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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. Anthony

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ERIE COUNTY BAR ASSOCIATION CALENDAR OF EVENTS AND SEMINARS

MONDAY, FEBRUARY 21, 2022

President's Day
ECBA Office Closed
Erie County and Federal Courthouses closed

TUESDAY, FEBRUARY 22, 2022

Solo/Small Firms Division Meeting
Noon
ECBA Headquarters in-person (must RSVP)
or via Zoom

WEDNESDAY, FEBRUARY 23, 2022

Women's Division Meeting
Noon
ECBA Headquarters in-person (must RSVP)
or via Zoom

THURSDAY, FEBRUARY 24, 2022

Defense Bar Section Meeting
4:00 p.m.
ECBA Headquarters live (must RSVP)
or via Zoom

MONDAY, FEBRUARY 28, 2022

ECBA Board of Directors Meeting
Noon
ECBA Headquarters live (must RSVP)
or via Zoom

TUESDAY, MARCH 1, 2022

ECBA Strategic Planning Committee
Noon
ECBA Headquarters live (must RSVP)
or via Zoom

TUESDAY, MARCH 1, 2022

PBA/ECBA Mock Trial District Final
3:00 p.m.
via Zoom

THURSDAY, MARCH 3, 2022

Live ECBA Lunch-n-Learn Seminar
*Title Insurance 101: Types of Liens, Judgments,
Taxes, Searches* (Part two of a four-part series)
Noon - 1:00 p.m.
The Will J. Schaaf & Mary B. Schaaf
Education Center in-person or via Zoom
Click link for details
[https://www.eriebar.com/events/public-
registration/1751](https://www.eriebar.com/events/public-registration/1751)

THURSDAY, MARCH 22, 2022

Live ECBA Lunch-n-Learn Seminar
*Forensic Meteorology:
Revealing Weather-Related Truths*
Noon - 1:00 p.m.
The Will J. Schaaf & Mary B. Schaaf
Education Center in-person or via Zoom
Click link for details
[https://www.eriebar.com/events/public-
registration/1754](https://www.eriebar.com/events/public-registration/1754)

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Jan. 7, 21 and Feb. 4, 18 and March 4, 18

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Forensic Meteorology: Revealing Weather-Related Truths

Tuesday, March 22, 2022

The Will J. Schaaf & Mary B. Schaaf Education Center
at the ECBA, 429 West 6th Street, Erie, PA 16507
or via Zoom

Registration: 11:45 a.m.
Seminar: 12:00 - 1:00 p.m.
Cost: \$47 - ECBA Members
(Judges & Attorneys) and their
Paraprofessional Staff
\$60 - Non-members



If attending in-person, a boxed lunch will be provided.

1 Hour Substantive CLE Credit

Speakers:



John Lavin,
CCM,
AccuWeather
Director
Forensic Services



**Dr. Joseph
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Steve Wistar,
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Topics covered:

Forensic meteorologists use historical weather data to reconstruct the weather conditions for a specific location and time. They investigate what role weather played in unusual events such as car accidents and slip-n-falls. Forensic meteorologists may be called as experts to testify in court.

- A discussion of what is forensic meteorology?
- How AccuWeather science and services are used in court cases.
- Pitfalls with free or low cost historical weather data online.

Reservations due to the ECBA office by March 15, 2022.

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**ERIE INSURANCE EXCHANGE A/S/O BATES COLLISION, INC.,
JAMES MYERS, ANITA MORGAN, LOSSIE AUTO SERVICE AND
BENEDICTINE SISTERS OF ERIE, INC., Plaintiff**

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION, Defendant

v.

BATES COLLISION, INC., Additional Defendant

TORTS / NEGLIGENCE

Under Pennsylvania law, there is no cause of action for third party negligent spoliation of evidence.

PRETRIAL PROCEDURE

“Spoliation of evidence” is the non-preservation or significant alteration of evidence for pending or future litigation.

ESTOPPEL / CONTRACTS / EQUITY

Promissory estoppel provides an equitable remedy to enforce a contract-like promise that would be otherwise unenforceable under contract law principles.

ESTOPPEL / CONTRACTS / EQUITY

To establish promissory estoppel, the aggrieved party must show that: (1) the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee; (2) the promisee actually took action or refrained from taking action in reliance on the promise; and (3) injustice can be avoided only by enforcing the promise.

EQUITY / ESTOPPEL

The burden of proof rests on the party asserting an estoppel to establish such estoppel by clear, precise, and unequivocal evidence.

EQUITY / ESTOPPEL

In absence of expressly proved fraud, there can be no estoppel based on acts or conduct of the party sought to be estopped, where they are as consistent with honest purpose and with absence of negligence as with their opposites.

EQUITY / ESTOPPEL

Promissory estoppel requires that plaintiffs reasonably rely on definite promise to their detriment.

EQUITY / ESTOPPEL

If, notwithstanding representation or conduct by defendant, plaintiff was still obliged to inquire for existence of other facts and to rely on them also to sustain course of action adopted, plaintiff cannot claim that conduct of defendant was cause of his action, and no estoppel will arise.

EQUITY / ESTOPPEL

Where there is no concealment, misrepresentation, or other inequitable conduct by one party, other party may not properly claim that estoppel arises in his favor from his own omission or mistake.

EQUITY / ESTOPPEL

Estoppel cannot be predicated on errors of judgment by person asking its benefit.

DAMAGES

Damages for breach of contract are not recoverable if they are too speculative, vague, or contingent and are not recoverable for loss beyond amount that evidence permits to be established with reasonable certainty.

INSURANCE / SUBROGATION

Subrogated insurers have no greater rights than their insured.

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

Erie County NO. 12888 of 2018

PA SUPERIOR COURT

1482 WDA 2021

Appearances: Kyle D. Reich, Esq. for Plaintiff, Erie Insurance Exchange
Patricia A. Monahan, Esq. for Defendant, APPELLEE USAA
William C. Wagner, Esq., for Add'l Defendant, Bates Collision, Inc.

Pa.R.A.P. 1925(a) OPINION

DOMITROVICH, J.,

February 8, 2022

Appellant Erie IE Erie Insurance Exchange [“Appellant Erie IE”] is Subrogee for its above named Subrogors.¹ Appellant Erie IE filed a Civil Complaint in “promissory estoppel” (Contract/equity) with a Cover Sheet indicating the nature of this action is a “Tort” and entering “Subrogation” as the case claim category. Within its Civil Complaint, Appellant Erie IE attempts to classify its sole cause of action as “a theory sounding in promissory estoppel” by alleging failure of Appellee USAA United Services Automobile Association’s [“Appellee USAA”] to preserve Appellee USAA’s own BMW. Appellant Erie IE labels its spoliation claim as one of promissory estoppel, attempting to circumvent the precedential Pennsylvania Supreme Court case of *Pyeritz v. Commonwealth*, 32 A.3d 637 (Pa. 2011), which prohibits courts from recognizing third-party negligent spoliation as a cause of action. *See N.T.*, September 27, 2021 at 33. However, the underlying substance of Appellant Erie IE’s claim is that Appellee USAA allegedly deprived it of evidence – a scrap-value BMW – for a possible future product liability suit against BMW. Appellant Erie IE now seeks to recover from Appellee USAA the entirety of the money Appellant Erie IE paid out to its insureds for this alleged loss of evidence of over one million dollars. However, this is exactly the type of claim the Pennsylvania Supreme Court in *Pyeritz* refused to recognize as a valid cause of action.

Accordingly, this Trial Court followed and applied the precedent established in *Pyeritz*, by granting Appellee USAA’s Cross-Motion for Summary Judgment and denying Appellant Erie IE’s Motion for Summary Judgment.

On appeal, Appellant Erie IE enumerates five (5) paragraphs in its Concise Statement of Matters Outstanding which this Trial Court has consolidated into one (1) encompassing issue:

¹ Appellant Erie IE’s Subrogors are listed in the above caption: Bates Collision, Inc. [hereinafter “Bates”], James Myers, Anita Morgan, Lossie Auto Service and Benedictine Sisters of Erie, Inc.

Whether the Trial Court properly granted Cross-Motion for Summary Judgment and, accordingly, properly denied Motion for Summary Judgment where action facially labeled as “promissory estoppel” is a third party negligent spoliation of evidence case which cannot be recognized as a cause of action under *Pyeritz*; where no promise was ever made to preserve indefinitely the scrap-valued BMW; where Complainant failed to make a prima facie showing sufficient to maintain a cause of action for promissory estoppel; and where Complainant failed to avail itself of adequate remedies at law until such remedies were no longer an option, thereby creating the very situation from which it seeks to recover.

BACKGROUND

On or about January 22, 2017, a fire caused significant damage to Appellant Erie IE’s Subrogors and Appellee USAA’s BMW. Appellant Erie IE paid out the following amounts to their insured Subrogors:

\$1,572,549.00 to Bates Collision, Inc.;
 \$6,826.00 to Lossie Auto Service;
 \$14,220.79 to James Myers;
 \$7,873.76 to Anita Morgan;
 \$14,451.10 to Bates Collision, Inc. as Garage keeper; and
 \$6,396.50 to Benedictine Sisters of Erie, Inc.

The Subrogors themselves paid \$1,900.00 in deductibles.

Appellee USAA’s insured is Robert Bailey, the owner of a 2013 BMW 3 Series, 335i [“BMW”] parked inside Bates’s garage. Although Appellee USAA is the Subrogee to Bailey, Appellee USAA did not pursue subrogation against BMW. *See letter dated October 7, 2021, by Patricia A. Monahan, Esq. on behalf of APPELLEE USAA with excerpts from its agent, Frank Jurado.*

Both parties had their experts examine the BMW. Appellant Erie IE claims this fire started as a result of a defective BMW and/or its component parts. Appellee USAA counters this fire started as a result of the negligence of Bates and its mechanics, one of Appellant Erie IE’s insureds. Appellee USAA states: (1) Bates was also a direct repair facility for Appellee USAA; and (2) Bates’ mechanics failed to follow the “STARS Agreement” in place at the time of the fire, violating the terms, conditions, and manner in which Bates was contractually obligated to repair the BMW. Appellee USAA states Bates at the time of the fire failed to repair and store properly the BMW by not de-energizing and depowering the BMW. Appellee USAA claims Bates’s failure caused an arcing to occur near the electric power steering unit or motor of the BMW.

As per Exhibit 6, Appellee USAA’s expert states, “the totality of the evidence indicates that the subject 2013 BMW’s battery leads were connected at the time of the fire, which was confirmed by the PA State Police Fire Marshal in his report.” *Id.* Moreover, Jason Kehl, the Bates’ collision mechanic, who worked on the BMW prior to the fire, stated, “he reconnected the battery in order to test the power steering system after his repair or replacement of the Electric Power Steering Rack.” *Id.* Bates replaced the original Electric Power Steering Rack of the BMW with a “used salvage or recycled Electric Power Steering Rack” removed from a 2014 BMW 320i Sedan. *Id.* Bates, however, is required not to use a recycled part for the Electric Steering system as such is in violation of said STARS Agreement.

Appellant Erie IE’s counsel states Appellee USAA denied there was ever a promise to preserve the subject BMW. Appellee USAA’s counsel admits Appellee USAA, as per its letter on February 23, 2017, complied with Appellant Erie IE’s request and made arrangements to tow the BMW from Bates to IAA [Insurance Auto Auctions] after the experts’ examined the BMW. However, Appellant Erie IE never communicated any length of time for which said BMW was to be stored by Appellee USAA. *See Pl.’s Mot. Summ. J. Ex.’s B and K.*

Meanwhile, it was not until April 25, 2017, sixty-one days after the joint inspection that Appellant Erie IE in desiring to have a “destructive examination” of the vehicle realized the BMW had been sold at an auction on March 30, 2017, thirty-five days after the BMW was stored by Appellee USAA. Appellee USAA’s representative stated she requested a “HOLD” on the BMW at the salvage yard through “electronic notes,” and had asked the towing company to wrap the BMW. However, due to the lack of necessary documentation for IAA, Appellee USAA’s agent indicated the BMW was sold. *See Def.’s Resp. to Pl.’s Mot. Summ. J. and Counterstatement of Material Facts.*

APPLICATION OF LAW AND ANALYSIS

Appellant Erie IE labeled their Complaint as a subrogation tort² and alleged “a single count sounding in Promissory Estoppel;”³ however, this claim “although labeled as promissory estoppel, sounds in tort.” *See generally Cornell Narbeth, LLC v. Borough of Narbeth*, 167 A.3d 228, 240 (Pa. Cmwlth. 2017). As Appellee USAA aptly states in its Cross-Motion, Appellant Erie IE’s claim “is a masked cause of action for spoliation of evidence.” *Def.’s Cross Mot. Summ. J.* at p. 7, para. 38. The facts and essence of Appellant Erie IE’s Complaint are of a third party negligent spoliation of evidence claim – a claim which Appellant Erie IE acknowledges is non-actionable under the landmark case *Pyeritz v. Commonwealth*, 32 A.3d 687 (Pa. 2011). *See N.T.* September 27, 2021 at 33.

In *Pyeritz*, the plaintiff brought suit against the Commonwealth after Trooper Ekis, a law enforcement officer employed by the Commonwealth, agreed to preserve a snapped two tree stand belt (hereafter “the belt”) as a piece of evidence recovered from the scene which resulted in the death of Mr. Pyeritz. *Id.* at 690. This piece of evidence was important for both law enforcement’s criminal investigation into Mr. Pyeritz’s death and for the plaintiff’s impending product liability suit against the manufacturer of the belt. *Id.* At the request of the plaintiff’s attorney, the trooper agreed to hold the belt for the plaintiff after the criminal investigation had concluded. *Id.* The trooper placed the appropriate labels on this evidence to indicate such purpose and intent. *Id.* However, after the trooper was transferred, the Commonwealth disposed of the belt pursuant to standard police protocol. As a result, the plaintiff was unable to bring this evidence to plaintiff’s product liability suit against the manufacturer, and instead accepted a settlement of \$200,000. *Id.*

The plaintiff then sued the Commonwealth under a theory of negligent spoliation of evidence, arguing the Commonwealth’s failure to uphold its promise and preserve the evidence had deprived the plaintiff of the ability to properly pursue its product liability claim against the belt’s manufacturer. *Id.* at 690-91. The trial court granted summary judgment for the Commonwealth, which was affirmed by the Commonwealth Court and appealed again to the Pennsylvania Supreme Court. *Id.* at 691.

² *See Plaintiff’s Complaint Cover Page.*

³ *See Plaintiff’s Motion for Summary Judgment* at p. 5, para. 22.

The Pennsylvania Supreme Court held in *Pyeritz* that no cause of action exists for negligent spoliation, reasoning that “as a matter of public policy, this is not a harm against which Appellee USAAs should be responsible to protect.” *Id.* at 693. *See also Boris v. Vurimindi*, No. 1215 EDA 2020, No. 1553 EDA 2020, 2022 WL 214287 at 10 (Pa.Sup. 2022); *Schwartz v. Taylor*, 2021 WL 4818283 at 3 (E.D. Pa. 2021); and *Turturro v. United States*, 43 F.Supp.3d 434, 459 (E.D. Pa. 2014) (all reiterating that there is no cause of action for negligent spoliation under *Pyeritz*). The Supreme Court further reasoned a negligent spoliation “tort would allow the imposition of liability where, due to the absence of the evidence, it is impossible to say whether the underlying litigation would have been successful.” *Pyeritz* at 693-694.

Moreover, the Supreme Court in *Pyeritz* was opposed to awarding damages for the hypothetical value a piece of evidence may have been worth in a prospective products liability suit, stating: **“It could very well be true in this case, for example, that if the belt had not been destroyed, it would have undermined Appellant Erie IEs’ suit against the manufacturers and they would not have realized even the \$200,000 settlement they now have in hand.”** *Id.* (emphasis added).

The Supreme Court in *Pyeritz* then further explains that even when evidence has been fully tested and alternative evidence exists, the value of such evidence in impending litigation is still inherently speculative:

Of course, in some cases, one party may have already finished testing the evidence by the time it is destroyed, or as here, photographs or other representations of the evidence may still exist. However, depictions are an inadequate substitute for the evidence itself, as other parties cannot inspect and test the evidence independently, which deprives them of the raw material they need to mount a potentially successful claim or defense. If we were to recognize the tort, the inability of the parties to assess meaningfully the impact of the missing evidence on the underlying litigation would result in potential liability based on speculation. *Id.* at 693-94.

The Supreme Court in *Pyeritz* also addresses the public policy argument in its opinion, and makes note of the existing legal remedies that preclude the need to recognize a negligent spoliation claim:

To the extent recognition of the tort would encourage the preservation of evidence, that benefit is outweighed by the financial burden the tort would impose. If it were recognized, **businesses and institutions would be forced to preserve evidence, at considerable expense, for a myriad of possible claims that might never be brought. Moreover, this goal can be achieved under existing law.... [P]arties to pending and prospective suits ... may be able to obtain injunctive relief to preserve evidence. See generally *Capricorn Power Co., Inc. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 433-34 (W.D.Pa.2004) (applying federal law and listing factors for obtaining such relief).... [P]arties to suits have an avenue to obtain physical evidence from non-parties, even pre-complaint, under the Rules of Civil Procedure. See Pa.R.C.P. 4003.8, 4009.21-4009.27.** *Id.* at 694 (emphasis added).

In the instant case, the entirety of Appellant Erie IE’s claim against Appellee USAA “sounds” in negligent spoliation. Similar to the plaintiff in *Pyeritz*, Appellant Erie IE’s claim of damages arises from the loss of evidence that it would have liked to use in a separate product liability case. Appellee USAA, like the Commonwealth entity in *Pyeritz*, is a non-party to Appellant Erie IE’s possible product liability suit against BMW (a suit which Appellant Erie IE never initiated, *see N.T.*, September 27, 2021 at p. 9). Appellee USAA, the rightful title holder of this BMW, had a known protocol regarding the scrapping of valueless vehicles after inspection.

Appellant Erie IE indicated it thought it placed Appellee USAA on notice that Appellant Erie IE *might* wish to pursue a subrogation claim against BMW, that Appellant Erie IE *may* want to carry out a destructive investigation of the BMW at a later date in furtherance of this prospective suit, and that Appellant Erie IE wanted the BMW wrapped and preserved for such possible future use. *See Pl.’s Mot. Summ. J., Ex. A, B, C, and D.* However, Appellant Erie IE never specified a timeframe for such preservation, definite or otherwise. *Id.*

Appellee USAA advised Appellant Erie IE it had **requested** the BMW be wrapped and preserved, and Appellee USAA advised Appellant Erie IE of the location of where the BMW was being stored. *See Pl.’s Mot. Summ. J. Ex. L.* Once again, no timeframe was ever mentioned, definite or otherwise.

Like the plaintiff in *Pyeritz*, Appellant Erie IE knew where the evidence was being stored and had multiple opportunities to pursue several other remedies at law. With knowledge of where the BMW was stored, Appellant Erie IE could have followed-up with the storage facility to ensure the BMW was being properly preserved. Appellant Erie IE similarly could have made an offer to purchase the BMW or pursued a court order to preserve the BMW. Appellant Erie IE opted not to pursue any of these available and adequate remedies despite the alleged value of the BMW in Appellant Erie IE’s possible future product liability lawsuit.

Instead, much like the plaintiff in *Pyeritz*, Appellant Erie IE unreasonably relied on others to preserve evidence that was only of value to itself, made no effort to avail itself of the adequate remedies at law, and now seeks to recover for the loss of speculatively valued evidence. As the Supreme Court states repeatedly in *Pyeritz*, such a cause of action is not recognizable in the state of Pennsylvania. Therefore, Appellant Erie IE has no cause of action against Appellee USAA and has failed to state a claim upon which relief can be granted. Accordingly, this Court granted Appellee USAA’s Cross-Motion for Summary Judgment and thereby denied Appellant Erie IE’s Motion for Summary Judgment.

Appellant Erie IE had multiple remedies at law available to it before the BMW was salvaged for scrap – a point which Appellant Erie IE themselves not only concedes but uses as a linchpin for its argument. *Pl.’s Memorandum in Support of its Mot. For Summ. J.*, pp. 16-17. Appellant Erie IE also acknowledges in its own pleadings that any one of these available remedies would have effectively preserved the BMW and prevented the harm allegedly suffered. *Id.* However, Appellant Erie IE chose not to avail itself of any of these adequate remedies, and now seeks to recover in equity what it failed to pursue in law.

Appellant Erie IE claims this case is not a negligent spoliation action at all, but instead a contract action “sounding in” promissory estoppel. *See Plaintiff’s Complaint, cf. Transcript of Hearing* at 9. For such an action to be recognized, Appellant Erie IE must establish a valid cause of action under the theory of Promissory Estoppel. In Pennsylvania, three elements

are required to make a prima facie showing for Promissory Estoppel:

- (1) the promisor made a promise that he should have reasonably expected to induce action or forbearance on the part of the promisee;
 - (2) the promisee actually took action or refrained from taking action in reliance on the promise; and
 - (3) injustice can only be avoided by enforcing that promise.
- Gutteridge v. J3 Energy Group, Inc.*, 165 A.3d 908, 919 (Pa. Sup. 2017).

Moreover, promissory estoppel is under the umbrella of equitable estoppel, and has the same evidentiary standard. *Josephs v. Pizza Hut of America, Inc.*, 733 F. Supp. 222, 223-224 (W.D. Pa. 1989). Accordingly, estoppel must be shown by clear and convincing evidence. *Id.* “The essential elements of estoppel are an inducement by the party sought to be estopped to the party who asserts the estoppel to believe certain facts to exist – and the party asserting the estoppel acts in reliance on that belief.” *Id.* at 226-227 (quoting *Blofsen v. Cutaiar*, 333 A.2d 841 (Pa. 1975)). No estoppel exists “where the complainant’s act appears to be ... the result of his own will or judgment [rather than] the product of what defendant did or represented.” *In Re Tallarico’s Estate*, 425 Pa. 280, 288-89, 228 A.2d 736, 741 (1967).

Furthermore, the promise or representation must originate with the promisor, and not be merely a self-serving promise originating with and acted upon by the promisee. *See, e.g., Home for Crippled Children v. Prudential Ins. Co. of America*, 590 F.Supp. 1490, 1504-1505 (Pa W.D. 1984) (“Mrs. Phillips never made such a remark. Rather, **the words were entirely those of Mrs. Hoffman.** Indeed, Mrs. Phillips **never referred specifically to Jason** or Deborah Sentner and **never stated that coverage was available to Jason.**”(emphasis added)(internal citations omitted)).

The promise or conduct also “must of itself have been sufficient to warrant the action of the party claiming the estoppel....” *Tallarico*, 228 A.2d at 741. “Where there is no concealment, misrepresentation, or other inequitable conduct by the other party, a [plaintiff] may not properly claim that an estoppel arises in his favor from his own omission or mistake....” *Id.* Finally, “[e]stoppel cannot be predicated on errors of judgment by [the] person asking its benefit.” *Id.*

In the instant case, the alleged “promise” relied upon by Appellant Erie IE originates with Appellant Erie IE itself by its own admission. *See Pl.’s Mot. Summ. J.* at p.2, para. 6-8 and *Pl.’s Mot. Summ. J. Ex. A, B, C, and D.* Appellee USAA, by Appellant Erie IE’s own recounting of the facts, complied with Appellant Erie IE’s initial request to wrap and preserve the BMW, and then later requested that IAA wrap and preserve the BMW and informed Appellant Erie IE of this request. *Id.*

Appellant Erie IE claims the “promises” which induced its lack of action to pursue legal remedies at law were: (1) Appellee USAA’s initial lack of a response to Appellant Erie IE’s letters; (2) statements made by Appellee USAA’s fire investigation expert to “request that the vehicle wrapped and preserved;” and (3) Frank Jurado’s response email answering Appellant Erie IE’s inquiry as to the storage location of the BMW and informing Appellant Erie IE that, pursuant Appellant Erie IE’s request, Appellee USAA had **requested** that the BMW be wrapped and preserved for potential additional investigation. *See Pl.’s Mot. Summ.*

J. Ex. L (emphasis added). Neither party at any point specified a definite duration of time for which the BMW would be maintained, nor did Appellee USAA receive any compensation for such storage and preservation.

The Exhibits submitted along with the facts pled by both parties demonstrate Appellee USAA never offered to preserve the BMW, but instead relayed Appellant Erie IE’s request to wrap and preserve said BMW. Even when all facts presented and inferences derived therefrom are viewed in the light most favorable to Appellant Erie IE, the only promise made by Appellee USAA was to **request** the BMW be wrapped and preserved. Appellant Erie IE’s own Exhibits show the letter sent by Appellee USAA’s representative Frank Jurado expressly contains the language “requested” and does not contain any form of the words “we will ensure.” Even if we assume – despite ample evidence to the contrary – this communication was intended to be a promise, the very evidence presented by Appellant Erie IE demonstrates this promise would only extend toward making a request for the BMW to be preserved.

Moreover, all communications containing the words “shall” and stating that Appellee USAA “will” preserve the BMW originate with Appellant Erie IE. Appellant Erie IE also points to communications made by Appellee USAA’s fire investigation expert – a person who by her own admission only possesses the authority to request certain actions be undertaken by Appellee USAA – as evidence of the alleged promise, *see Pl.’s Mot. Summ. J. Ex.’s B, C, D* (communications in question); *c.f. Pl.’s Mot. Summ. J. Ex. I* (selections from deposition of said expert). However, even these communications were made in direct response to Appellant Erie IE’s own proclamations, as reflected in Appellant Erie IE’s own Motion for Summary Judgment and accompanying Exhibits. *Id.* at para. 5-8; *Ex.’s B, C, D, K, and L.*

Stated differently, Appellant Erie IE’s own Exhibits and averments show the promise originated with Appellant Erie IE, and was for Appellant Erie IE’s own benefit. Therefore, the alleged promise was self-serving by originating from Appellant Erie IE, not with Appellee USAA. Frank Jurado only “requested” on behalf of Appellant Erie IE that the BMW be preserved.

For all of these reasons, this Trial Court finds and concludes Appellant Erie IE failed to make its prima facie showing that Appellee USAA made a promise to preserve the BMW.

Appellant Erie IE also fails to make a prima facie showing that Appellee USAA should have reasonably foreseen its conduct would induce Appellant Erie IE to abandon all of its available adequate legal remedies to preserve the BMW. In order to make this showing, a complainant must show that the conduct itself was reasonable given the circumstances: “Where there is no concealment, misrepresentation, or other inequitable conduct by the other party, a [plaintiff] may not properly claim that an estoppel arises in his favor from his own omission or mistake.... Estoppel cannot be predicated on errors of judgment by [the] person asking its benefit.” *Tallarico* at 741.

A reasonable actor, when faced with the possibility of losing a piece of evidence the reasonable actor believes to be worth over one million dollars in a prospective suit, would not rely on an email that another party had “requested” the evidence be preserved. A reasonable actor, when faced with the potential risk of losing such a highly valuable piece of evidence, would instead pursue any of the several readily-available adequate remedies at law.

In *Pyeritz*, the Pennsylvania Supreme Court suggests plaintiff’s counsel was unreasonable to rely upon a trooper’s promise to preserve the evidence rather than utilizing legally available

channels available to secure the evidence for themselves. *Id.* at 693-694. In the instant case, the communication upon which Appellant Erie IE “relies” is far less direct and substantial. The letter stating Appellee USAA had requested the BMW be marked for preservation is, at most, a promise to **request** that the BMW be marked and preserved. There is nothing in this letter that communicates any affirmative assumption of responsibility for the BMW on the part of Appellee USAA. Therefore, Appellant Erie IE’s expectation that Appellee USAA would affirmatively and actively ensure the preservation of this BMW, where no legal obligation existed to do so, and where Appellee USAA never communicated an intent to do so, is unreasonable.

Moreover, Appellant Erie IE alleges this BMW was potentially worth over one million dollars to Appellant Erie IE in a possible future product liability case against BMW. However, this BMW was worth only salvageable scrap-value to Appellee USAA. A reasonable actor, especially a reasonable and sophisticated insurance provider such as Appellant Erie IE, would have utilized any one of the readily available adequate remedies at law, such as a contract or a court order, to either take possession of the BMW or otherwise ensure the BMW’s preservation.

In the instant case, Appellant Erie IE chose not to avail itself of any adequate remedies at law and instead unreasonably relied on mere requests. Moreover, Appellant Erie IE knew where the BMW was being stored. Despite the BMW’s alleged importance and value to Appellant Erie IE’s prospective lawsuit, Appellant Erie IE made no efforts to visit or communicate with the IAA lot to ensure that the BMW was being properly preserved. Instead, Appellant Erie IE chose to simply wait more than sixty days without following-up with either the IAA lot to ensure the BMW was being preserved or with Appellee USAA to specify a timeframe for the preservation. As stated in *Tallarico*, “errors of judgment” on the part of the promisee are not sufficient grounds for estoppel. *Tallarico* at 741. Therefore, this Trial Court finds and concludes Appellant Erie IE’s errors in judgment and its unreasonable reliance are not sufficient grounds to maintain an action in estoppel, especially where no valid promise exists in the first place.

Moreover, no evidence presented by either party demonstrates Appellee USAA’s agents engaged in any fraud, misrepresentation, or “other inequitable conduct.” *See Tallarico* at 741. Nothing in Appellee USAA’s communications to Appellant Erie IE should have reasonably induced Appellant Erie IE to abandon its legally available, more reliable adequate remedies. The emails and written communications to which Appellant Erie IE points never specify a time period in which Appellee USAA would preserve the BMW, definite or otherwise. Pursuant to *Pyeritz*, Appellee USAA had no legal duty to preserve this BMW in the first place. Therefore, any expectation or assumption that Appellee USAA would continue to hold onto this BMW indefinitely, absent a contract or court order to the contrary, is facially unreasonable; ergo, Appellant Erie IE’s reliance upon this unreasonable expectation is also unreasonable.

For all of these reasons, Appellant Erie IE’s reliance on the alleged promise is facially unreasonable, and therefore not reasonably foreseeable by Appellee USAA. Therefore, this Trial Court finds and concludes Appellant Erie IE has failed to make its prima facie showing that Appellee USAA should have reasonably expected its communications to induce Appellant Erie IE’s Appellant Erie IE’s reliance.

Finally, there is no estoppel “where the complainant’s act appears to be ... the result of his own will or judgment [rather than] the product of what defendant did or represented.” *Tallarico* at 741; *see also, e.g., Josephs v. Pizza Hut of America, Inc.* at 227 (plaintiff’s choice was not sufficiently supported by evidence of inducement and reasonable reliance, even where specific assurances were given to plaintiff during the decision making process).

In the instance case, Appellant Erie IE created this situation itself by not availing itself of the several aforementioned adequate remedies at law. Appellant Erie IE’s chose to rely on mere requests to preserve the BMW rather than pursue the much safer adequate remedies at law that were readily available to Appellant Erie IE at the time, despite knowing the clearly foreseeable risk of such reliance. Moreover, the evidence and pleadings submitted by Appellant Erie IE demonstrate that this choice was not the “product” of any representation or inducement by Appellee USAA but instead the result of its own will and judgment. *See Tallarico* at 741. After creating the very situation which caused its alleged harm, Appellant Erie IE should not then be able to channel this Trial Court’s equity powers in an alleged action for promissory estoppel after the fact.

Appellant Erie IE chose to rely on mere requests by Appellee USAA for the BMW to be preserved rather than pursue readily available alternatives to secure and preserve the BMW itself. For the reasons set out above, this choice was unreasonable, and the harm suffered was not the result of any inducement or inequitable conduct by Appellee USAA but instead directly resulted from Appellant Erie IE’s own “errors in judgment.” *See Tallarico* at 741. While this choice is certainly regrettable in hindsight, the consequences of Appellant Erie IE’s Appellant Erie IE’s failing to avail itself of available adequate remedies at law must fall upon Appellant Erie IE’s own shoulders: “errors in judgment” without evidence of fraudulent inducement or other inequitable conduct are not sufficient grounds upon which to maintain an action for estoppel. *Id.*

Appellant Erie IE as a large and sophisticated insurance company is well-versed in the importance and usefulness of contracts. Appellant Erie IE was also fully capable of pursuing subpoenas to protect its interest in securing possession of the BMW and of preparing and drafting a written contract to preserve the BMW. Appellant Erie IE also could have made an offer to purchase said BMW for itself to obtain rightful title after the joint investigation. *See Pyeritz* at 694 (discussing proper alternatives to preserve evidence); *c.f. Pl.’s Mot. Summ. J.* at pp. 25-26; *and N.T.*, September 27, 2021 at p. 47. Appellant Erie IE should not be now permitted to avail itself of equitable remedies after willfully choosing not to utilize any of the adequate remedies at law. Accordingly, this Trial Court found and concluded Appellant Erie IE also failed to make a prima facie showing that injustice could be avoided only by enforcing the alleged promise.

As to Appellant Erie IE’s alleged claim of “subrogation” with Appellee USAA, this Trial Court agrees with Appellee USAA’s counsel in her Cross-Motion for Summary Judgment: Appellant Erie IE’s subrogation claim against Appellee USAA fails as a matter of law because Appellee USAA did not cause the property damage to which Appellant Erie IE was contractually obligated to pay its insureds.

Appellant Erie IE has subrogation rights to Bates Collisions’ recovery against any party liable for loss. Because the loss here is the direct and accidental loss of or damage to covered property resulting from the fire, Appellant Erie IE is entitled to recover from any party that

caused or contributed to the fire damage. While the exact cause of the fire is unknown, it is known and undisputed that Appellee USAA did not cause the fire nor the ensuing property damage to which Appellant Erie IE was contractually obligated to pay its insureds. Because none of Appellant Erie IE's Subrogors have a claim against Appellee USAA, and because a subrogee's rights extend no further than those of the subrogor, Appellant Erie IE lacks standing to pursue a subrogation claim against Appellee USAA. *See Insurance Co. of North America v. Carnahan*, 446 Pa. 48, 50, 284 A.2d 728, 729 (1971) (declaring that insurance company's rights as subrogee do not rise above those of their insureds); *see also*, e.g., *Republic Ins. Co. v. Paul Davis Systems of Pittsburgh South, Inc.*, 543 Pa. 186, 670 A.2d 614 (1995) and *Pennsylvania Mfrs. Ass'n Ins. Co. v. Wolfe*, 534 Pa. 686, 626 A.2d 522 (1993). Therefore, Appellant Erie IE has no subrogation rights against Appellee USAA, and Appellant Erie IE's subrogation claim against Appellee USAA is non-actionable.

Moreover, the damages asserted by Appellant Erie IE are of the same speculative nature expressly disallowed by *Pyeritz*. In *Lobolito, Inc. v. N. Pocono Sch. Dist.*, 755 A.2d 1287, 1293 (2000), the Pennsylvania Supreme Court states damages in a promissory estoppel claim are limited to amounts lost and expended in reliance upon an alleged promise. Assuming arguendo that promissory estoppel is applicable to the instant case, Appellant Erie IE's damages in an alleged promissory estoppel are limited to amounts lost and expended in reliance upon an alleged promise, not the entire amount Appellant Erie IE expended with their Subrogors of over one and a half million dollars. Appellant Erie IE seeks to recover and assign to Appellee USAA the entirety of its policy payout costs, an amount arrived upon entirely on the basis of Appellant Erie IE's prospective possible recovery against BMW as a subrogor in a possible future product liability case. However, *Pyeritz* expressly prohibits recovery under a theory of negligent spoliation for this exact reason. *Id.* at 693.

Damages that cannot be proven with reasonable certainty are generally not recoverable. *Spang & Co. v. U.S. Steel Corp.*, 545 A.2d 861, 866 (Pa. 1988). Damages are considered speculative where damages are not identifiable despite difficulties in calculating an amount. *Newman Dev. Grp. Of Pottstown, LLC v. Genuardi's Family Mkt., Inc.*, 98 A.3d 645, 661 (Pa. Super. 2014), and *Printed Images of York, Inc., v. Mifflin Press, Ltd.*, 133 A.3d 55, 59-60 (Pa. Super. 2016).

In the instant case, no proof exists that a manufacturing defect of the BMW caused the fire; therefore, Appellant Erie IE cannot ascertain and identify its damages as said damage claims are dependent upon Appellant Erie IE's ability to establish BMW caused its insured's damages. However, even if Appellant Erie IE could establish that BMW was the likely cause of the fire, Appellant Erie IE's damages would still be speculative under *Pyeritz*.

The Court in *Pyeritz* also reiterated that the value of lost evidence in a prospective case is inherently speculative, as it may just as easily have harmed the plaintiff's hypothetical case as helped it. *Id.* at 693-694. In the instant case, Appellant Erie IE themselves admits that the investigation of the BMW was incomplete, and that the BMW's probative value in Appellant Erie IE's hypothetical product liability lawsuit against BMW accordingly could not be fully ascertained or confirmed.

However, even if we were to assume that the cause of the fire was fully determined before the BMW was destroyed, the Court in *Pyeritz* clearly and explicitly states that even when the evidence has been fully investigated before its destruction, its value in a prospective

or pending case is still speculative because it is impossible to determine whether it would have ultimately held a positive or negative effect on the would-be plaintiff's case. *Id.* at 694. Thus, the Pennsylvania Supreme Court has already more than sufficiently explained why these exact types of damages complained of in the instant case are speculative and non-recoverable; accordingly, this Trial Court found and concluded Appellant Erie IE's claimed damages arising from the loss of uncertain evidence in a possible future product liability suit are also speculative and non-recoverable.

Appellant Erie IE attempts to contravene *Pyeritz*'s reasoning by claiming that Appellee USAA violated a duty to preserve the evidence, thereby creating a bailment and shifting the burden of proving damages onto Appellee USAA as the alleged bad actor. However, for reasons already discussed at length, this claim is without merit: The Pennsylvania Supreme Court in *Pyeritz* held that no independent cause of action exists for negligent spoliation, and expressly stated that there is no legal duty for third parties to preserve evidence for others. *Id.* at 693-694. Moreover, the Pennsylvania Supreme Court also explicitly states:

“To the extent recognition of the tort would encourage the preservation of evidence, that benefit is outweighed by the financial burden the tort would impose. **If it were recognized, businesses and institutions would be forced to preserve evidence, at considerable expense, for a myriad of possible claims that might never be brought.** Moreover, this goal can be achieved under existing law.” *Id.* at 694 (emphasis added).

Thus, the Pennsylvania Supreme Court makes it abundantly clear that there is a strong, public-policy supported presumption against requiring businesses to preserve evidence without a court order or contract to the contrary. Because Appellee USAA was not under any preexisting legal or contractual obligation, and because Appellee USAA made no promise to affirmatively preserve the BMW, the uncertainty of the BMW's probative value was not created by any breach of duty or bad act on the part Appellee USAA. Accordingly, the burden of showing that the damages are not speculative remains with Appellant Erie IE, and Appellant Erie IE is not capable of meeting said burden under *Pyeritz*.

Appellant Erie IE's counsel claims “[t]here are no reported Pennsylvania decisions with similar facts.” *Plaintiff's Memorandum supra* at 19. As explained in detail above, the facts of this case are actually quite similar to those in *Pyeritz*. Nevertheless, Appellant Erie IE's counsel argues this Trial Court should instead apply a California case, *Cooper v. State Farm Mutual Automobile Ins. Co.*, 177 Cal. App.4th 876, 902, 99 Cal. Rptr. 3d 870, 891 (2009), and claims said California case is “persuasive authority.” *Id.*

However, the California case of *Cooper* is factually distinguishable from the instant case in that the plaintiff in *Cooper* sued his own insurance company under promissory estoppel alleging State Farm disposed of his “suspected defective tire” after being informed of the importance of the tire to insured's product liability against manufacturer. The California trial court dismissed the case, finding plaintiff would be unable to show he would have prevailed in his case against Continental Tire had the tire not been destroyed. The California Appellate Court disagreed and reversed, holding State Farm's promise to preserve the vehicle created an independent duty, under contractual principles and State Farm's insured met all the requirements of a promissory estoppel claim.

State Farm's responsibility in *Cooper* cannot be separated from its subrogation relationship with its own insured. In the instant case, no subrogation responsibility exists between Appellant Erie IE and Appellee USAA.

Moreover, even if we were to apply California law to the instant case, Appellant Erie IE would still fail to make a prima facie showing of promissory estoppel. In California, the four elements of promissory estoppel are "(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance." *US Ecology, Inc. v. State of California*, 129 Cal.App.4th 887, 901 (2005); *Joffe v. City of Huntington Park*, 201 Cal.App.4th 492, 513 (2011); see also *Aceves v. U.S. Bank N.A.*, 192 Cal.App.4th 218, 225 (2011). Here, the communication between Appellee USAA and Appellant Erie IE in no way establishes a promise "clear and unambiguous in its terms;" as stated above in greater detail, the alleged promise here lacks specificity, only stating that Appellee USAA *requested* that the BMW be wrapped and preserved. Neither party ever communicates a timeframe for the BMW's preservation, nor is any compensation ever discussed.

The terms here are unclear, nonspecific, and non-definite; as discussed in greater detail above, the nature and level of Appellant Erie IE's supposed reliance on Appellee USAA's communications is patently unreasonable. Therefore, Appellant Erie IE fails to make a showing for promissory estoppel even under California law.

Finally, Appellant Erie IE contends this Trial Court failed to consider the public policy ramifications of not recognizing its cause of action against Appellee USAA. However, this Trial Court notes that the public policy question was already addressed and answered fully by the Pennsylvania Supreme Court in *Pyeritz*:

To the extent recognition of the tort would encourage the preservation of evidence, that benefit is outweighed by the financial burden the tort would impose. If it were recognized, businesses and institutions would be forced to preserve evidence, at considerable expense, for a myriad of possible claims that might never be brought. Moreover, this goal can be achieved under existing law. Although Pennsylvania law does not permit an equity action for discovery, see *Cole v. Wells*, 406 Pa. 81, 177 A.2d 77, 80 (1962), parties to pending and prospective suits, upon an appropriate showing, may be able to obtain injunctive relief to preserve evidence. See generally *Capricorn Power Co., Inc. v. Siemens Westinghouse Power Corp.*, 220 F.R.D. 429, 433-34 (W.D.Pa.2004) (applying federal law and listing factors for obtaining such relief). In addition, parties to suits have an avenue to obtain physical evidence from non-parties, even pre-complaint, under the Rules of Civil Procedure. See Pa.R.C.P. 4003.8, 4009.21-4009.27.

Therefore, this Trial Court finds and concludes that there is no public policy issue here that has not already been addressed at length. Appellant Erie IE was fully capable of entering into a contract with Appellee USAA to preserve the BMW, or of purchasing the BMW. Appellant Erie IE was fully capable of traveling to the IAA holding lot to ensure that the BMW was preserved. Appellant Erie IE was fully capable of initiating its product liability suit against BMW and then utilizing the existing Rules of Civil Procedure to acquire and preserve the evidence, or of obtaining preemptive injunctive relief to preserve the BMW.

The failure of a sophisticated insurance company like Appellant Erie IE to avail itself of any of the several readily available legal and self-help remedies does not create a public policy issue, and neither does Appellant Erie IE's unreasonable reliance upon a non-binding, non-specific and ambiguous communication.

For all of the above stated reasons, Appellant Erie IE's issues on appeal are without merit, and this Trial Court respectfully requests the Pennsylvania Superior Court affirm this trial court's rulings.

BY THE COURT

/s/ **Hon. Stephanie Domitrovich, Judge**

CHANGE OF NAME NOTICE
In the Court of Common Pleas of Erie County, Pennsylvania 10253-22 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Laura Baez-Sprague to Laura Carbo.

The Court has fixed the 16th day of March, 2022 at 9:00 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.

Feb. 18

DISSOLUTION NOTICE

Notice is hereby given that Stonebrook Realty, LLC, a Pennsylvania limited liability company with a registered office at 4132 Stone Creek Dr., Erie, PA 16506, is in the process of winding up and dissolving its business pursuant to the provisions of the Pennsylvania Uniform Limited Liability Company Act of 2016, as amended. Any claims should be sent in writing to c/o James M. Antoun, Esquire, 100 State Street, Suite 700, Erie, Pennsylvania 16507.

Feb. 18

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 December 9, 2021 for Spaces By Steffie G at 10060 Calkins Rd., North East, PA 16428. The name and address of each individual interested in the business is Stephanie Gilfoyle

at 10060 Calkins Rd., North East, PA 16428. This was filed in accordance with 54 PaC.S.311-417.

Feb. 18

INCORPORATION NOTICE

Notice is hereby given that SOUNDER & FRIENDS INC. was incorporated under the provisions of the Nonprofit Corporation Law of 1988 on February 7, 2022. Norman A. Stark, Esquire Marsh SchAAF, LLP 300 State Street, Suite 300 Erie, PA 16507

Feb. 18

LEGAL NOTICE

ATTENTION: MELVIN LUCAS INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR FEMALE CHILD M.A.T-L DOB: 4/15/2021

BORN TO: ALEXIS MARIE TIRADO 139 IN ADOPTION, 2021

If you could be the parent of the above-mentioned child, at the instance of Erie County Office of Children and Youth you, laying aside all business and excuses whatsoever, are hereby cited to be and appear before the Orphan's Court of Erie County, Pennsylvania, at the Erie County Court House, Judge Erin Connelly Marucci, Courtroom D-214, City of Erie on February 28, 2022 at 1:30 p.m. and there show cause, if any you have, why your parental rights to the above child should not be terminated, in accordance with a Petition and Order of Court filed by the Erie County Office of Children and Youth. A copy of these documents can be obtained by contacting the Erie County Office of Children and Youth at (814) 451-7740.

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

and your rights to your child may be ended by the Court without your being present.

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

Family/Orphan's Court Administrator Room 204 - 205

Erie County Court House

Erie, Pennsylvania 16501

(814) 451-6251

NOTICE REQUIRED BY ACT 101 OF 2010: 23 Pa. C.S. §§2731-2742.

This is to inform you of an important option that may be available to you under Pennsylvania law. Act 101 of 2010 allows for an enforceable voluntary agreement for continuing contact or communication following an adoption between an adoptive parent, a child, a birth parent and/or a birth relative of the child, if all parties agree and the voluntary agreement is approved by the court. The agreement must be signed and approved by the court to be legally binding. If you are interested in learning more about this option for a voluntary agreement, contact the Office of Children and Youth at (814) 451-7726, or contact your adoption attorney, if you have one.

Feb. 18

LEGAL NOTICE

ATTENTION: ALEXIS MARIE TIRADO INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR FEMALE CHILD M.A.T-L DOB: 4/15/2021

139 IN ADOPTION, 2021

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the Hearing will go on without you and your rights to your child may be ended by the Court without your being present.

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

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Feb. 18

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SHERIFF SALES

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

**FEBRUARY 25, 2022
AT 10 A.M.**

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

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

Christopher D. Campanelli
Sheriff of Erie County

Feb. 4, 11, 18

SALE NO. 1

**Ex. #12238 of 2021
KATHLEEN M. HUBBARD,
Plaintiff**

v.

**LINDA LYONS KING,
Executrix of the ESTATE OF
FLORENCE M. LYONS aka
FLORENCE LYONS, Defendant**

DESCRIPTION

By virtue of a Writ of Execution filed at No. 2021-12238, KATHLEEN M. HUBBARD v. LINDA LYONS KING, Executrix of the ESTATE OF FLORENCE M. LYONS aka FLORENCE LYONS, owner of property situated in the Township of Millcreek, Erie County, Pennsylvania being commonly known as 506 Howe Avenue, Erie,

PA with 1,248 square footage and .2170 acreage.
Assessment Map No. (29) 12-20-6
Assessed Value Figure: \$88,100
Improvement thereon: Two story family dwelling
Mark G. Claypool, Esquire
Knox McLaughlin Gornall & Sennett, P.C.
120 West Tenth Street
Erie, Pennsylvania 16501
(814) 459-2800

Feb. 4, 11, 18

SALE NO. 3

**Ex. #10410 of 2021
TED HILINSKI, and
ROSALEE CALDWELL,
Plaintiffs**

v.

**AMANDA FLICK, JAMES
FLICK, BRADLEY FLICK,
LAWRENCE JOSEPH FLICK
and JEFFRY PORACKY, Heirs
of LAWRENCE E. FLICK
(Deceased), Defendants**

DESCRIPTION

By virtue of a Writ of Execution filed at No. 2021-10410, Ted Hilinski and Rosalee Caldwell vs. James Flick and Amanda Flick, Heirs of Lawrence E. Flick, Deceased, owners of property situate in the Township of Millcreek, Erie County, Pennsylvania being: 1425 Hilborn Avenue, Erie, Pennsylvania.
Approx. 0.2700 acres
Assessment Map Number: (33) 33-179-6
Assessed Value Figure: \$28,600.00
Improvement Thereon: Residence
Eugene C. Sundberg, Jr., Esq.
Marsh Schaaf, LLP
300 State Street, Suite 300
Erie, Pennsylvania 16507
(814) 456-5301

Feb. 4, 11, 18

SALE NO. 4

**Ex. #11833 of 2021
MARQUETTE SAVINGS
BANK, Plaintiff**

v.

**HARRY R. JAGODZINSKI;
CHRISTINE A. ANDERSON;
ROSANNE JAWORSKI; JAMES
JAGODZINSKI; ROBERT
JAGODZINSKI; AND THOMAS
JAGODZINSKI; as the HEIRS**

**of JOHN A. JAGODZINSKI,
Deceased, Defendants**
DESCRIPTION

By virtue of a Writ of Execution filed at No. 2021-11833, Marquette Savings Bank vs. Harry R. Jagodzinski, Christine A. Anderson, Rosanne Jaworski, James Jagodzinski, Robert Jagodzinski, and Thomas Jagodzinski, owners of property situate in the City of Erie, Erie County, Pennsylvania being: 722 East 34th Street, Erie, Pennsylvania.

Approx. 0.1643 acres
Assessment Map Number: (18) 5387-107
Assessed Value Figure: \$64,800.00
Improvement Thereon: Residence
Eugene C. Sundberg, Jr., Esq.
Marsh Schaaf, LLP
300 State Street, Suite 300
Erie, Pennsylvania 16507
(814) 456-5301

Feb. 4, 11, 18

SALE NO. 6

**Ex. #10125 of 2021
NORTHWEST BANK f/k/a
NORTHWEST SAVINGS
BANK, Plaintiff**

v.

**MATTHEW M. MORELL and
PATTY A. MORELL, Defendants**
DESCRIPTION

By virtue of a Writ of Execution filed at No. 2021-10125, Northwest Bank vs. Matthew M. Morell and Patty A. Morell, owners of property situate in the City of Erie, Erie County, Pennsylvania being: 1807 West 32nd Street, Erie, Pennsylvania: 40 X 100 X 40 X 100
Assessment Map Number: (19) 6153-203
Assessed Value Figure: \$72,900.00
Improvement Thereon: Residence
Kurt L. Sundberg, Esq.
Marsh Schaaf, LLP
300 State Street, Suite 300
Erie, Pennsylvania 16507
(814) 456-5301

Feb. 4, 11, 18

SALE NO. 7
Ex. #11963 of 2021
THE ANDOVER BANK, Plaintiff
v.
ALISON M. SCARPITTI
and SARA E. KAVANAUGH,
Sole Heirs of WILLIAM F.
SCARPITTI, JR., Deceased,
and THE UNITED STATES OF
AMERICA, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed at No. 2021-11963, Andover Bank vs. Alison M. Scarpitti and Sara E. Kavanaugh, owners of property situate in the City of Erie, Erie County, Pennsylvania being: 662 West 6th Street, Erie, Pennsylvania. Approx. 38' X 69' X 38' X 69' Assessment Map Number: (17) 4020-129 Assessed Value Figure: \$84,300.00 Improvement Thereon: Residence Kurt L. Sundberg, Esq. Marsh Schaaf, LLP 300 State Street, Suite 300 Erie, Pennsylvania 16507 (814) 456-5301

Feb. 4, 11, 18

SALE NO. 8
Ex. #11493 of 2021
NORTHWEST BANK, Plaintiff
v.
CHESTER J. VENDETTI, II,
Defendant
DESCRIPTION

By virtue of a Writ of Execution filed at No. 2021-11493, Northwest Bank vs. Chester J. Vendetti, II, owner of property situate in the City of Erie, Erie County, Pennsylvania being: 1401 State Street, Units 505 and 507, Erie, Pennsylvania. Unit 505 - 807.73 Square Feet and Unit 507 - 719.10 Square Feet Assessment Map Number: (15) 2004-203.76 and (15) 2004-203.78 Assessed Value Figure: Unit 505 - \$92,500.00 Unit 507 - \$86,200.00 Improvement Thereon: Residence Kurt L. Sundberg, Esq. Marsh Schaaf, LLP 300 State Street, Suite 300 Erie, Pennsylvania 16507 (814) 456-5301

Feb. 4, 11, 18

SALE NO. 9
Ex. #10569 of 2021
U.S. Bank Trust National
Association, Not In Its Individual
Capacity But Solely As Owner
Trustee For vrmtg Asset Trust,
Plaintiff
v.
Glinda R. Atkinson, Defendant
DESCRIPTION

By Virtue of Writ of Execution filed to No. 2021-10569, U.S. Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For vrmtg Asset Trust vs. Glinda R. Atkinson, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 2414 Camphausen Avenue, Erie, PA 16510 0.1132 Assessment Map number: 18051012010700 Assessed figure: \$55,970.00 Improvement thereon: Single Family Residential Dwelling Hladik, Onorato & Federman, LLP 289 Wissahickon Avenue North Wales, PA 19454 (215) 855-9521

Feb. 4, 11, 18

SALE NO. 11
Ex. #13577 of 2017
JPMorgan Chase Bank, National
Association successor by
merger to Chase Home Finance,
LLC successor by merger to
Chase Manhattan Mortgage
Corporation c/o Carrington
Mortgage Services, LLC, Plaintiff
v.

Michael J. Schmitt and
Karen M. Schmitt, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2017-13577, JPMorgan Chase Bank, National Association successor by merger to Chase Home Finance, LLC successor by merger to Chase Manhattan Mortgage Corporation c/o Carrington Mortgage Services, LLC vs. Michael J. Schmitt and Karen M. Schmitt, owner(s) of property situated in the Township of Venango, Erie County, Pennsylvania being 13661 Joy Avenue, Wattsburg, PA 16442 0.9276

Assessment Map number: 44015039000300 Assessed Value figure: \$135,200.00 Improvement thereon: a residential dwelling SAMANTHA GABLE, ESQUIRE LOGS Legal Group LLP Attorney for Movant/Applicant 3600 Horizon Drive, Suite 150 King of Prussia, PA 19406 (610) 278-6800

Feb. 4, 11, 18

SALE NO. 12
Ex. #12545 of 2018
Carrington Mortgage Services,
LLC, Plaintiff
v.
Deborah L. Vargas and
Brian D. Bean, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2018-12545, Carrington Mortgage Services, LLC vs. Deborah L. Vargas and Brian D. Bean, owner(s) of property situated in the City of Corry, First Ward, Erie County, Pennsylvania being 942 East Main Street, Corry, PA 16407 50X175 Assessment Map number: 05029107000200 and 05029107002200 Assessed Value figure: \$35,070.00 Improvement thereon: a residential dwelling KRISTEN D. LITTLE, ESQ. LOGS Legal Group LLP Attorney for Movant/Applicant 3600 Horizon Drive, Suite 150 King of Prussia, PA 19406 (610) 278-6800

Feb. 4, 11, 18

SALE NO. 13
Ex. #10042 of 2020
PNC Bank, National Association,
Plaintiff
v.
Byron E. Jones, AKA
Byron Jones, Defendant
DESCRIPTION

By virtue of a Writ of Execution file to No. 2020-10042, PNC Bank, National Association vs. Byron E. Jones, AKA Byron Jones, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania

being 3106 Auburn Street, Erie, PA 16508 896 SQFT Assessment Map Number: 19062029010200 Assessed Value figure: \$76,090.00 Improvement thereon: Single Family Dwelling Cristina L. Connor, Esquire Manley Deas Kochalski LLC P.O. Box 165028 Columbus, OH 43216-5028 614-220-5611

Feb. 4, 11, 18

SALE NO. 14
Ex. #12260 of 2019
PNC Bank, National Association,
Plaintiff
v.
John Kreider, AKA
John W. Kreider, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2019-12260, PNC Bank, National Association vs. John Kreider, AKA John W. Kreider, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 1015 West 28th Street, Erie, PA 16508 1,529 SQFT Assessment Map Number: 19060037010800 Assessed Value figure: \$65,300.00 Improvement thereon: Single Family Dwelling Cristina L. Connor, Esquire Manley Deas Kochalski LLC P.O. Box 165028 Columbus, OH 43216-5028 614-220-5611

Feb. 4, 11, 18

SALE NO. 15
Ex. #11536 of 2021
SPECIALIZED LOAN
SERVICING LLC, Plaintiff
v.
JAMIE BARR, IN HER
CAPACITY AS HEIR OF
ROSE ANN M. BARGIELSKI;
MICHAEL BARGIELSKI, IN
HIS CAPACITY AS HEIR OF
ROSE ANN M. BARGIELSKI;
UNKNOWN HEIRS,
SUCCESSORS, ASSIGNS, AND
ALL PERSONS, FIRMS OR
ASSOCIATIONS CLAIMING

RIGHT, TITLE OR INTEREST
FROM OR UNDER ROSE ANN
M. BARGIELSKI, Defendant(s)
DESCRIPTION

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN THE CITY OF ERIE, ERIE COUNTY, PENNSYLVANIA: BEING KNOWN AS: 667 PAYNE AVE., ERIE, PA 16503 BEING PARCEL NUMBER: 14011004022000 IMPROVEMENTS: RESIDENTIAL PROPERTY Robertson, Anschutz, Schneid, Crane & Partners, PLLC A Florida Limited Liability Company 133 Gaither Drive, Suite F Mt. Laurel, NJ 08054 (855) 225-6906 Attorneys for Plaintiff Robert Flacco, Esquire Id. No. 325024

Feb. 4, 11, 18

SALE NO. 16
Ex. #11809 of 2021
DEUTSCHE BANK NATIONAL
TRUST COMPANY, AS
TRUSTEE FOR IXIS REAL
ESTATE CAPITAL TRUST
2005-HE4 MORTGAGE PASS
THROUGH CERTIFICATES,
SERIES 2005-HE4, Plaintiff
v.

AGELA T. LEGGETT,
Defendant(s)
DESCRIPTION

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN THE CITY OF ERIE, ERIE COUNTY, PENNSYLVANIA: BEING KNOWN AS: 830 E. 22ND STREET, ERIE, PA 16503 BEING PARCEL NUMBER: 18050033012900 IMPROVEMENTS: RESIDENTIAL PROPERTY Robertson, Anschutz, Schneid, Crane & Partners, PLLC A Florida Limited Liability Company 133 Gaither Drive, Suite F Mt. Laurel, NJ 08054 (855) 225-6906 Attorneys for Plaintiff Robert Crawley, Esquire Id. No. 319712

Feb. 4, 11, 18

SALE NO. 17
Ex. #11670 of 2021
Wilmington Savings Funds
Society, Plaintiff
v.
Randell B. Coleman, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2021-11670, Wilmington Savings Funds Society vs. Randell B. Coleman, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 1820 Fairmont Parkway, Erie, PA 44X138 Single Family Assessment Map number: 18051024022200 Assessed Value figure: \$59,850 Improvement thereon: Residential Single Dwelling Stern & Eisenberg, P.C Andrew J. Marley, Esquire 1581 Main Street, Suite 200 Warrington, PA 18976

Feb. 4, 11, 18

SALE NO. 18
Ex. #10466 of 2020
Lakeview Loan Servicing, LLC,
Plaintiff
v.
Michael L. Rhoades, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2020-10466, Lakeview Loan Servicing, LLC vs. Michael L. Rhoades, owner(s) of property situated in the County of Erie, Erie County, Pennsylvania being 12004 West Lake Road, East Springfield, PA LOT 2 2.141 AC Single Family Assessment Map number: 39005004000200 Assessed Value figure: \$87,500 Improvement thereon: Residential Single Dwelling Stern & Eisenberg, P.C Andrew J. Marley, Esquire 1581 Main Street, Suite 200 Warrington, PA 18976

Feb. 4, 11, 18

SALE NO. 19
Ex. #11087 of 2021
Pennsylvania State Employees
Credit Union, Plaintiff
v.

Fernando Pagan and Minerva
Pagan, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 11087-21, Pennsylvania State Employees Credit Union vs. Fernando Pagan and Minerva Pagan, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 348 East 9th Street, Erie, PA 16503
0.1562 acres / 2,932 square feet
Assessment Map number:
Parcel - 15020016024200
Assessed Value figure: \$40,200.00
Improvement thereon: Two Family land use code
Michelle Pierro, Esquire
436 7th Ave., Ste 250
Pittsburgh, PA 15213
412-338-7113

Feb. 4, 11, 18

SALE NO. 21
Ex. #11967 of 2021
PLAINTIFF 6101 WATTSBURG
ABL I HOLDINGS, LLC,
Plaintiff
v.
PENDER CAPITAL ASSET
BASED LENDING FUND I, L.P.,
Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2021-11967,

PLAINTIFF 6101 WATTSBURG ABL I HOLDINGS, LLC v. DEFENDANT PENDER CAPITAL ASSET BASED LENDING FUND I, L.P.

Defendant is owner of real property situated in Township of Millcreek, Erie County, Pennsylvania being 6101 Wattsburg Road, Erie, PA 16509.

Also known as Tract No. 334 in Township of Millcreek, Erie County, Pennsylvania being 74,332 square feet.

Assessment Map number: 33-198, Tax Map No: 643

Assessed Value Figure: \$1,953,500
Improvement Thereon: Hotel/Motel John C. Gentile (No. 322159)
Benesch, Friedlander, Coplan &

Aronoff LLP
1650 Market St., 36th Floor
Philadelphia, PA 19103
(302) 442-7010
jgentile@beneschlaw.com

Feb. 4, 11, 18

SALE NO. 22
Ex. #11521 of 2021
PENNYMAC LOAN SERVICES,
LLC, Plaintiff
v.
DANIEL G. ROGERS,
Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2021-11521, PENNYMAC LOAN SERVICES, LLC vs. DANIEL G. ROGERS, owner(s) of the property situated

in Erie County, Pennsylvania being 4034 WARSAW AVENUE, ERIE, PA 16504

Assessment Map Number:
18052042010300
Assessed Value Figure: \$130,000.00
Improvement Thereon:
A Residential Dwelling
KML LAW GROUP, P.C.
ATTORNEY FOR PLAINTIFF
701 MARKET STREET,
SUITE 5000
PHILADELPHIA, PA 19106
(215) 627-1322

Feb. 4, 11, 18

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Joseph P. Maloney, CPA, CFE

Rick L. Clayton, CPA • Christopher A. Elwell, CPA • Ryan Garofalo, CPA

Confidential inquiries by phone or email to mrsinfo@mrs-co.com.

ATTENTION ALL ATTORNEYS

Are you or an attorney you know dealing with personal issues related to substance use, depression, anxiety, grief, an eating disorder, gambling, significant stress or other mental health concerns?

YOU ARE NOT ALONE!

You are invited and encouraged to join a small group of fellow attorneys who meet informally in Erie twice a month. Please feel free to call Lawyers Concerned for Lawyers (LCL) at 1-888-999-1941 for meeting details and information about free confidential services available to you or your colleague.



Check out the LCL website www.lclpa.org for free CLE videos, extensive resources and educational information.

**AUDIT LIST
NOTICE BY
AUBREA HAGERTY-HAYNES
Clerk of Records
Register of Wills and Ex-Officio Clerk of
the Orphans' Court Division, of the
Court of Common Pleas of Erie County, Pennsylvania**

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, February 9, 2022** and confirmed Nisi.

March 23, 2022 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

<u>2022 ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
29 Dorothy E. Berry	James F. Berry	Darlene M. Vlahos, Esq.
	<i>Executor</i>	
30 Rita J. Slomski.....	James J. Junewicz.....	Melissa L. Larese, Esq.
a/k/a Rita Slomski	J. Mark Junewicz	
	<i>Co-executors</i>	

AUBREA HAGERTY-HAYNES
Clerk of Records
Register of Wills &
Orphans' Court Division

Feb. 18, 25

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

ADAMECK, FLORENCE R., a/k/a FLORENCE ADAMECK, deceased

Late of the City of Erie, Harborecreek Township, County of Erie and Commonwealth of Pennsylvania
Co-executors: Karen A. Wykoff, 4111 Dominion Drive, Erie, PA 16510, Joanne A. Fournier, 2390 Depot Road, Harborecreek, PA 16421 and Joseph J. Adameck, 10104 Plum Road, Wattsburg, PA 16442
Attorney: None

ALBERICO, MARCO M., a/k/a MARCO ALBERICO, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Phyllis M. Herbstritt, 2071 Embarcadero Way, North Fort Myers, FL 33917
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

CONNELLY, JOYCE BLACK, a/k/a JOYCE B. CONNELLY, a/k/a JOYCE CONNELLY, deceased

Late of Lawrence Park Township, County of Erie
Executrix: Barbara J. Welton, Esquire, 2530 Village Common Drive, Suite B, Erie, PA 16506
Attorney: Barbara J. Welton, Esquire, 2530 Village Common Drive, Suite B, Erie, PA 16506

DENIZIAK, HELEN JEAN, a/k/a HELEN J. DENIZIAK, a/k/a HELEN DENIZIAK, deceased

Late of Erie County
Executor: Michael Deniziak, 2914 Washington Avenue, Erie, PA 16508
Attorney: David J. Mack, Esquire, 510 Parade Street, Erie, PA 16507

ENGLISH, ELLEN V., deceased

Late of Conneaut Township
Administrator: Carl M. English, c/o Brenc Law, 9630 Moses Road, Springboro, Pennsylvania 16435
Attorney: Andrew S. Brenc, Esquire, 9630 Moses Road, Springboro, Pennsylvania 16435

HAMBLIN, RUSSELL NEIL, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Sheila Jean Doolittle
Attorney: Deanna L. Heasley, Esq., 333 State Street, Suite 203, Erie, PA 16507

HANAS, JOHN R., a/k/a JOHN ROBERT HANAS, deceased

Late of LeBoeuf Township, Erie County, PA
Executor: Kellie R. Hanas, 250 Conneauttee Road, Waterford, PA 16441
Attorney: Lisa Pepicelli Youngs, Esq., Pepicelli, Youngs and Youngs PC, 363 Chestnut Street, Meadville, PA 16335

HAUK, LEITHA J., deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: Michael E. Hauk, c/o Eugene C. Sundberg, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Eugene C. Sundberg, Jr., Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

HUGHES, WALTER THOMAS, a/k/a WALTER C. HUGHES, deceased

Late of Harborecreek Township
Administratrix: Sandra T. Hughes
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16506

JASKIEWICZ, JOAN, deceased

Late of the City of Erie
Executor: Vincent Jaskiewicz
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

KALUZNY, EDWARD H., a/k/a EDWARD HENRY KALUZNY, a/k/a EDWARD KALUZNY, a/k/a ED KALUZNY, deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Co-administrators: Michael E. Kaluzny and Jessica B. Kaluzny, c/o 504 State Street, 3rd Floor, Erie, PA 16501
Attorney: Michael J. Nies, Esquire, 504 State Street, 3rd Floor, Erie, PA 16501

KATSIKES, JOHN AGGELOS, a/k/a JOHN E. KATSIKES, a/k/a JOHN A. KATSIKES, a/k/a JOHN KATSIKES, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Dean Katsikes, 1216 Polk Street, Charlotte, NC 28206
Attorney: None

KLEIN, JOAN M., deceased

Late of the Township of Lawrence Park, County of Erie, Commonwealth of Pennsylvania
Executor: Christopher J. Klein, c/o Steven Srnka, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428
Attorney: Steven Srnka, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428

KONKOL, THOMAS, deceased

Late of the City of Erie
Executor: Paul Konkol,
1316 Hardscrabble Drive, Erie,
PA 16505
Attorney: David J. Mack, Esquire,
510 Parade Street, Erie, PA 16507

LUCIANO, JAMES A., a/k/a JAMES ANTHONY LUCIANO, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Patricia A. Luciano, 1727 West 31st Street, Erie, PA 16508
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

MARTIN, PAUL R., deceased

Late of Wayne Township, County of Erie, Commonwealth of Pennsylvania
Administrator: Noble Martin, c/o Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407
Attorney: Joan M. Fairchild, Esq., 132 North Center Street, Corry, Pennsylvania 16407

MERCIER, LUELLA A., a/k/a LUELLA ANONA MERCIER, deceased

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Co-executors: Douglas R. Mercier and Joan E. Belitsky
Attorney: David J. Rhodes, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

NISHNICK, DONNA M., deceased

Late of Harborcreek Township, County of Erie and Commonwealth of Pennsylvania
Executor: James M. Tromans, c/o Eugene C. Sundberg, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Eugene C. Sundberg, Jr., Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

POPE, TRINA MARIE, deceased

Late of the City of Erie
Administrator: Jamal Moffatt
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

PRUSAK, JAMES MICHAEL, deceased

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

RAMEY, SHIRLEY A., a/k/a SHIRLEY ANN RAMEY, a/k/a SHIRLEY RAMEY, deceased

Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania
Executrix: Karen S. Agens, 415 Main Street East, Apt. 107, Girard, PA 16417
Attorney: John M. Bartlett, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

STEWART, JOAN M., a/k/a JOAN STEWART, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Sharon L. Knoll, 955 Persimmon Court, Fairview, PA 16415
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

THOMPSON, IRENE J., a/k/a IRENE THOMPSON, a/k/a IRENE J. NOVEL GOODMAN THOMPSON, deceased

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

TOME, OLGA K., a/k/a OLGA KATHLEEN TOME, a/k/a OLGA TOME, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: John M. Tome, 1714 Garloch Drive, Erie, PA 16505
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

WALKER, JEAN C., a/k/a JEAN WALKER, deceased

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Co-administrators: Keri A. Walker and Patrick J. Walker, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

WALLACE, VALERIE C., a/k/a VALERIE WALLACE, deceased

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administrator C.T.A.: Robert A. Wallace, c/o 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

SECOND PUBLICATION

AMENDOLA, PAULINE J., deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Chris Rupp, 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

BALOGH, STEVEN A., a/k/a STEVEN ANDREW BALOGH, deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: Brian C. Balogh, c/o Blakely & Blakely, LLC, 2701 Evanston Avenue, Suite 100, Erie, PA 16506-3171
Attorney: Richard A. Blakely, Esq., Blakely & Blakely, LLC, 2701 Evanston Avenue, Suite 100, Erie, PA 16506-3171

BERCHTOLD, REBECCA, a/k/a REBECCA LYNN BERCHTOLD, a/k/a REBECCA BERCHTOLD, deceased

Late of the Township of Millcreek, County of Erie and State of Pennsylvania
Administrator: Mark A. Berchtold, 1809 W. Grandview Blvd., Erie, PA 16509
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

BINGAMAN, WILLIAM R., deceased

Late of Venango Township, Erie County, Commonwealth of Pennsylvania
Executor: Tad M. Bingaman, 10906 Backus Rd., Wattsburg, PA 16442
Attorney: None

CAREY, JELSOMINA, deceased

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Alice M. Fuhrman, 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

GAMES, RITA M., deceased

Late of the Borough of Wattsburg, County of Erie, Pennsylvania
Executrix: Katherine L. Kimmy, c/o Thomas J. Ruth, Esq., 224 Maple Avenue, Corry, PA 16407
Attorney: Thomas J. Ruth, Esq., 224 Maple Avenue, Corry, PA 16407

HERTEL, AUDREY M., deceased

Late of Harborcreek Township, Erie County, Pennsylvania
Executrix: Dianna Dias, 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

HOVIS, RICHARD L., deceased

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Jean E. Hovis, c/o Blakely & Blakely, LLC, 2701 Evanston Avenue, Suite 100, Erie, PA 16506-3171
Attorney: Richard A. Blakely, Esq., Blakely & Blakely, LLC, 2701 Evanston Avenue, Suite 100, Erie, PA 16506-3171

ROPELEWSKI, MARY, a/k/a EILEEN M. ROPELEWSKI, a/k/a EILEEN ROPELEWSKI, deceased

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Ronald J. Susmarski, 4036 West Lake Road, Erie, PA 16505
Attorney: Aaron E. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

SACK, DAVID, a/k/a DAVID C. SACK, deceased

Late of the Township of Millcreek, County of Erie and State of Pennsylvania
Administrator: Jacob Sack, 1265 E. Arlington Road, Erie, PA 16504
Attorney: Ronald J. Susmarski, Esq., 4030 West Lake Road, Erie, PA 16505

SCUTELLA, STEPHEN P., deceased

Late of the City of Erie, Erie County, Pennsylvania
Administratrix: Tina M. Denning-Scutella, c/o Dan W. Susi, Esquire, 714 Sassafras Street, Erie, PA 16501
Attorney: Dan W. Susi, Esquire, 714 Sassafras Street, Erie, PA 16501

**SMITH, JUNE M., a/k/a
JUNE MARY
BARBARULA SMITH,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: Paul L. Smith, c/o Blakely & Blakely, LLC, 2701 Evanston Avenue, Suite 100, Erie, PA 16506-3171
Attorney: Richard A. Blakely, Esq., Blakely & Blakely, LLC, 2701 Evanston Avenue, Suite 100, Erie, PA 16506-3171

**SOHL, TIMOTHY M., a/k/a
TIMOTHY SOHL,
deceased**

Late of the City of Erie, County of Erie and State of Pennsylvania
Executor: Ronald J. Susmarski, 4030 West Lake Road, Erie, PA 16505
Attorney: Anthony Andrezewski, Esq., 815 E. 28th Street, Erie, PA 16504

**TOROK, JOSEPH JAMES,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Administratrix: Rita Torok, c/o 3939 West Ridge Road, Suite B-27, Erie, PA 16506
Attorney: James L. Moran, Esquire, 3939 West Ridge Road, Suite B-27, Erie, PA 16506

**WEIGEL, ROBERT LYNFORD,
deceased**

Late of 3324 Berkeley Road, Erie, Erie County, Pennsylvania
Executrix: Susan Weigel Kelly, 715 Tidball Avenue, Grove City, PA 16127
Attorney: James A. Stranahan IV, Esquire, Stranahan, Stranahan & Cline, 101 South Pitt Street, P.O. Box 206, Mercer, PA 16137-0206

**WOZNAK, JINNY L.,
deceased**

Late of the City of Erie, County of Erie, and State of Pennsylvania
Executor: Anthony Wozniak, 55 Orchard Street, Erie, PA 16508
Attorney: None

THIRD PUBLICATION

**BAIRD, DOUGLAS P., SR.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executrix: Michelle Loiacono, c/o 502 Parade Street, Erie, PA 16507
Attorney: Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

**BENACCI, BARBARAANN, a/k/a
BARBARA A. BENACCI,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Co-administratrices: Lisa Brady and Kathleen Pollard, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**BENTON, JOAN E., a/k/a
JOAN ELIZABETH BENTON,
a/k/a JOAN BENTON,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executrix: Fay E. Ifft, 222 Conifer Drive, Evergreen, CO 80439
Attorney: John M. Bartlett, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**BLANKS, KENNETH LEE, a/k/a
KENNETH L. BLANKS, a/k/a
KENNETH BLANKS,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Michelle Blanks, c/o James J. Bruno, Esquire, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: James J. Bruno, Esquire, 3820 Liberty Street, Erie, Pennsylvania 16509

**BUSCHAK, ESTHER ANN, a/k/a
ESTHER A. BUSCHAK,
deceased**

Late of the Township of Conneaut, County of Erie and State of Pennsylvania
Co-executrices: Sally Buschak Irick and Esther Buschak-Smith, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

**COMSTOCK, DAVID J.,
deceased**

Late of the Township of Harborcreek, County of Erie, and Commonwealth of Pennsylvania
Executrix: Kathy H. Riser, c/o 300 State Street, Suite 300, Erie, PA 16507
Attorney: Thomas V. Myers, Esquire, Marsh SchAAF, LLP, 300 State Street, Suite 300, Erie, PA 16507

**DeLUCA, FRED, a/k/a
FRED M. DeLUCA,
deceased**

Late of the Township of Millcreek, County of Erie, and State of Pennsylvania
Executor: Thomas J. Giblin
Attorney: Gregory A. Karle, Esq., Dailey, Karle & Vilella, 731 French Street, Erie, PA 16501

**FEICK, THERESA M.,
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Executor: David Feick, 3602 Lansing Way, Erie, PA 16506
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**GANDZIARSKI, JOSEPH
ALLISON,
deceased**

Late of Erie City, Erie County, PA
Executor: Jean L. Steiger
Attorney: Noah A. Erde, Esq., Cressman Erde Ferguson, LLC, 300 Arch Street, Meadville, PA 16335

**HENDRICKS, ROBERT R.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Administrator: Gregory Hendricks, c/o 502 Parade Street, Erie, PA 16507
Attorney: Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

**JOHANNES, LOUELLA,
deceased**

Late of Summit Township, Erie County, Erie, PA
Executor: James G. Johannes, c/o 33 East Main Street, North East, Pennsylvania 16428
Attorney: Robert J. Jeffery, Esq., Knox McLaughlin Gornall & Sennett, P.C., 33 East Main Street, North East, Pennsylvania 16428

**MALONE, PATRICK MICHAEL,
deceased**

Late of 823 Hilltop Road, Erie, PA 16509
Administratrix: Andrea Malone, 823 Hilltop Road, Erie, PA 16509
Attorney: Matthew J. Parini, Esquire, 502 West Seventh Street, Erie, Pennsylvania 16502

**PASSARELLI, JOHN P., a/k/a
JOHN PATRICK PASSARELLO,
a/k/a JOHN PASSARELLI,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executor: John G. Passarelli, 4208 Alison Avenue, Erie, PA 16506
Attorney: John M. Bartlett, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**STEVENS, GORDON L., a/k/a
GORDON STEVENS,
deceased**

Late of the Borough of Lake City, County of Erie, Commonwealth of Pennsylvania
Executrix: Karen S. Parrish, 3563 Route 215, East Springfield, PA 16411
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**TRACY, EILEEN L., a/k/a
EILEEN M. TRACY, a/k/a
EILEEN LEONA TRACY,
deceased**

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

**WISE, BEVERLY ANN,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Alan C. Wise, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

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2022 ECBA Facility Rental Fees

The ECBA facility rates listed below are for spaces during normal ECBA business hours. They include use of the specific space reserved, available AV equipment, parking, coffee/tea/water/soda, WiFi, and limited photocopies if needed. Breakfast and/or lunch can be ordered at an additional cost.

Room(s) available with COVID restrictions:
 Large Conference Room (Board Room), accommodates 8 people
 Medium Conference Room (Lawyer's Lounge), accommodates 4-5 people
 Small Conference Room, accommodates 4 people
 The Will J. Schaaf and Mary B. Schaaf Education Center, accommodates 16 people

ECBA Member Fees – Headquarters:

Person reserving the room must be present for meeting.

- Meeting with handicapped client, no cost
- Deposition, no cost
- Arbitration (panel chair is an ECBA member), no cost
- Mediation (includes up to 3 rooms), \$125.00 – four hours or fewer
- Mediation (includes up to 3 rooms), \$175.00 – five to seven hours
- Zoom conferencing (minimum 1 hour), \$100.00/hour

ECBA Member Fees – Schaaf Education Center:

- Meeting with handicapped client, no cost
- Deposition, no cost
- Arbitration (if panel chair is an ECBA member), no cost

Non-Member Fees – Headquarters:

- Deposition, \$100.00 – four hours or fewer
- Deposition, \$175.00 – five to seven hours
- Arbitration (panel chair is non-member), \$100.00 – four hours or fewer
- Arbitration (panel chair is non-member), \$175.00 – five to seven hours
- Mediation (includes up to 3 rooms), \$125.00 – four hours or fewer
- Mediation (includes up to 3 rooms), \$175.00 – five to seven hours
- Zoom conferencing (minimum 1 hour), \$150.00/hour
- External organization meetings/events, \$100.00 – four hours or fewer
- External organization meetings/events, \$175.00 - five to seven hours

Non-Member Fees – Schaaf Education Center:

- Deposition, \$100.00 – four hours or fewer
- Deposition, \$175.00 – five to seven hours
- Arbitration (panel chair is non-member), \$100.00 – four hours or fewer
- Arbitration (panel chair is non-member), \$175.00 – five to seven hours
- Educational programming/meetings/events, \$200.00 – four hours or fewer
- Educational programming/meetings/events, \$300.00 - five to seven hours

Cancellation Policy: Members will be charged \$25 for room set-up if cancellation is less than 24 hours in advance of scheduled use. Non-member will not receive a refund if cancellation is less than 24 hours in advance of scheduled use.

Contact the ECBA office at 814-459-3111 or email capalicia@eriebar.com.

Erie County Bar Association 429 West 6th Street Erie, PA 16507 814/459-3111 www.eriebar.com

Effort to classify student-athletes as employees continues with new twist to include public university students - Ongoing efforts to urge the National Labor Relations Board (NLRB) to classify student-athletes as employees continue with the latest unfair labor charge filed by the National College Players Association (NCPA) and their Executive Director Ramogi Huma. The unfair labor practice charge alleges that the NCAA, the Pac-12 Conference, and University of Southern California (USC) and the University of California, Los Angeles (UCLA) have violated the National Labor Relations Act (NLRA) and that NCAA Division-I men's and women's basketball and FBS football players should be recognized as university employees. Read more ... <https://www.natlawreview.com/article/effort-to-classify-student-athletes-employees-continues-new-twist-to-include-public>

Hertz can't hide number of police reports filed against customers, judge rules - U.S. Bankruptcy Judge Mary F. Walrath said Hertz can't redact the information from publicly filed documents, including information about the number of reports stemming from theft allegations after customers extended rentals. Walrath ruled on behalf of 230 claimants who said they were wrongly arrested as a result of Hertz theft reports. The claimants said they should be compensated for false arrests and wrongful incarceration along with other creditors in Hertz's Chapter 11 reorganization. Hertz emerged from bankruptcy last year. Read more ... <https://www.abajournal.com/news/article/hertz-cant-hide-number-of-police-reports-filed-against-customers-judge-rules>

Restaurant greenwashing: diners beware or industry beware? - In June 2021, a class action lawsuit was filed in California in which restaurant greenwashing was alleged due to sustainability statements made on Red Lobster's menus. Now, Red Lobster has filed pleadings with the court seeking to have the case dismissed, arguing that plaintiffs failed to establish any colorable claim on which they can prevail. While it remains to be seen what the court will do with the lawsuit, the critical takeaway from the litigation is that any industry, not just the consumer goods industry, must realize that marketing buzzwords such as "sustainable", "environmentally friendly", and "responsibly sourced" are in the crosshairs. Now more than ever, globally situated companies of all types that are advertising, marketing, drafting ESG statements, or disclosing information as required by regulatory agencies must pay extremely close attention to the language used in all of these types of documents, or else run the risk of enforcement action or lawsuits. Read more ... <https://www.natlawreview.com/article/restaurant-greenwashing-diners-beware-or-industry-beware>

Longtime Pittsburgh middle school art teacher alleges her transfer was due to age discrimination - An Allegheny County art teacher alleges that she was transferred from teaching at the middle school level to the elementary school level as a result of age-related discrimination, in violation of federal law. Read more ... <https://pennrecord.com/stories/619961975-longtime-pittsburgh-middle-school-art-teacher-alleges-her-transfer-was-due-to-age-discrimination>

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