonwealth), the appellate courts have voiced dissatisfaction with having to restrict the class of victims.

Here the tenets of statutory interpretation may come into play. It is axiomatic that legislative intent controls and “when the words of a statute are free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S.A. 1921(b), *see also* 18 Pa.C.S.A. §105 (provisions of the Crimes Code must be construed “according to the fair import of their terms”). Consequently, when the meaning of a statute is clear, it must be given effect in accordance with its plain and common meaning. *Id.* *See also* 1 Pa.C.S.A. §1922(2) (indicating that the legislature intends entire statute to be effective). “The principles of statutory construction indicate that ‘[w]henver possible each word in a statutory provision is to be given meaning and not to be treated as surplusage.’” *Commonwealth v. Tome*, 737 A.2d 1239, 1241 (Pa. Super. 1999) (citation omitted). Additionally, our rules of statutory construction provide that where the words of a statute are not explicit, we may discern legislative intent by examining, *inter alia*, “[t]he former law, if any” and the “consequences of a particular interpretation.” 1 Pa.C.S.A. §1921(c)(5), (6). *Commonwealth v. Ostrosky*, 866 A.2d 423, 429 (Pa. Super. 2005). A review of the cases must now be undertaken.

We look to the historical evolution of the definition of victim by first analyzing the Pennsylvania Supreme Court decision in *Commonwealth v. Runion*, 662 A. 2d 617 (Pa. 1995), *superseded by statute* as stated in *Commonwealth v. Veon*, 150 A.3d 435 (Pa. 2016). *Runion* interpreted a prior version of §1106 which employed §479.1 of the Administrative Code (prior to its repeal in 1997) to define “victim.” The Pennsylvania Supreme Court held in *Runion* that the Department of Public Welfare (DPW), which had covered medical expenses for a victim of a violent crime, was not entitled to restitution under §1106. *Runion* turned to the definition of “victim” included in §479.1 of the Administrative Code, which defines a victim as “[any person, except an offender, who suffered injuries to his person or property as a direct result of the crime.” *Runion*, 662 A.2d at 619. Next, the Court in *Runion* utilized the definition of “person” as set forth in the Statutory Construction Act as “a corporation, partnership, limited liability company, business trust, other association, **government entity (other than the Commonwealth)**, estate, trust, foundation or natural person.” *Id.* and 1 Pa.C.S.A. §1991 (emphasis supplied). Because the DPW constituted a government entity that *was* part of the Commonwealth, it was explicitly excluded from the definition of “person” and therefore not entitled to restitution. *Id.* at 619. Nonetheless, the Supreme Court in *Runion* complained that the necessary result was contrary to the historic purpose of restitution, saying, “[T]he primary purpose of restitution is rehabilitation of the offender by impressing upon him that his criminal conduct caused the victim’s loss or personal injury and that it is his responsibility to repair the loss or injury as far as possible.” *Id.* at 620.

In response to the ruling in *Runion*, the legislature acted to strengthen and broaden §1106. In *Commonwealth v. Brown*, 981 A.2d 893, 899 (Pa. 2009), our Pennsylvania Supreme Court

<sup>7</sup> Restitution was discretionary until 1998, when the General Assembly amended Section 1106 to make it mandatory. See Act of December 3, 1998, P.L. 933, No. 121, §1 (immediately effective).

found that Medicare, a (federal) government agency, was eligible to receive restitution under §1106(c)(1)(ii)(C).<sup>8</sup> The Court explained:

In 1995, and again in 1998, however, the legislature rewrote Section 1106 to significantly strengthen and amplify the notion of restitution, and to expand the class of entities eligible for restitution. Specifically, after the amendments, restitution became mandatory. 18 Pa.C.S.A. §1106(a) (“the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor”). Moreover, restitution to the greatest extent is required. *Id.* §1106(c)(1) (“[t]he court shall order full restitution”); *Id.* §1106(c)(1)(i) (the victim is entitled to “the fullest compensation for the loss”).

Furthermore, the General Assembly broadened the class of those entities eligible to receive restitution. While not the model of clarity, the legislature certainly evinced an extension of those entities who could receive restitution through the priorities scheme. As noted above, this included not only the “victim,” but also the Crime Victim’s Compensation Board, other government agencies, and insurance companies. Furthermore, the General Assembly explicitly enlarged the definition of “victim” to include the Crime Victim’s Compensation Fund and insurance companies. Thus, while the General Assembly expanded the definition of “victim,” which was the focus of our opinion in *Runion*, and in doing so widened the definition of that term, *the revamping of Section 1106 was even more sweeping and implicitly broadened the class of entities eligible for restitution to include government agencies, in addition to manifesting a heightened focus on the need for and importance of restitution.*

*Id.* at 899-900 (emphasis added). Additionally, *Brown* clarifies the fact that §1106 (effective from 2005-2018) defined “victim” pursuant to §479.1 of the Administrative Code, which, in turn defines a “victim” as a “person” which includes government agencies.<sup>9</sup> *Brown* concluded that the class of entities entitled to restitution after the 1995 amendments expanded to include government agencies. Medicare was found to be a “government agency which has provided reimbursement to the victim as a result of the defendant’s criminal conduct.” *Id.* at 902. The Court found the phrase “reimbursement to the victim” ambiguous, but ultimately held that the phrase included government agencies which provided reimbursement on behalf of the victim. As such, Medicare, was entitled to restitution. *Id.*

The next evolutionary step occurs in *Commonwealth v. Veon*, 150 A.3d 435 (Pa. 2016). In *Veon*, the Pennsylvania Supreme Court discussed the dichotomous definitions of “victim” as defined by the Administrative Code and the recodification in the CVA as it struggled with the question of whether the Pennsylvania Department of Community and Economic Development (DCED), a direct victim of criminal fraud, was entitled to restitution under

<sup>8</sup> The *Brown* court interpreted the same version of §1106 at issue in this case.

<sup>9</sup> Government agencies, excluding the Commonwealth. 1 Pa.C.S.A. §1991.

§1106. *Veon* discussed *Runion*, which, as set forth above, held that a Commonwealth entity is not entitled to restitution because although “government entities” are included in the definition, the Statutory Construction Act specifically excludes “Commonwealth agencies” from the definition of “person.” 1 Pa.C.S.A. §1991. *Runion*, 662 A.2d at 619. However, *Veon* elected to use the CVA definition of “victim” rather than the definition contained in the Administrative Code, finding that:

Subsection 1106(c)(1)(i) provides for the mandatory payment of ‘the fullest compensation’ to the victim for his loss, and provides for payment of restitution to the Crime Victim’s Compensation Fund, ‘other designated account *when the claim involves a government agency,*’ and/or any insurance company, ‘for loss previously compensated’ by those entities. 18 Pa.C.S. §1106(c)(1)(i) (emphasis added). Under either subsection, it is clear that no restitution may be paid except to a “victim,” the two categories of government entities that the General Assembly has authorized to compensate victims ... or victims’ insurance policies for monies paid to insurance victims.

*Id.* at 454.

*Veon* then concluded:

Notwithstanding any legislative expansion of the definition of “victim,” it is clear that the plain text of Section 11.103 [of the Crime Victims Act] still envisages “victims” as “persons” commonly understood...Every relevant noun unequivocally describes a human being, not a government agency, and nowhere else is there a relevant definition that persuades us to broad the common understanding of these words. There can be no serious doubt that DCED, the agency designated to receive the restitution ordered in this case, does not qualify as a direct victim.

*Id.* at 454.

*Veon* did not address the explicitly referenced Administrative Code definition of “person,” as discussed in *Brown*. Notably both *Brown* and *Veon* address the exact same version of the Restitution Statute. *Veon* distinguishes *Brown* by slotting Medicare as a government agency that provided third party reimbursement to a victim, which *Veon* notes, is clearly allowed by §1106(c)(1)(ii)(C). Despite the specific inclusion of a government agency as a third party provider of reimbursement to a victim, *Veon* concludes that the Commonwealth, as a government agency, cannot be a victim itself unless it provided reimbursement to the victim.

However, the Pennsylvania Superior Court previously observed that allowing an entity to receive restitution as a third party reimbursor but **not** as a direct victim was an absurd result. In *Commonwealth v. Pozza*, 750 A.2d 889 (Pa. Super. 2000), the Court held that an insurance company must be considered included as a direct victim, despite no explicit provision in the statute, since an insurance company is specifically entitled to restitution as a third party



provider of reimbursement to a victim. *Pozza*, 750 at 894. *Pozza* posits that it would be illogical for an insurance company to be allowed restitution as a third party re-imburser to a victim, but not as a victim itself. The Superior Court in *Pozza* noted:

Giving the statute a common sense interpretation, with the caveat that the Legislature does not enact laws that reach an absurd or unintended result, we read the restitution statute to include the reimbursement to an insurer who has lost money when the object of deception and fraud. Statutory Construction Act, 1 Pa.C.S.A. §1921 (Legislature does not intend an absurd result when enactments are passed). Here, such a result would be obtained if we were to exclude the insurer from the list of those entitled to restitution.

*Pozza*, 750 A.2d at 895. The same logic would also seem to extend to the USCG which would have unquestionably been entitled to receive restitution had it provided compensation to a victim as a third party reimburse. It seems absurd to find that this same government agency, which is entitled to restitution for compensating a victim, could not be a direct victim also entitled to restitution.

Presently, the Defendant advocates that *Veon* precludes the USCG from obtaining restitution in this case as a government entity. However, we find *Veon* clearly distinguishable because it addresses the question of whether a *Commonwealth* agency can be entitled to restitution, not whether a federal agency such as the USCG is entitled to restitution as a direct victim. The long history of judicial and statutory interpretation of restitution clearly supports the fact that a Commonwealth agency is, and always has been, explicitly barred from receiving restitution.<sup>10</sup> This is true whether one employs the Administrative Code version of the definition of “victim” as “person,” which includes government entities other than the Commonwealth or whether one employs the CVA definition of victim as an “individual” or “natural person.” Consequently, the holding in *Veon* must be restricted to the facts of *Veon* excluding restitution to a Commonwealth agency. Any pronouncements beyond that are not applicable to the case at hand. To exclude consideration of §479.1 of the Administrative Code is distorted and clearly disproportionally restricts the class of “victims” for restitution purposes. Also, the post October 24, 2018 §1106 appears to be a *Veon* “fix” by now including the Commonwealth as a victim when it is an “affected government agency.” See newest version of 18 Pa.C.S.A. §1106(c)(1)(ii)(A.1), effective October 24, 2018.

In support of this conclusion, we note that after the ruling in *Veon*, the Pennsylvania Superior Court again struggled with the definition of “victim” under the Restitution Statute in *Commonwealth v. Holmes*, 155 A.3d 69 (Pa. Super. 2017). *Holmes* held that a victim’s parents were “victims” entitled to restitution for funeral expenses. *Id.* at 81. The *en banc* Superior Court of Pennsylvania was divided evenly 4-4 on the issue of whether restitution was properly ordered by the trial court under §1106. Both the majority opinion, in favor of awarding restitution, and the minority opinion, against awarding restitution, examined the differing definitions of “victim” under the Administrative Code and the CVA. The Opinion in Support of Affirmance concludes that both the Administrative Code and the

<sup>10</sup> Until, of course, the October 24, 2018 amendment to §1106 which now includes Commonwealth agencies but paradoxically excludes non-Commonwealth agencies.

CVA define victim under §1106 to include parents who paid their son's funeral bill §1106, once again, expanding the reach of restitution. Although *Holmes* is not directly on point with our issue, we note that both the Opinion in Support of Affirmance and the Opinion in Support of Reversal continued to examine the question of whether courts should look to the Administrative Code or to the CVA for the definition of victim, even after the sweeping pronouncement in *Veon*. However, it does signify the ever expanding pattern of awarding restitution wherever feasible. This Court believes it is entirely appropriate and equitable to utilize both the Administrative Code and CVA definitions of victim to fairly encompass the class entitled to restitution.

This pattern is borne out by the most recent case on this issue. The Pennsylvania Superior Court, in *Commonwealth v. Steffey*, 2018 WL 4140624 (Pa. Super. August 30, 2018), admittedly a non-reported decision with only persuasive value, held that despite the holding in *Veon*, three nonprofit agencies who were the direct victims of criminal fraud were entitled to restitution. This Court looks to *Steffey* for guidance, as it is perhaps most factually similar to the issue at hand. The Superior Court also distinguished *Veon* noting:

We acknowledge that, at first blush, this and other passages from *Veon* appear to support Steffey's assertion that corporations and other limited liability organizations, as non-human persons, cannot be the object of an award of restitution. However, we conclude the Supreme Court did not intend such a sweeping modification of the law of restitution in the Commonwealth. The *Veon* court relied upon long-standing precedent interpreting the Statutory Construction Act, 1 Pa.C.S.A. §1991. That precedent established "the plain and ordinary meaning of the word 'person' excluded Commonwealth agencies 'where the legislature has not otherwise spoken.'" 150 A.3d at 450 (quoting *Commonwealth v. Runion*, 662 A.2d 617, 619 (Pa. 1995)). Thus, Commonwealth agencies were ineligible for restitution. *See Id.*

In contrast, the Statutory Construction Act explicitly includes corporations and other limited liability organizations in the definition of "person." 1 Pa.C.S.A. §1991. Thus, there is no need to engage in an extensive analysis of statutory construction as in *Veon*. The statutory scheme explicitly encompasses human persons such as those victimized by Steffey within the class of victims entitled to restitution. We therefore conclude Steffey's sole issue on appeal merits no relief.

*Steffey*, 2018 WL 4140624, at \*1. The Superior Court held, despite the prior Supreme Court pronouncement in *Veon*, that a non-profit agency which is a direct victim of fraud, may, in fact receive restitution under the 2005-2018 version of the Restitution Statute, stating, "We conclude Pennsylvania law clearly includes private non-natural persons within its definition of victims, and therefore affirm the judgment of sentence." *Id.* at\* 1. Furthermore, this also is the version of §1106 in effect at the time of Defendant's false report in the case *sub judice*.

Noting the persuasive decision in *Steffey*, distinguishing *Veon* as limited to its particular facts, and recognizing the strong legislative intent in favor of awarding restitution, and the



statute in effect at the time of the crime, this Court finds that the USCG falls within the definition of victim as a “person” which specifically includes “government entities (other than the Commonwealth).” This reasoning results in an award of restitution for the USCG as a “government entity” other than the Commonwealth.

**C. DEFENDANT’S FALSE REPORT TO THE USCG SATISFIES THE “BUT FOR” TEST FOR THE IMPOSITION OF RESTITUTION.**

Since the USCG is entitled to restitution as a direct victim of Defendant’s criminal act, it is *mandatory* that this Court order Defendant to pay restitution to the USCG for losses that resulted from his criminal conduct. “[U]pon conviction of any crime wherein property of a victim has been substantially decreased as a direct result of the crime...the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.” 18 Pa.C.S.A. §1106(a). Property includes, “any real or personal property, including currency and negotiable instruments, of the victim.” §1106(h). Regardless of the financial resources of the defendant, the Court “shall” order full restitution, “so as to provide the victim with the fullest compensation of the loss.” §1106(c) (1)(i).

In imposing restitution, we must determine that the loss flows from the crime. In this circumstance, we must determine that Defendant’s crime of making a false report of his wife falling overboard directly resulted in the expenses incurred by the USCG. Defendant has challenged the USCG’s request for personnel hours and any other expenses it incurred in the search and rescue effort made for Karen LeClair, arguing that some of those expenditures would have existed regardless of Defendant’s false report. In other words, Defendant asserts the USCG had to pay its personnel for the same number of hours at the same hourly rate on June 11 and June 12, 2017, regardless of whether the search took place. Therefore, he contends those expenses may not be recouped in a restitution award.

This Court finds *Commonwealth v Poplawski*, 158 A.3d 671, 674 (Pa. Super. 2017) illustrative. *Poplawski* involved a defendant who was charged with crimes associated with building contractor fraud claims. There, the defendant was convicted of home improvement fraud. *Id.* This crime required that the defendant received advance payments for services never performed. The evidence showed defendant retained the home owner’s \$2000 deposit and failed to do the promised work. *Id.* The defendant was acquitted of deceptive or fraudulent business practices which requires, “delivering less than the represented quantity of any... service.” *Id.* Despite this, the trial court awarded \$41,000 in restitution which may have consisted of the amount the home owner paid another contractor to complete the work defendant was hired to perform. *Id.* at 673. The Pennsylvania Superior Court held that the amount of restitution (\$41,000) was “neither a direct result of the defendant’s criminal conduct, nor was it supported by the record.” *Id.* at 675. The Court further explained:

[r]estitution may be imposed only for those crimes to property or person **where the victim suffered a loss that flows from the conduct that forms the basis of the crime for which the defendant is held criminally accountable.** In computing the amount of restitution, the court shall consider the extent of injury suffered by the victim and such other matters as it deems appropriate. Because restitution is a sentence, the amount ordered must be supported by the record; it may not be speculative or

excessive. The amount of a restitution order is limited by the loss or damages sustained as a direct result of defendant's criminal conduct and by the amount supported by the record.

*Poplawski*, 158 A.3d at 674 (emphasis added); *see also* 18 Pa.C.S.A. §1106(c)(2)(i).

The *Poplawski* Court noted that there must be "a direct causal connection between the crime and the loss." *Id.* citing *Commonwealth v. Harriott*, 919 A.2d 234, 238 (Pa. Super. 2007). Moreover, the sentencing court must apply a "but for" test in imposing restitution. In other words, restitution can only be for damages which occur as a direct result of the crimes and those which would not have occurred "but for" the defendant's criminal conduct. *Id.* *Poplawski* also noted that "the court may not go beyond the jury verdict in fashioning its restitution award." *Id.*

Thus, this Court recognizes that it is imperative to base a restitution award on sufficient findings of fact, which are of record, in support of the expenses awarded for restitution. In this matter, clearly Defendant's false report that his wife fell overboard prompted a direct response from the USCG. However, the inquiry does not end there. This was prominently noted by the Court at Defendant's sentencing on December 11, 2018.

The Commonwealth must demonstrate that the USCG incurred specific losses because of Defendant's false report. Defendant contends that not all of the restitution requested by the USCG, such as personnel hours, was incurred solely as a result of the false report. Defendant suggests that certain expenditures sought by the USCG, such as salaries or hourly rates for regular personnel, would have been incurred regardless of the search for Karen LeClair. In other words, these members of the USCG would have received their salary and compensation on June 11 and June 12 of 2017, regardless of the false report made by the Defendant.

In determining what amount of loss was caused by Defendant's conduct a compatible analogy to the *costs*<sup>11</sup> of prosecution, as opposed to *restitution* to a victim, can be analogized in examining the propriety of awarding restitution. Both 42 Pa.C.S.A. §9721(C.1) and §9728(g) authorize this Court to order a defendant to pay costs. Costs are also authorized under Pa.R.Crim.P. 706(c). Costs are defined in §9728(g) as:

**(g) Costs, etc.**--Any sheriff's costs, filing fees and costs of the county probation department, clerk of courts or other appropriate governmental agency, including, but not limited to, any reasonable administrative costs associated with the collection of restitution, transportation costs and other costs associated with the prosecution, shall be borne by the defendant and shall be collected by the county probation department or other appropriate governmental agency along with the total amount of the judgment and remitted to the appropriate agencies at the time of or prior to satisfaction of judgment.

42 Pa.C.S.A. §9728(g).

As previously noted, the Commonwealth has not disputed this Court's award of costs. We analogize the cost cases in order to determine whether items of expenses, such as hourly rates for Coast Guard personnel, should be awarded as part of the restitution order.

<sup>11</sup> The Court is well aware that costs and restitution are two different components of a defendant's sentence. However, in arriving at the amount owed by a defendant for restitution, a cost analysis is helpful.

16 P.S. §7708 allows a sentencing court to require a defendant to pay costs of prosecution and trial, including the expenses of the district attorney in connection with such prosecution, these costs “shall be considered a part of the costs of the cases and paid by the defendant.” Nevertheless, in *Commonwealth v. Garzone*, 34 A.3d 67 (Pa. 2012), the Pennsylvania Superior Court held that 16 P.S. §7708 does not allow the court to award as costs the regular salaries paid to prosecution and investigative personnel who work on a particular case. The *Garzone* court noted, “Again, the statute does not expressly identify prosecution-related salaries as recoverable expenses, and the question being equivocal (at best), the narrower construction favoring appellees must prevail.” *Id.* The *Garzone* court listed a number of cases which disallowed the prosecutorial staff salaries, but did allow other expenses of prosecution. Although lengthy, the list is inclusive and illustrative of the various situations in which prosecutorial costs were allowed and disallowed in Pennsylvania. *Garzone* discussed the relevant cases, especially with respect to the regular salaries of the prosecutors, as follows:

We are aware of no case, and the Commonwealth has cited none, where Section 7708 (or its analogues respecting other counties) has been construed to allow, as expenses, the regularly budgeted salaries of prosecutors and investigative staff. In *Commonwealth v. Davy*, this Court certainly employed broad language, stating that “it is clear that the Legislature intended to include in the costs for which a convicted person is liable the costs of all proceedings requisite for the final disposition of the case.” 317 A.2d at 48... However, that language must be read against the issue in *Davy*, which was not “expenses” representing prosecutorial staff salaries, but the distinct expense of approximately \$1,000 incurred in extraditing the defendant from Texas to Pennsylvania. *Id.*; [string cites omitted]

Arguably, the closest analogue is the Superior Court’s decision in *DuPont*, *supra*, since that case, like this one, involved expenses representing prosecution salary costs. In *DuPont* the panel held that recovery of expenditures representing specially retained prosecutorial personnel may be permissible if the Commonwealth can demonstrate extraordinary circumstances.

In *DuPont*, the defendant shot and killed a wrestling coach who worked at the training facility that DuPont sponsored and maintained on his estate in Delaware County; he was convicted of third-degree murder and simple assault but was also found to be mentally ill. The trial court imposed total prosecution costs exceeding \$700,000 and the Superior Court affirmed, explaining that recovery of the cost of a specially-hired ADA to try the case, as well as several legal interns who assisted in research, was appropriate because the district attorney’s office had had two vacancies during the initial stages of prosecution, and to meet its prosecutorial obligations in this and all other cases, they deemed it necessary to assume the costs involved in the special hires. According to the *DuPont* panel, “[t]he trial court found that these costs were reasonable and necessary to meet the demands of this high profile, complex case. The voluminous record clearly

supports this finding.” 730 A.2d at 987.

In short, *DuPont* approved the recovery of prosecution salaries in what was deemed to be an extraordinary situation.

*Garzone*, 34 A.3d at 78-79 (emphasis added).

Recently, in *Commonwealth v. Lehman*, 2019 WL 100374 (Pa. Super., January 4, 2019) (reported) the Superior Court held that if costs are not “necessary,” they are not authorized. Otherwise, “a defendant could be forced to pay costs associated with lighting and heating the courtroom in which he or she was tried. A defendant could also be forced to pay for out-of-town jurors to stay at the Ritz-Carlton. These are absurd results.” *Id.* at \*5. Costs are not “necessary” if they would not have arisen but for the Commonwealth’s actions. *Id.* at \*6. *Lehman* noted a foreseeability test to determine whether costs are appropriate. For instance, in *Commonwealth v. Coder*, (cited by *Lehman*) the Pennsylvania Supreme Court held that defendant was responsible for paying costs associated with a change in venue because the change in venue (due to excessive publicity) was reasonably foreseeable at the time the defendant committed the crime in question:

when a person commits a crime which stirs wide community interest, either because the crime is heinous or its perpetrator is a person invested with a public trust, publicity will follow inevitably. The ensuing publicity should be **readily foreseeable by the perpetrator** of the crime, so that it is neither arbitrary, capricious nor unreasonable to hold him responsible for the dysfunction his conduct caused the criminal justice system.

*Coder*, 415 A.2d at 409.

This Court found, on the record at sentencing, that “but for” Defendant’s false report to the USCG, certain expenses incurred by the USCG for the massive search and rescue operation conducted on June 11-12, 2017 for Mrs. LeClair would not have been incurred. There is no challenge to the conclusion that “but for” Defendant’s false report, the USCG would have not responded. Therefore, this Court finds the USCG may be deserving of an award of restitution. However, based on the above authority, the personnel hours expended by members of the USCG for the search for Karen LeClair are not properly part of restitution in this case because they are duplicative. Consequently, the “units” or personnel hours will be extracted from the Commonwealth’s request for restitution.

To order restitution, the expenses incurred must be a direct result of Defendant’s crime. *See Commonwealth v. Fuqua*, 407 A.2d 24, 26 (Pa. Super. 1979). However, use of resources such as cargo planes, cutters, etc. may be part of the restitution. The monetary amounts associated with these expenses may be derived from the Commonwealth’s exhibits. This Court intends to award restitution in some amount to the USCG, however, the expenses which shall be awarded in restitution must be “a direct result of the defendant’s crime.” *Fuqua*.<sup>12</sup> Moreover,

<sup>12</sup> As noted by the Defense, the USCG claim is an “estimate” and does not appear to be the actual cost of the search and rescue operation. An affidavit in support of the USCG’s actual costs would be helpful. Moreover, we question whether the USCG actually paid out of pocket for the Canadian C-130 detailed in item “a” of Commonwealth Post Sentence Motion Hearing Exhibit “2,” in the amount of \$87,137.75. We have not been provided any proof of payment by the USCG or the Department of Human Services (or a bill by the Canadian agency that provided the C-130). The Commonwealth has not provided any response to this issue.

this Court seeks clarification as to whether the aircraft, boats, cutters and use of other resources represent expenses that would not normally have been incurred on a daily basis, but for the search. Finally, this Court seeks clarification regarding the personnel charges (i.e. employee hourly wages) and whether the proffered personnel expenses constitute regular wages or whether they represent wages that the USCG paid over and above the ordinary daily wages of the subject personnel.

### **III. CONCLUSION**

Based on the above review, it is clear that:

- 1.) We must apply the version of the Restitution Statute in effect at the time of Defendant's crime of making a false report, in June of 2017, *See* 18 Pa. C.S.A. §1106 (effective January 31, 2005 to October 23, 2018);
- 2.) The USCG falls under the statutory umbrella of a "victim" as statutorily defined.
- 3.) The expenses incurred as a direct result of Defendant's criminal act and "but for" Defendant's false report must be awarded in a restitution award to the USCG.

In response to the Court's finding at paragraph 3, the Court will schedule a Rule to Show Cause hearing with the burden on the Commonwealth to demonstrate which expenses were incurred by the USCG as a direct result of Defendant's false report. The Commonwealth will not duplicate wages or salaries otherwise normally paid and will only address the use of resources or added expenses directly caused by Defendant's criminal act.

Finally, this Court notes the priority of payment to the victims per §1106(c)(1)(ii). Any payment shall be first directed to the United States Coast Guard, as the direct victim. Next, the Crime Victims Compensation Board shall receive payment for its provision of funeral expenses for Karen LeClair in the amount of \$4,443.46.

Based upon the above, this Court will issue an Order in accordance with this Opinion.

### **ORDER**

AND NOW, this 12th day of February, 2019, upon due consideration of Defendant's Post Sentence Motion, the Commonwealth's Memorandum of Law in Response to Defendant's Post Sentence Motion, and the Defendant's Response thereto, after holding a hearing on the issue of restitution, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. The Restitution Statute found at 18 Pa.C.S.A. §1106 (effective January 31, 2005 to October 23, 2018) which was in effect at the time of Defendant's false report to the United States Coast Guard, shall be applied to this matter.
2. The United States Coast Guard is a "victim" entitled to an award of restitution, within the meaning of §1106 of the Restitution Statute. 18 Pa.C.S.A. §1106 (effective January 31, 2005 to October 23, 2018).
3. The United States Coast Guard is entitled to all expenses incurred in the June 11, 2017 - June 12, 2017 search and rescue operation for Karen LeClair, which would not have been incurred but for Defendant's criminal act.
4. A Rule to Show Cause hearing shall be held on Tuesday, **February 19, 2019 at 9:00**

**a.m.**, before this Court in Courtroom E-219. The Commonwealth is responsible for establishing the expenses incurred as a direct result of the United States Coast Guard's search and rescue operation in response to Defendant's false report. The Commonwealth shall not include any expenses for personnel hours, wages, maintenance, fuel, insurance, administrative costs, and/or any other expenses that would have been incurred regardless of the LeClair search. Restitution shall only be ordered to the United States Coast Guard for those expenses directly incurred as a result of Defendant's criminal act.<sup>1</sup>

5. Thereafter, this Court shall issue an Order specifying the amount of the restitution award to the United States Coast Guard, as it deems appropriate.

**BY THE COURT**

/s/ **Hon. John J. Trucilla, President Judge**

---

<sup>1</sup> To support their claim for restitution, the Commonwealth has previously submitted exhibits itemizing these expenses. However, the Court is mindful that there has yet to be testimony provided to authenticate or substantiate the actual expenses incurred for use of USCG resources in their search for Karen LeClair.

## COMMONWEALTH OF PENNSYLVANIA

v.

CHRISTOPHER LECLAIR

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

DOCKET NO. 2693 OF 2017

**ORDER OF COURT**

**AND NOW**, to wit, this 28th day of February, it is hereby **ORDERED, ADJUDGED**, and **DECREED** that the Defendant pay restitution to the United States Coast Guard (“USCG”) in the amount of \$424,180.20. The matter was before the Court pursuant to this Court’s Order scheduling a Rule to Show Cause hearing as to what specific restitution was due and owing to the USCG as a result of Defendant’s false report.

On January 9, 2019, the Court held a hearing regarding the restitution amount awarded to the USCG. The Court granted the parties time to submit legal authority to support their respective positions. Upon consideration of the legal arguments set forth, on February 12, 2019, this Court issued a Memorandum Opinion and Order finding the USCG was a “victim” as defined in 18 Pa. C.S.A. §1106 (effective January 31, 2005 to October 23, 2018), that certain expenses of the USCG were incurred as a direct result of Defendant’s false report, and “but for” Defendant’s actions said expenses would not have been incurred. The Court scheduled a Rule to Show Cause hearing with the burden on the Commonwealth to identify which expenses were incurred as a direct result of Defendant’s criminal act exclusive of personnel hours, wages, maintenance, fuel, insurance, administrative costs, and/or any other expenses that would have been incurred regardless of Defendant’s false report.

The Commonwealth has relied on two documents to assist in determining the amount incurred by the USCG, both of which have been admitted and incorporated as part of the record. First, the Commonwealth submitted a Memorandum dated July 27, 2017 from J.A. Erickson, LT, CG Sector Buffalo which listed itemized costs of the search and rescue for Karen LeClair, denoting the estimated expenses as letters *a* through *w*.<sup>1</sup> *See*, Commonwealth Post Sentence Motion Hearing Exhibit “2” and Courtroom Exhibit “2” (hereinafter collectively Exhibit “2”). Second, attached to the Commonwealth’s Memorandum of Law in Response to Defendant’s Post Sentence Motion was Exhibit “1,” a document taken from the USCG Manual (“Commandant Instruction 7310.1R”) listing “Reimbursable Standard Rates” utilized by the USCG (hereinafter Exhibit “1”).

Prior to the hearing the parties came to a stipulated agreement regarding the amount of restitution payable to the USCG.<sup>2</sup> The parties agreed items *f* through *w* would be excluded from any restitution amount as they were duplicative personnel costs. The parties further agreed items *a* through *e* represented use of USCG resources including aircraft and rescue boats. As to items *a* through *e*, the parties agreed to the base amounts as provided in Exhibit

<sup>1</sup> Exhibit “2” contains an itemized list of costs claimed by the USCG as a result of the search and rescue. Letters *a* through *e* listed equipment utilized in the search and rescue while letters *f* through *w* listed personnel costs.

<sup>2</sup> The Court recognizes the stipulated agreement in no way impairs Defendant’s ongoing objection as to the Court’s finding that USCG is a “victim” under the statute.



“1”, Enclosure 1, “Hourly Standard Rates for Cutters, Boats, and Aircraft.” However, the Commonwealth excluded the general and administrative costs (“G&A”) and Pension Benefit Adjustment.<sup>3</sup> Under this stipulated agreement, the total amount of restitution would now be amended to \$424,180.20 instead of the originally ordered \$705,974.80.

At the hearing, the Commonwealth made Commander Jake Smith of the USCG, Chief of Personnel Allowance, available as a witness. Also available was Mark C. Weidmann of the USCG Buffalo. Defendant’s counsel confirmed that he had had a full opportunity to examine the witnesses, as well as access to all evidence and information relied upon by the Commonwealth.

The Court concludes Defendant’s counsel, Attorney Bruce G. Sandmeyer, exercised extreme diligence in his investigation and research of the expenses incurred by the USCG in this case. Attorney Sandmeyer also uniquely brings with him over thirty years of military experience and an intimate understanding of the resources, personnel, Commandant Manuals, and other matters relied upon in this case by the Commonwealth and the USCG. The Court further concludes there is ample evidence made a part of this record to support the findings of restitution owed to the USCG and agreed upon by the parties.

Therefore, based on the reasons on the record, it is hereby **ORDERED, ADJUDGED, and DECREED** that the Defendant’s Post-Sentence Motion is **GRANTED** in part as it pertains to the amount of restitution. The Restitution Order shall be amended to reflect \$424,180.20 payable to the United States Coast Guard.

**BY THE COURT**

/s/ **Hon. John J. Trucilla, President Judge**

<sup>3</sup> During the hearing the Court specifically inquired about Exhibit “2,” Item *a*, and whether there was a reciprocal agreement for the USCG’s usage of the Canadian aircraft. The parties confirmed the reciprocal agreement was set by treaty and agreed the use of the aircraft was a valid expense incurred by the USCG in this matter.



**CERTIFICATE OF AUTHORITY**

Notice is hereby given that Troy & Banks, Inc., a foreign corporation formed under the laws of the State of New York and with its principal office located 2216 Kensington Avenue, Buffalo, NY 14226, has registered to do business in Pennsylvania with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, PA, on 3/7/19, under the provisions of the Pennsylvania Business Corporation Law of 1988. The registered office in Pennsylvania shall be deemed for venue and official publication purposes to be located in Erie County.

Mar. 29

**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 10854-2019 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Edward James Bliss to Eileen Jules Bliss.

The Court has fixed the 29th day of April, 2019 at 9:15 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.

Mar. 29

**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 10901-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Daniel John Fausnaught to Daniel John Alexander.

The Court has fixed the 16th day of April, 2019 at 3:00 p.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.

Mar. 29

**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 10852-19 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Ali Saleh to Ali Salah.

The Court has fixed the 29th day of April, 2019 at 3:30 p.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.

Mar. 29

**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 January 30, 2019 for Agape Boutique at 7417 Orchard Drive Fairview, PA 16415. The name and address of each individual interested in the business is Emily Elizabeth Meade at 7417 Orchard Drive Fairview, PA 16415. This was filed in accordance with 54 Pa.C.S. 311.

Mar. 29

**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 January 10, 2019 for H'Appie Interactive at 4524 Southern Drive Erie, PA 16506. The name and address of each individual interested in the business is Edward Thomas Petrak at 4524 Southern Drive Erie, PA 16506. This was filed in accordance with 54 Pa.C.S. 311.

Mar. 29



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**ESTATE NOTICES**

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

**FIRST PUBLICATION**

**ALBERT, RANDY P.,  
deceased**

Late of the City of Erie, County of Erie  
*Administrator:* Matthew P. Albert, c/o Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505  
*Attorney:* Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505

**ANTHONY, DARLE.,  
deceased**

Late of City of Erie, Erie County, Commonwealth of Pennsylvania  
*Executrix:* Linda Anthony, c/o 120 W. 10th Street, Erie, PA 16501  
*Attorney:* Christine Hall McClure, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West 10th Street, Erie, PA 16501

**DILLEY, AVADEAN,  
deceased**

Late of the Borough of Union City, County of Erie, Commonwealth of Pennsylvania  
*Co-Executors:* Steven Wilkins and Cindy Wilkins, c/o Thomas J. Ruth, Esq., 224 Maple Avenue, Corry, PA 16407  
*Attorney:* Thomas J. Ruth, Esq., 224 Maple Avenue, Corry, PA 16407

**JUCHNO, LARRY WALLACE,  
a/k/a LARRY W. JUCHNO, a/k/a  
LARRY JUCHNO,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Administratrix:* Diann Ruggiero, c/o 504 State Street, Suite 300, Erie, PA 16501  
*Attorney:* Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**LAWRENCE, ROSE MARIE,  
a/k/a ROSEMARIE LAWRENCE,  
deceased**

Late of Millcreek Township, County of Erie, Pennsylvania  
*Executor:* Thomas David Lawrence, c/o 150 East 8th Street, Erie, PA 16501  
*Attorney:* Gregory L. Heidt, Esquire, 150 East 8th Street, Erie, PA 16501

**LIEB, JAMES F.,  
deceased**

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

**MEYER, MARY JANE,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Jack H. Meyer, 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

**MURPHY, ELIZABETH,  
a/k/a ELIZABETH HELENE  
MURPHY, a/k/a ELIZABETH H.  
MURPHY,  
deceased**

Late of the City of Erie, Erie County, PA  
*Executor:* Patrick J. Coyne, 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

**NYBERG, LINDA J.,  
deceased**

Late of the City of Erie, County of Erie  
*Executor:* Stephanie Wood, c/o Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505  
*Attorney:* Barbara J. Welton, Esquire, 2530 Village Common Dr., Suite B, Erie, PA 16505

**SNYDER, JOHN P.,  
deceased**

Late of 3300 Baer Beach Road, Erie, PA 16505  
*Executrix:* Mary Jude Duncan, 11600 Clifton Drive, North Huntingdon, PA 15642  
*Attorney:* William C. Price, Jr., Esquire, Price & Associates, P.C., 2005 Noble Street, Pittsburgh, PA 15218

**SVETZ, MARY ANN,  
deceased**

Late of the Township of Wayne, County of Erie, Commonwealth of Pennsylvania  
*Executor:* Stephen Svetz, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407  
*Attorney:* Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**THOMAS, GLENN R., a/k/a  
GLENN ROBERT THOMAS,  
deceased**

Late of Township of Millcreek,  
Erie County, Commonwealth of  
Pennsylvania  
*Executrix:* Ellen T. Bane, c/o 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

**SECOND PUBLICATION**

**BARCZYNSKI, MARCELLA,  
a/k/a MARCELLA Z.  
BARCZYNSKI, a/k/a MARCELLA  
Z. RYAN BARCZYNSKI,  
deceased**

Late of City of Erie, County  
of Erie, Commonwealth of  
Pennsylvania  
*Executrix:* Jennifer Kehl, c/o  
Leigh Ann Orton, Esquire, Orton  
& Orton, 68 E. Main St., North  
East, PA 16428  
*Attorney:* Leigh Ann Orton,  
Esquire, Orton & Orton, 68 E.  
Main St., North East, PA 16428

**BATTERSBY, ALICE J.,  
deceased**

Late of Township of Millcreek,  
Erie County, Commonwealth of  
Pennsylvania  
*Executrix:* Dawn C. Carstensen,  
c/o 120 W. 10th Street, Erie, PA  
16501  
*Attorney:* Christine Hall McClure,  
Esq., Knox McLaughlin Gornall &  
Sennett, P.C., 120 West 10th Street,  
Erie, PA 16501

**BORT, MIKKI D.,  
deceased**

Late of the Borough of Albion,  
County of Erie, Commonwealth  
of Pennsylvania  
*Administrator:* Cody A. Bort, 5090  
Chambers Hill Road, Harrisburg,  
PA 17111  
*Attorney:* Valerie H. Kuntz, Esq.,  
24 Main St. E., P.O. Box 87,  
Girard, PA 16417

**BRICKER, ALICE M.,  
deceased**

Late of the Township of Conneaut,  
Erie County, Pennsylvania  
*Administrator:* Alan Bricker, 24  
2nd Ave., Albion, PA 16401  
*Attorney:* None

**BROWN, MARJORIE E., a/k/a  
MARJORIE BROWN,  
deceased**

Late of the Township of Millcreek,  
County of Erie and Commonwealth  
of Pennsylvania  
*Executrix:* Maureen K. Trott, 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

**BUCZYNSKI, GLORIA J., a/k/a  
GLORIA JEAN BUCZYNSKI,  
a/k/a GLORIA BUCZYNSKI,  
deceased**

Late of the City of Erie, County of  
Erie, State of Pennsylvania  
*Executor:* Joseph E. Buczynski,  
c/o 337 West 10th Street, Erie,  
PA 16502  
*Attorneys:* THE FAMILY LAW  
GROUP, LLC, 337 West 10th  
Street, Erie, PA 16502

**FERRINGER, NEIL C., a/k/a  
NEIL FERRINGER,  
deceased**

Late of the Township of North East,  
County of Erie, Commonwealth of  
Pennsylvania  
*Executor:* William J. Ferringer,  
PO Box 87, Sherman, New York,  
14781  
*Attorney:* Grant M. Yochim, Esq.,  
24 Main St. E., P.O. Box 87,  
Girard, PA 16417

**KYSOR, THOMAS H., a/k/a  
TOM KYSOR,  
deceased**

Late of the City of Erie,  
Pennsylvania  
*Executor:* B. Scott Seidler, 336  
Sandy Point Road, Emlenton,  
PA 16373  
*Attorney:* Ronald W. Coyer,  
Esquire, S.R. LAW, LLC, 631  
Kelly Blvd., P.O. Box 67, Slippery  
Rock, PA 16057

**MELE, ALAN J.,  
deceased**

Late of Erie, Erie County,  
Pennsylvania  
*Administratrix:* Cheryl Ann Mele,  
c/o Peter J. Sala, Esquire, 731  
French Street, Erie, PA 16501  
*Attorney:* Peter J. Sala, Esquire,  
731 French Street, Erie, PA 16501

**MONAHAN, MARY  
CONSTANCE,  
deceased**

Late of City of Erie  
*Executor:* Michael M. Monahan,  
c/o 246 West 10th Street, Erie,  
PA 16501  
*Attorney:* Evan E. Adair, Esq., 246  
West 10th Street, Erie, PA 16501

**REVOK, ANNE,  
deceased**

Late of the City of Erie,  
Pennsylvania  
*Administrator:* John Revak, c/o  
731 French Street, Erie, PA 16501  
*Attorney:* Angelo P. Arduini, Esq.,  
731 French Street, Erie, PA 16501

**SZUMINSKI, FRANK P., a/k/a  
FRANK PHILLIP SZUMINSKI,  
deceased**

Late of the Township of Millcreek,  
Erie County, Pennsylvania  
*Executor:* Gary P. Szuminski, 2087  
SW Mooring Drive, Palm City,  
FL 34990  
*Attorney:* Gary J. Shapira, Esquire,  
305 West Sixth Street, Erie, PA  
16507

**TAYLOR, ROSE MARY, a/k/a  
ROSE M. TAYLOR, a/k/a  
ROSE TAYLOR,  
deceased**

Late of the Township of  
Springfield, County of Erie,  
Commonwealth of Pennsylvania  
*Administratrix:* Pamela Mead,  
2479 Nursery Road, Lake City,  
Pennsylvania 16423  
*Attorney:* Grant M. Yochim, Esq.,  
24 Main St. E., P.O. Box 87,  
Girard, PA 16417

**WAXHAM, MARVIN E., SR.,  
a/k/a MARVIN E. WAXHAM,  
deceased**

Late of Lake City Borough,  
County of Erie, Commonwealth  
of Pennsylvania  
*Executrix:* Elizabeth F. Jobczynski,  
22 Bainbridge Way, Bluffton, SC,  
29910  
*Attorney:* None

**WILLIAMS, MARK J.,  
deceased**

Late of the City of Erie, County  
of Erie and Commonwealth of  
Pennsylvania  
*Executrix:* Carol Drury, c/o 2222  
West Grandview Blvd., Erie, PA  
16506  
*Attorney:* Thomas E. Kuhn,  
Esquire, QUINN, BUSECK,  
LEEMHUIS, TOOHEY &  
KROTO, INC., 2222 West  
Grandview Blvd., Erie, PA 16506

**TRUST NOTICES**

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

**WINGERTER, ROBERT J., a/k/a  
ROBERT JAMES WINGERTER,  
deceased**

Late of the City of Erie, County  
of Erie and Commonwealth of  
Pennsylvania  
*Trustees:* Robert Wingerter and  
Anne Marie Burrows  
*Attorney:* H. Valentine Holz II,  
Esquire, The Holz Law Firm, 8331  
Edinboro Road, Erie, PA 16509

**THIRD PUBLICATION**

**BEHOIT, BRIAN A.,  
deceased**

Late of the City of Erie, County  
of Erie and Commonwealth of  
Pennsylvania  
*Administratrix:* Lois Behoit, c/o  
Norman A. Stark, Esquire, Suite  
300, 300 State Street, Erie, PA  
16507  
*Attorney:* Norman A. Stark,  
Esquire, MARSH, SPAEDER,  
BAUR, SPAEDER & SCHAAF,  
LLP., Suite 300, 300 State Street,  
Erie, PA 16507

**BODNER, DAVID W., a/k/a  
DAVID WILLIAM BODNER,  
deceased**

Late of Millcreek Township,  
Erie County, Commonwealth of  
Pennsylvania  
*Executrix:* Gail A. Bodner, c/o  
Jeffrey D. Scibetta, Esq., 120 West  
Tenth Street, Erie, PA 16501  
*Attorney:* Jeffrey D. Scibetta,  
Esq., Knox McLaughlin Gornall  
& Sennett, P.C., 120 West Tenth  
Street, Erie, PA 16501

**BOSTAPH, HELEN,  
deceased**

Late of the Township of Summit,  
County of Erie and Commonwealth  
of Pennsylvania  
*Executor:* Stephen Bostaph  
*Attorney:* David J. Rhodes,  
Esquire, ELDERKIN LAW FIRM,  
150 East 8th Street, Erie, PA 16501

**FORISH, FLORENCE, a/k/a  
FLORENCE A. FORISH,  
deceased**

Late of the Township of Millcreek,  
County of Erie and State of  
Pennsylvania  
*Executor:* Terrence J. Forish,  
18005 Wildman Ct., Boyds, MD  
20841  
*Attorney:* Ronald J. Susmarski,  
Esq., 4030 West Lake Road, Erie,  
PA 16505

**FREEMAN, BETTE J.,  
deceased**

Late of the Township of Millcreek,  
County of Erie and Commonwealth  
of Pennsylvania  
*Co-Executors:* David A. Freeman  
and Stacie M. Murzynski  
*Attorney:* David J. Rhodes,  
Esquire, ELDERKIN LAW FIRM,  
150 East 8th Street, Erie, PA 16501

**FRIES, JASON R.,  
deceased**

Late of the Township of  
Harborcreek  
*Administrator:* Gilbert C. Kosko,  
Jr.  
*Attorney:* Steven E. George,  
Esquire, George Estate and Family  
Law, 305 West 6th Street, Erie,  
PA 16507

**MAYR, LOIS JEAN, a/k/a  
LOIS J. MAYR,  
deceased**

Late of Millcreek Township,  
Erie County, Commonwealth of  
Pennsylvania  
*Administrator:* Mark C. Fratus,  
c/o Jeffrey D. Scibetta, Esq., 120  
West Tenth Street, Erie, PA 16501  
*Attorney:* Jeffrey D. Scibetta,  
Esq., Knox McLaughlin Gornall  
& Sennett, P.C., 120 West Tenth  
Street, Erie, PA 16501

**MEHL, EDMUND J., JR., a/k/a  
EDMUND J. (BRUB) MEHL,  
a/k/a EDMUND J. MEHL,  
deceased**

Late of City of Erie, Erie County,  
Commonwealth of Pennsylvania  
*Co-Executors:* Mary M. Ebach  
and Charles R. Weber, 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

**MEYER, KATHLEEN M.,  
deceased**

Late of the City of Erie, County  
of Erie  
*Executrix:* Cheryl Ritts, 1312  
Pasadena Drive, Erie, PA 16505  
*Attorneys:* Nicholas, Perot, Smith,  
Koehler & Wall, P.C.

**MICHAELIDES, DOROS  
NIKITA, a/k/a DOROS N.  
MICHAELIDES, a/k/a DOROS  
MICHAELIDES,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executrix:* Eutychia Michaelides, c/o 504 State Street, Suite 300, Erie, PA 16501  
*Attorney:* Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**OLESS, MARJORIE B., a/k/a  
MARJORIE OLESS,  
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania  
*Executor:* John B. Oless, 315 E. 11th Street, Erie, Pennsylvania 16503  
*Attorney:* Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**ROSENTHAL, KENNETH E.,  
a/k/a KENNETH ROSENTHAL,  
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania  
*Executrix:* Betty Englert, 3206 Holmes Street, Erie, Pennsylvania 16504  
*Attorney:* Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

**ROWAND, ELIZABETH, a/k/a  
ELIZABETH F. ROWAND,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executrix:* Maureen Formanski, c/o Norman A. Stark, Esq., Suite 300, 300 State Street, Erie, PA 16507  
*Attorney:* Norman A. Stark, Esq., MARSH, SPAEDER, BAUR, SPAEDER & SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

**SERAFINE, MARGARET M.,  
deceased**

Late of Erie City, Erie County, PA  
*Administrator:* Charles A. J. Halpin, III, Esquire, The Land Title Building, 100 S. Broad St., Ste. 1830, Phila., PA 19110  
*Attorney:* Charles A. J. Halpin, III, Esquire, The Land Title Building, 100 S. Broad St., Ste. 1830, Phila., PA 19110

**STATECZNY, REGINA, a/k/a  
REGINA MARIE STATECZNY,  
a/k/a VIRGINIA STATECZNY,  
deceased**

Late of the Township of Washington, County of Erie, Commonwealth of Pennsylvania  
*Co-Executors:* Karen M. Bond, 4065 Ponderosa Drive, Edinboro, PA 16412 and Michael J. Stateczny, 2128 West Churchill Street, Chicago, IL 60647  
*Attorney:* Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**WARD, SAMUEL R., JR., a/k/a  
SAMUEL R. WARD, JR. M.D.,  
deceased**

Late of the City of Erie, Erie County, Commonwealth of Pennsylvania  
*Executor:* Cheryl A. Ward, c/o Thomas C. Hoffman, II, Esq., 120 West Tenth Street, Erie, PA 16501  
*Attorney:* Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**WELCH, MARY GRACE, a/k/a  
MARY GRACE J. WELCH, a/k/a  
MARY WELCH,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Daniel J. Welch, 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

**WYDRO, MARTHA A.,  
deceased**

Late of the City of Erie, Erie County, PA  
*Administratrix:* 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

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6270 Red Pine Lane  
Erie, PA 16506 .....[kristaott@gmail.com](mailto:kristaott@gmail.com)

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