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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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WEDNESDAY, JUNE 8, 2022

Judicial Committee Meeting
Noon
ECBA Headquarters in-person or via Zoom

THURSDAY, JUNE 9, 2022

ECBA Mid-year Membership Meeting and CLEs
Click link for details
<https://www.eriebar.com/events/member-registration/1760>

MONDAY, JUNE 13, 2022

Law Day Committee Wrap-up Meeting
Noon
ECBA Headquarters in-person or via Zoom

TUESDAY, JUNE 14, 2022

Flag Day Holiday
Erie County Courthouse Closed

WEDNESDAY, JUNE 15, 2022

Workers' Compensation Section Meeting
Noon
ECBA Headquarters in-person or via Zoom

THURSDAY, JUNE 16, 2022

ECBA Strategic Planning Committee Meeting
Noon
ECBA Headquarters in-person or via Zoom

THURSDAY, JUNE 16, 2022

AKT Kid Konnection Event
5:30 - 7:00 p.m.
Flying Squirrel
1338 East Grandview Boulevard, Erie

MONDAY, JUNE 20, 2022

Juneteenth Holiday
Federal Courthouse Closed

TUESDAY, JUNE 21, 2022

Live ECBA Lunch-n-Learn Seminar
Get a Grip! Effectively and Efficiently Manage the Demands of this Profession While Making the Most of Your Time
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/1756>

WEDNESDAY, JUNE 22, 2022

Diversity & Inclusion Section Leadership Meeting
Noon
ECBA Headquarters in-person or via Zoom

THURSDAY, JUNE 23, 2022

Defense Bar Section Meeting
Noon
ECBA Headquarters in-person or via Zoom

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
MOTION COURT DATES FOR JUDGE THOMAS P. AGRESTI
ERIE AND PITTSBURGH DIVISION CASES
JUNE 2022 NOTICE

The following is a list of **June 2022, July 2022 and August 2022** motion court dates and times to be used for the scheduling of motions pursuant to *Local Rule 9013-5(a)* before **Judge Thomas P. Agresti** in the Erie and Pittsburgh Divisions of the Court. The use of these dates for scheduling motions consistent with the requirements of *Local Rule 9013-5(a)* and Judge Agresti's *Procedure B(1)-(3)* summarized below and on Judge Agresti's webpage at: www.pawb.uscourts.gov.

The motions will be heard by the Zoom Video Conference Application. When using the below self-scheduling dates to schedule a matter please include the following Zoom Meeting link in your Notice: <https://www.zoomgov.com/j/16021303488>, or alternatively, to attend and use the following Meeting ID: 160 2130 3488. To join the Zoom hearing please initiate and use the link 15 minutes prior to your scheduled hearing time. **All Attorneys and Parties may only appear via the Zoom Video Conference Application and must comply with the Updated Notice of Temporary Modification of Appearance Procedures Before Judge Thomas P. Agresti, as updated on November 22, 2021.**

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

SCHEDULE CHAPTERS 13 & 12 MOTIONS ON:

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

Wednesday, June 1, 2022	9:30 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, June 29, 2022	10:00 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, July 27, 2022	10:30 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
Wednesday, August 17, 2022	11:00 a.m.:	Open for all Erie & Pittsburgh Ch. 13 matters
	11:30 a.m.:	Ch. 13 Sale, Financing and Extend/Impose Stay & Ch. 12 matters

SCHEDULE CHAPTERS 11 & 7 MOTIONS ON:

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

Thursday, June 16, 2022	9:30 a.m.:	Open for all Erie & Pittsburgh Ch. 11 matters
Thursday, June 30, 2022	10:00 a.m.:	Open for all Erie & Pittsburgh Ch. 11 matters
Thursday, July 7, 2022	10:30 a.m.:	Open for all Erie & Pittsburgh Ch. 7 matters
Thursday, July 28, 2022	11:00 a.m.:	Open for all Erie & Pittsburgh Ch. 7 matters,
Thursday, August 18, 2022		including all Ch. 7 Motions to Extend/Impose Stay
	11:30 a.m.:	Ch. 11 and 7 Sale Motions at this time, only

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

June 3



ECBA Mid-year Meeting & CLEs

06
09
22

Thursday
June 9
Erie Club
524 Peach Street
Erie

2:15 - 3:15 p.m.
The Russia/Ukraine Conflict
Lena Surzhik-Harned, Ph.D., Penn State Behrend
Americans are closely watching the developments in Ukraine, and many listen as Ukrainian President Volodymyr Zelenskyy depicts the day-to-day invasion of the country. Lena Surzhik-Harned, Ph.D. will present her perspective not only as a professor of political science but a person who has family and friends still living in Ukraine.

1 substantive CLE credit
S47 - ECBA Members (Judges & Attorneys) and their Paraprofessional Staff

3:30 - 4:30 p.m.
Attorney Well-being
Hon. Jamie Mead; Atty. Patricia Kennedy; Dawn Sokol, LPC; Melissa Sulkowski
Most attorneys know that addiction is difficult to beat, but do you know the full scope of what occurs with addiction? During this CLE, the speaker panel will discuss: the risks of mental health and addiction issues; available options for help; ways that attorneys can help their colleagues, if they identify a concern; and addiction treatment concerns. Dawn Sokol will speak from a mental health provider's perspective. Judge Mead will review the process and the concerns that he sees with those struggling with addiction from a judicial standpoint. This CLE is being offered in coordination with the ECBA's and PBA's wellness initiative.

1 ethics CLE credit
S47 - ECBA Members (Judges & Attorneys) and their Paraprofessional Staff

4:30 p.m.
ECBA Business Meeting

5:00 p.m.
Reception
Relax with your colleagues with complimentary reception in the Erie Club's Rotunda.



Dr. Surzhik-Harned is an assistant teaching professor of Political Science and a faculty affiliate of the Public Policy Fund at PSB. Her research interests are in the field of comparative politics. She is an author of several papers dealing with issues of nationalism and ethnic conflict, identity politics, electoral politics, comparative democratization, and political behavior in the post-communist states of Eastern Europe.



John J. Mead was elected to the Erie County Court of Common Pleas in 2015. He was an Assistant Solicitor for the City of Erie from 2006 to 2015. He also served as an Assistant U.S. Attorney for the Western District of PA from 1983 to 1989. Judge Mead, earned a Juris Doctorate from the University of Pittsburgh School of Law and a bachelor's degree from Princeton University.

Ms. Kennedy earned a juris doctor from The Dickinson School of Law. She was the Chief Public Defender of Erie County, PA, and previously served as an assistant public defender and assistant district attorney. Ms. Kennedy is a member of the Erie County Bar Association, the Pennsylvania Coalition for Justice, and the National Association of Drug Court Professionals. She was a member of the Pennsylvania Supreme Court Rules Committee, 2007-2013, and its vice chair, 2011-2013.

Dawn Sokol is a District Administrator at Pa Dept of Labor & Ind. PA Office of Vocational Rehabilitation.

Melissa Sulkowski is a Professional Mediator and Relationship and Communication Specialist who has been working with individuals for over 26 years. She is Board Certified by the National Board of Certified Counselors and is licensed by the State of Pennsylvania as a Registered Nurse and Professional Counselor. Melissa is the owner of Nurturinsse, a practice offering peaceful alternatives to healing and intentionally designed to promote health and well-being.

FOR MORE INFORMATION AND TO REGISTER, VISIT:

<https://www.eriebar.com/events/ecba-events/1760-ecba-mid-year-meeting-cles>

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ROBERT WIERBINSKI

v.

CITY OF ERIE

AGENCY / APPEAL AND ERROR

Where no additional evidence is taken on appeal to the court of common pleas from a local agency adjudication, its review is not *de novo*; rather, the reviewing court must affirm the decision below unless it identifies a constitutional violation, an error of law, a failure by the local agency to comply with the statute's procedural provisions, or a material finding of fact that is unsupported by substantial evidence.

AGENCY / APPEAL AND ERROR

Errors of law include misinterpretations or a misapplication of law.

AGENCY / EMPLOYMENT / ACCIDENTS

Unlike the Workers' Compensation Act, which caps recovery for a total disability at sixty-six and two-thirds percent of the employee's average weekly wage, the Heart and Lung Act guarantees certain public employees engaged in police work and firefighting their full rate of salary during a temporary disability until their return to duty.

AGENCY / EMPLOYMENT / ACCIDENTS

A covered employee is eligible for benefits under the Heart and Lung Act if he is injured in the performance of his duties.

AGENCY / EMPLOYMENT / ACCIDENTS

The inquiry to determine if a police officer was injured in the performance of his duties is whether the officer was engaging in an obligatory task, conduct, service, or function that arose from his or her position as a police officer as a result of which an injury occurred; this does not mean only those duties unique to police officers such as making arrests or investigating crimes, but includes any duties assigned to a police officer.

AGENCY / EMPLOYMENT / ACCIDENTS

While an officer's status as on or off-duty is not dispositive of whether an injury occurred in the performance of duties, it is certainly one factor to be considered.

AGENCY / EMPLOYMENT / ACCIDENTS

An officer injured while actively on patrol is injured in the performance of his duties pursuant to the Heart and Lung Act.

COURTS / JUDICIAL POWERS

The doctrine of *stare decisis* maintains that for purposes of certainty and stability in the law, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different.

COURTS / JUDICIAL POWERS

While an *en banc* court may overturn its own precedents if it identifies a special justification for doing so, it is a fundamental precept of our judicial system that a lower tribunal may not disregard the standards articulated by a higher court.

AGENCY / APPEAL AND ERROR

An agency adjudicator contravenes basic principles of *stare decisis*, and therefore, commits an error of law, when he finds the case before him to be factually analogous to an established appellate court precedent, nonetheless determines that the precedent was wrongly decided,

purports to correct its holding, and proceeds to apply the reimagined holding to the facts of the case.

COURTS / JUDICIAL POWERS / EVIDENCE

It is material facts which are relevant to distinguishing or analogizing one case from another, not the particular evidence that was offered to establish those facts.

STATUTES / CONSTRUCTION

A statute's plain language generally provides the best indication of legislative intent; thus, in close cases, where the express terms of a statute provide one answer and extra-textual considerations suggest another, the written word must prevail.

AGENCY / APPEAL AND ERROR

Remand is unnecessary where the material facts of a holding have already been determined, and there is but one conclusion of law that may be reasonably drawn when applying analogous precedent to the facts.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
TRIAL DIVISION – CIVIL
No. 11849 of 2021

Appearances: Douglas G. McCormick, Esq., Attorney for Petitioner, Robert Wierbinski
Richard E. Bordonaro, Esq., Attorney for Respondent, the City of Erie
Joseph E. Sinnott, Esq., Attorney for Respondent, the City of Erie

OPINION OF THE COURT

Piccinini, J., May 20, 2022

Pennsylvania law contains various provisions providing recovery for workers in the event of occupational injury or illness, including those found in the Workers' Compensation Act, the Occupational Disease Act, Act 534, and the statute at the center of this dispute, the Heart and Lung Act. As relevant here, the Heart and Lung Act guarantees certain public employees engaged in police work and firefighting their "full rate of salary" during a temporary disability until their return to duty. 53 P.S. § 637(a). To be eligible, however, the employee must be "injured in the performance of his duties[.]" *Id.*

This case concerns Robert Wierbinski, a seasoned patrolman with the City of Erie Police Department. Shortly after beginning his shift on the morning of January 27, 2021, he pre-ordered a Starbucks latte from his phone. He spent all of thirty seconds inside the coffee shop retrieving the beverage, but while walking back to his patrol vehicle, he slipped on a patch of ice, tearing the rotator cuff in his right shoulder. The tear required surgery and post-operative rehabilitative care, during which time Wierbinski was unable to work. He subsequently filed a claim for Heart and Lung Act benefits, but the City of Erie denied it. On appeal, a hearing examiner, sitting as factfinder, affirmed that decision.

The sole question in this statutory appeal of the hearing examiner's ruling is whether Wierbinski was injured "in the performance of his duties," thereby entitling him under the Heart and Lung Act to reimbursement of his full rate of salary for the time he was off the job. Consistent with settled case law construing the phrase, the answer is yes. In misapplying these cases, the hearing examiner below committed an error of law, and consequently, this Court now reverses.

I. BACKGROUND

A. Factual History

The facts of this case are straightforward and undisputed. Petitioner, Robert Wierbinski, a patrolman and 23-year veteran with the City of Erie Police Department arrived at the station in full uniform on the morning of January 27, 2021, shortly before his 6:30 a.m. shift was scheduled to start. Tr., p. 7. He pre-ordered a Starbucks latte (his caffeinated beverage of choice) from a mobile app on his phone and left the station at approximately 6:45 a.m. to begin his patrol and pick up his order from the Starbucks on Fifth and State Streets. Tr., pp. 8-9, 34. He parked just south of the Starbucks on the west side of State Street. Tr., pp. 8-9. He walked in, greeted the barista, grabbed the latte, which was already waiting for him on the counter, and walked back out. Tr., pp. 9-10. The entire exchange lasted about 30 seconds. Tr., p. 10. On his way out, while heading toward his parked cruiser, he slipped on a patch of ice, falling directly on his right shoulder. Tr. p. 10. His right arm went immediately numb, and he was on the ground for roughly 20 seconds before he was able to pull himself up. Tr., pp. 13-14. Eventually, he drove back to the station to alert his supervisor what had happened, and thereafter, went to UPMC Hamot Hospital for x-rays. Tr., pp. 14-15.

It was eventually determined that Wierbinski suffered a tear to his right shoulder rotator cuff and bicep. Tr. p. 40. On February 4, 2021, Wierbinski was cleared to return to work on light duty. Tr., p. 19. On March 3, 2021, after an MRI was taken, Dr. Williams, an orthopedic surgeon, recommend Wierbinski undergo arthroscopic surgery¹ as soon as possible to treat the traumatic full thickness tear in his right shoulder. Tr., pp. 20-21. Wierbinski sought a second opinion from Dr. Burke in Pittsburgh, who recommended against the less invasive arthroscopic procedure because the damage to his shoulder was so severe that a surgeon would "have to open it up completely." Tr., p. 21. Wierbinski agreed to undergo the more extensive procedure with Dr. Burke, and his last day of work prior to the surgery was March 23, 2021. Tr., pp. 27, 29. Dr. Burke performed the surgery on March 25, 2021. Tr., p. 22.

After the surgery, Wierbinski required several weeks of post-operative care, including four weeks in which his shoulder was completely restricted in a foam wedge, two weeks in a smaller wedge, and more time beyond that in a sling. Tr., pp. 22-23.² Dr. Burke imposed work restrictions on Wierbinski during this time and ordered him to participate in physical therapy. Tr., pp. 23-24. The parties agree that Wierbinski made a full recovery and eventually returned to work on June 21, 2021. Pet.'s Post-Argument Br. in Supp. of Granting Pet. for Review, p. 7; Post-Argument Brief for the City of Erie, p. 2.

B. Procedural History

The City of Erie approved Wierbinski for workers' compensation benefits stemming from his injury, but he disclaimed those payments, opting to use sick time instead because workers' compensation benefits would not reimburse him at his full rate of pay, and more importantly for Wierbinski, because he would not continue to accrue seniority during the time he collected these benefits. Tr., pp. 26-27, 37-38. Wierbinski did, however, file a claim for benefits under the Heart and Lung Act, which the City of Erie denied. Tr., p. 25. Wierbinski contested that decision, so the matter was scheduled for a hearing pursuant to Pennsylvania's

¹ Arthroscopic surgery is "surgery performed on joints using a fiberoptic system that allows visualization of the joint and surrounding structures for the purpose of diagnosis and treatment." Stedman's Medical Dictionary (2014).

² Indeed, Wierbinski was still in the sling at the time of his May 10, 2021, hearing in this matter. Tr., p. 23.

Local Agency Law. *See* 2 Pa.C.S. § 553 (“No adjudication of a local agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard.”).

The hearing was held on May 10, 2021, before an adjudicator, known as a hearing examiner. Tr., p. 1. Wierbinski testified at the hearing, and the parties stipulated to a set of facts concerning the circumstances surrounding the fall and the nature of his injury. Tr. p. 40. As the parties both agreed, the only meaningful issue in dispute was whether Wierbinski was “injured in the performance of his duties” as required under the Heart and Lung Act. Tr. pp. 43-44.

The hearing examiner issued a written decision on July 26, 2021, affirming the denial of Heart and Lung Act benefits. A Petition for Review to this Court followed. Oral argument was held on January 20, 2022. Post-hearing briefs were submitted by the City of Erie and Wierbinski on March 2, 2022, and March 3, 2022, respectively. The matter is now ripe for review. After careful consideration of the arguments presented by the parties at oral argument and in their post-argument briefs, this Court now reverses the hearing examiner’s denial of benefits under the Heart and Lung Act.

II. APPLICABLE LAW

A. Standard of Review

This Court has jurisdiction to review the Petition for Review of the Decision of the Adjudicator pursuant to Section 752 of the Local Agency Law and Section 933(a) of the Judicial Code. *See* 2 Pa.C.S. § 752 (“Any person aggrieved by an adjudication of a local agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals by or pursuant to [the Judicial Code].”); 42 Pa.C.S. § 933(a)(2) (“each court of common pleas shall have jurisdiction of appeals from final orders of government agencies ... [including a]ppeals from government agencies, except Commonwealth agencies, under Subchapter B of Chapter 7 of Title 2[.]”).³ Sitting in such a capacity, this Court functions as an appellate court. *See* 42 Pa.C.S. § 701(a) (stating “[t]he provisions of this subchapter shall apply to all courts of this Commonwealth, including the courts of common pleas when sitting as appellate courts.”).

The standard of review for the decision below is initially set forth in Section 754(b) of the Local Agency Law. *See* 2 Pa.C.S. § 754(b). Where, as here, no additional evidence is taken on appeal to the court of common pleas, its review is not *de novo*; rather, the reviewing court “shall affirm the adjudication unless” it identifies “a constitutional violation, an error of law, a failure by the local agency to comply with the statute’s procedural provisions, or a material finding of fact that is unsupported by substantial evidence.” 2 Pa.C.S. § 754(b); *Johnson v. Lansdale Borough*, 146 A.3d 696, 711 (Pa. 2016). This deferential standard permits both “local agencies to manage their employees without fear that a trial court may ‘second-guess’ their every prerogative” and “breathe[s] vitality into civil service commissions, which otherwise would appear to constitute nothing more than an unnecessary stop between a local agency decision and trial court review.” *Id.* at 713.

³ While the record is not entirely clear on this point, even if the hearing examiner was appointed as an arbitrator, this Court has jurisdiction to review the decision pursuant to Section 933(b) of the Judicial Code. *See* 42 Pa.C.S. § 933(b) (stating “each court of common pleas shall have jurisdiction of petitions for review of an award of arbitrators appointed in conformity with statute to arbitrate a dispute between a government agency, except a Commonwealth agency, and an employee of such agency.”).

“Errors of law include misinterpretations or a misapplication of law[.]” *AFSCME, District Council 33 v. City of Philadelphia*, 95 A.3d 966, 971 (Pa. Cmwlth. 2014). “Substantial evidence is such evidence that a reasonable person would accept as adequate to establish the fact in question. A reviewing court will examine, but not weigh, the evidence because the [hearing officer], acting as the factfinder, is in a better position to discover the facts based upon the testimony and the demeanor of witnesses.” *Sheppelman v. City of Chester Aggregated Pension Fund*, 271 A.3d 938, 947 (Pa. Cmwlth. 2021).

“If the adjudication is not affirmed,” then the reviewing court “may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances.” 2 Pa.C.S. § 754(b); 42 Pa.C.S. § 706. “If a trial court determines the record before the local agency is incomplete, the court has discretion to determine the manner of implementing (completing) a deficient record before the agency.” *Carson Concrete Corp. v. Tax Revenue Board, City of Philadelphia*, 176 A.3d 439, 454 (Pa. Cmwlth. 2017) (citation omitted). It “may either hear the appeal *de novo* itself or remand the matter to the agency for supplementation of the deficient record. However, the trial court may not remand for a *de novo* agency hearing.” *Id.* (citations omitted).

B. Compensable Injury under the Heart and Lung Act

The Heart and Lung Act is best understood in relation to the Workers’ Compensation Act. Workers’ compensation “is remedial legislation designed to compensate claimants for earnings loss occasioned by work-related injuries.” *Triangle Building Center v. W.C.A.B. (Linch)*, 746 A.2d 1108, 1111 (Pa. 2000). To be more precise, the Workers’ Compensation Act permits recovery by an employee when an injury arises in the course of his employment and is causally related thereto. *Penn State University v. W.C.A.B. (Smith)*, 15 A.3d 949, 952 (Pa. Cmwlth. 2011) (citing 77 P.S. § 411). “The Workers’ Compensation Act is similar to accident insurance, and it seeks to provide compensation commensurate with damage from accidental injury as a fair exchange to the employee for relinquishing every other action against his employer.” *Soppick v. Borough of West Conshohocken*, 6 A.3d 22, 26 (Pa. Cmwlth. 2010). But compensation under this statutory scheme is capped at sixty-six and two-thirds percent of the employee’s average weekly wage. *City of Erie v. W.C.A.B. (Annunziata)*, 838 A.2d 598, 602-03 (Pa. 2003) (citing 77 P.S. § 511(1)). “The legislature justified this substantial, percentage-based reduction of average weekly pay as an amelioration of potential unfairness to employers.” *Id.* at 602. Such was “The Grand Bargain” brokered by the framers of the workers’ compensation system. ELLEN RELKIN, *The Demise of the Grand Bargain: Compensation for Injured Workers in the 21st Century*, 69 RUTGERS U. L. REV. 881, 883 (2017).

The Heart and Lung Act is a “materially different” statute, informed by distinct concerns. *Soppick*, 6 A.3d at 25. It applies only to “specified public employees engaged primarily in police work, firefighting, or other jobs involving public safety.” *Cunningham v. Pennsylvania State Police*, 507 A.2d 40, 43 (Pa. 1986). Unlike the Workers’ Compensation Act, which promotes “humanitarian objectives,” the Heart and Lung Act “is intended to serve the interest of the public employer, not the disabled employee, and is based on the theory that the promise of full income to employees in a hazardous industry could serve to attract qualified individuals to professions involving public safety.” *Soppick*, 6 A.3d at 26. “The

Heart and Lung Act “was not intended to displace other forms of disability compensation such as [Workers’] Compensation benefits and payments under the Occupational Disease Act, which cover more prolonged or permanent disabilities[.]” and as such, our Supreme Court has “concluded that it was intended to cover only those disabilities where the injured employees were expected to recover and return to their positions in the foreseeable future. *Cunningham*, 507 A.2d at 43-44.⁴ “Another significant distinction between the Heart and Lung Act and the Workers’ Compensation Act is that the Heart and Lung Act is to be strictly construed.” *Annunziata*, 838 A.2d at 603.

The Heart and Lung Act derives its title from the fact that it compensates covered employees for “diseases of the heart and tuberculosis ... caused by extreme overexertion in times of stress or danger or by exposure to heat, smoke, fumes or gases, arising directly out of the employment.” 53 P.S. § 637(b). But relevant for our purposes, it also covers any temporary disability incurred “in the performance of [the employee’s] duties[.]” 53 P.S. § 637(a). During such time as the employee is unable to perform his duties due to the injury, he is entitled to “his full rate of salary, as fixed by ordinance or resolution, until the disability arising therefrom has ceased.” 53 P.S. § 637(a). This standard is more demanding than that utilized in the Workers’ Compensation Act. *Pennsylvania State Corrections Officers Association v. Department of Corrections*, 235 A.3d 426, 430 (Pa. Cmwlth. 2020).⁵

“The Heart and Lung Act does not define the phrase ‘in the performance of his duties.’” *Colyer v. Pennsylvania State Police*, 644 A.2d 230, 233 (Pa. Cmwlth. 1994). In order to determine whether an injury has occurred in the performance of one’s duties pursuant to the Heart and Lung Act, it is necessary to undertake “a case-by-case, fact-sensitive analysis[.]” *Pennsylvania State Corrections Officers Association*, 235 A.3d at 430. “[T]he dispositive inquiry to determine if an officer was injured in the performance of his duties is whether the officer was engaging in an obligatory task, conduct, service, or function that arose from his or her position as a [police] officer as a result of which an injury occurred[.]” *McLaughlin v. Pennsylvania State Police*, 742 A.2d 254, 257 (Pa. Cmwlth. 1999). “This does not mean only those duties unique to police officers such as making arrests, investigating crimes, etc. ... Instead, the phrase includes any duties assigned to a police officer.” *Id.* at 258-59.

Prior appellate cases have distilled several considerations relevant to the analysis. “Unlike coverage under the Workers’ Compensation Act, the site of the injury is completely irrelevant when determining an officer’s entitlement to Heart and Lung Act benefits[.]” *Allen v. Pennsylvania State Police*, 678 A.2d 436, 439 (Pa. Cmwlth. 1996) (footnote omitted). Also, “[e]xcluded from consideration is the degree of hazard involved.” *Justice v. Department of Public Welfare*, 829 A.2d 415, 417 (Pa. Cmwlth. 2003) (citing *Colyer*, 644 A.2d 230). While an officer’s status as on or off-duty is “not dispositive of whether an injury occurred in the performance of duties, it is certainly one factor to be considered” for “[w]here an officer is on duty, it is more likely that an injury which occurs is one that occurs in the performance of

⁴ In contrast, the Workers’ Compensation Act “provides compensation for both temporary and permanent disabilities[.]” *Rodgers v. Pennsylvania State Police*, 759 A.2d 424, 429 (Pa. Cmwlth. 2000).

⁵ “[U]nlike ‘wages’ contemplated by the Workers’ Compensation Act,” the term “salary” as used in Section 637(a) of the Heart and Lung Act “does not include vacations and overtime.” *Annunziata*, 838 A.2d at 603 (internal quotation marks and brackets omitted). “Therefore, although the [Heart and Lung Act] Act grants full compensation and continuation of employee benefits to eligible employees, and thus in one sense is more generous towards injured employees than the Workers’ Compensation Act, its scope is in fact much narrower.” *Allen v. Pennsylvania State Police*, 678 A.2d 436, 438 (Pa. Cmwlth. 1996).

his duties in contrast to where an officer is not on duty and an injury occurs.” *McLaughlin*, 742 A.2d at 258 n.2. “Conversely, ... even though a police officer is not on paid duty, so long as he is injured while performing police duties, he is entitled to benefits pursuant to the Act.” *Id.* at 256.

Although an officer simply at rest between assignments, yet “nonetheless at the ready,” is still performing official duties, he ceases to do so the moment he deviates from those duties in order to perform a “personal mission,” that is, an act “of personal convenience” with “no connection to his obligations” as a police officer. *Mitchell v. Pennsylvania State Police*, 727 A.2d 1196, 1198-99 (Pa. Cmwlth. 1999); see also *Pennsylvania State Corrections Officers Association*, 102 A.3d at 1048-49. This idea is not unlike the concept of a “frolic” common to other areas of the law. See, e.g., *Potter Title & Trust Co. v. Knox*, 113 A.2d 549, 552 (Pa. 1955) (rejecting application of the doctrine of respondeat superior) (“It was an act wholly unauthorized by his employers, — the kind of an act which the law, in one of its rare drolleries, terms a ‘frolic’ of his own.”); *Gibson v. Bruner*, 178 A.2d 145, 148 (Pa. 1961) (holding father could not be held liable for his son’s use of his vehicle while intoxicated where there was no evidence to indicate that the father knew the son would be unfit to drive by reason of intoxication) (“Such conduct constituted a substantial deviation from the authorized and permitted use and the record is clear that when the accident occurred [the driver] was clearly on a frolic of his own.”). *Mitchell* itself purported to borrow the term “personal mission” from “workers’ compensation law parlance[.]” 727 A.2d at 1198, and indeed, there is some older case law, pre-dating the more liberal workers’ compensation scheme currently in place,⁶ to support this assertion. See *Boal v. State Workmen’s Insurance Fund*, 193 A. 341, 343 (Pa. Super. 1937) (“his employment ceased and he was then engaged on a personal mission, which had no relation to the business in which his employer was engaged” and thus “was a matter that was purely personal to him and bore no relation to the duties which he was required to perform.”).

It is against this backdrop that the present dispute arises. With these observations in mind, the Court proceeds to examine the question at the heart of this appeal: whether Wierbinski was injured in the performance of his duties.

III. DISCUSSION

A. Preliminary Analysis

Applying the foregoing principles to the facts of this case, Wierbinski is entitled to benefits under the Heart and Lung Act as a result of the injury he sustained on January 27, 2021. To reiterate, the central inquiry is whether Wierbinski was “engaging in an obligatory task, conduct, service, or function” arising from his position as a patrolman when he fell on the ice. *McLaughlin*, 742 A.2d at 257. The Court notes that Wierbinski was undeniably on-duty at the time of his injury, having just begun his shift roughly 15 minutes before, although this fact, alone, does not resolve the question. *Id.* at 258 n.2. Wierbinski’s uncontroverted testimony, however, reveals not simply that he was on-duty at the time of his injury, but that he was on patrol.

⁶ “As originally enacted in 1915 The Pennsylvania Workmen’s Compensation Act provided benefits only for injury or death resulting from an ‘accident’ in the course of employment.” *Pawlosky v. W.C.A.B.*, 525 A.2d 1204, 1208 (Pa. 1987). “In 1972 The Pennsylvania Workmen’s Compensation Act underwent extensive amendment.” *Id.* “[T]he legislature in 1972 provided a concept of ‘injury’ broad enough in its scope to encompass all work-related harm to an employee[.]” *Id.* at 1209.

When asked whether he was on patrol while in the Starbucks, Wierbinski testified “Yes. I mean, I always consider myself on patrol when I am in uniform out in public, because I’m always open to the public or to calls. Tr., p. 11. He clarified that he is “[a]bsolutely” permitted to get coffee while on patrol, and indeed, “they encourage it.” Tr., p. 11. He noted, “[y]ou get into establishments, you are seen by the public, you are accessible by the public. And you deter crime just by your mere presence being in these establishments.” Tr., p. 11. He testified that officers are permitted to eat meals and use the restroom while on patrol, “but you may not actually receive your meal or even get to finish it because you are open to calls at all times.” Tr. pp. 11-12. He further stated that while in the Starbucks, he was accessible by radio and would have acted if he had observed a breach of the peace, a crime being committed, or if an emergency had arisen while he was in the coffee shop. Tr., p. 13. He recalled how the area around the intersection of Fifth and State Street was historically “a high nuisance crime area ... especially when McDonalds was there[,]” but that even after the McDonald’s was torn down, panhandling continued, as well as “people just harassing people inside establishments.” Tr., p. 12. He explained that in the past “I would go into Starbucks and sit and have my coffee. And the baristas would often tell me that they appreciate me being in there just as crime deterrent. And [they] asked for special attentions at openings and closings.” Tr. p. 12.

Cross-examination did not cast doubt upon the veracity of these claims. Wierbinski admitted that while there is coffee at the station, he typically stops to get a caffeinated beverage away from the station after roll call:

Not at Starbucks all the time. It really depends. Sometimes I will go to McDonalds at the drive-thru. I like to go into places, because I like to interact a little bit when I can. I like people to see me. So, I go to Country Fair. Just different places, it varies.

Tr., p. 34. The thrust of cross-examination on this point focused on the fact that Wierbinski was not responding to any call when he arrived at Starbucks, nor when leaving it, a fact he readily admitted, but Wierbinski reiterated that he was nonetheless on patrol throughout this time. Tr. pp. 36-38. On redirect, he confirmed that he is considered on patrol the moment he leaves the station. Tr., p. 39.

It cannot be reasonably denied that patrolling is an obligatory task, service, or function of a patrolman. As *McLaughlin* makes clear, the phrase “in the performance of his duties” in the Heart and Lung Act “does not mean only those duties unique to police officers such as making arrests, investigating crimes, etc. ... Instead, the phrase includes any duties assigned to a police officer.” *McLaughlin*, 742 A.2d at 258-59 (emphasis added). Patrolling is undoubtedly an assigned task of a patrolman — his *raison d’être* if you will — and the record confirms that Wierbinski was assigned on patrol at the time that he was injured. It is therefore of no moment that Wierbinski was not specifically responding to a call or observable threat when he entered the Starbucks.

As such, the only way it could be shown that Wierbinski was not injured in the performance of his duties is by showing that Wierbinski deviated from his patrol by embarking on a personal mission of personal convenience having no connection to his obligations as a patrolman, *Mitchell*, 727 A.2d at 1198-99, but once again, the undisputed evidence does

not bear this out. Wierbinski stated that he was not only permitted, but actively encouraged, to eat and drink at establishments while on duty in order to deter crime in the area. Thus, while there is a “personal convenience” aspect to his presence there, it cannot be said it has “no connection to his obligations,” as the case law requires, because he is simultaneously performing a law enforcement function, namely deterring crime. It is telling that while Wierbinski is on patrol in these establishments, his law enforcement duties trump his personal needs, meaning he “may not actually receive [his] meal or even get to finish it because [he is] open to calls at all times.” Tr. p. 12.

There was no evidence presented at the hearing to suggest that the act of getting a coffee somehow suspends an officer’s patrol as a matter of Department policy. Quite the opposite; as just explained, Wierbinski testified that it is actively encouraged. Tr. p. 11. The City could offer nothing to rebut this assertion, such as a guideline, regulation, collective bargaining agreement, or even the testimony of an administrator within the Department, and Wierbinski confirmed that the collective bargaining agreement is “vague” and does not speak to the question. Tr., p. 45. In short, there is insufficient evidence to suggest that Wierbinski was on a personal mission as that term-of-art is defined by our case law; at best, his motives were mixed, partly personal and partly official, but that does not mean it had “no connection” to his official duties. *Mitchell*, 727 A.2d at 1199.

Even assuming, *arguendo*, that Wierbinski’s appearance in the Starbucks did constitute a purely personal mission, that mission was already complete at the time of his injury. Wierbinski testified that when he slipped he was heading “[b]ack to [his] marked cruiser, which was parked on the street.” Tr., p. 10. That brings this case squarely within the fact-pattern of *McLaughlin*. In that case, a state police officer suspended his patrol to take a lunch break at a restaurant as permitted by field regulation. *McLaughlin*, 742 A.2d at 255. After finishing his meal, he exited the restaurant and headed toward his patrol car, but fell and broke his arm before he reached it. *Id.* The State Police denied his claim for Heart and Lung Act benefits and the agency commissioner affirmed that decision, finding the officer was not injured in the performance of his duties. *Id.* On appeal, the Pennsylvania State Police argued the officer was at lunch, and therefore, was not acting in the performance of his duties when he was injured. *Id.* at 259. The Commonwealth Court disagreed with this “factual description of events[,]” instead noting that “McLaughlin was not at lunch at the time of the injury; he had finished lunch.” *Id.* The Court explained:

McLaughlin testified that he had finished eating his lunch. *Id.* The significance of this fact is that according to FR 1–2.27 members who are on continuous duty shall be permitted to suspend patrol or other assigned activity for the purpose of consuming one meal “during their tour of duty ... but only for such period of time as is reasonable or necessary and not to exceed thirty minutes.” (emphasis added). According to McLaughlin’s testimony, he had finished “consuming [his] one meal.” Thus the period of time which was necessary for consuming that one meal was over and thus pursuant to the language of FR 1–2.27, so was the suspension of McLaughlin’s patrol. As he testified, he was supervising the patrols and was going back out on the road to do so. R.R. at 8a. As the period of suspension of his assigned activity was over, he was duty bound to return to his patrolling. Having finished his lunch, his patrol was no longer suspended and he

had an obligation as a police officer to resume that patrol. In attempting to perform this duty, he, of necessity, had to go to and reenter his patrol car. In attempting to do so, he tripped and injured himself. Hence, McLaughlin did not injure himself while at lunch as the PSP erroneously contend; rather, he injured himself in attempting to fulfill his duty to go back out on patrol after having completed his lunch. Thus, the Commissioner erred in concluding that McLaughlin was not entitled to benefits under the Act. As McLaughlin sustained injuries in the performance of his duty in his capacity as a police officer to go out on patrol, he is entitled to benefits pursuant to the Act.

Id.

So too here. Wierbinski had already picked up his latte and was heading back to his police cruiser to continue his patrol, a task he was obligated to perform. Unlike in McLaughlin, there is no evidence here of regulations or other pertinent guidelines speaking to Wierbinski's authority to take such a break, but neither is there any evidence that to suggest that Wierbinski's actions constituted a suspension of his patrol, as was the case with the lunch-break field regulation in *McLaughlin*. Tr. p. 45. And even if he did suspend his patrol by leaving his vehicle in order to pick up the latte, his personal mission was complete by the time that he fell. In recommending his duties, "he, of necessity, had to go to and reenter his patrol car." *McLaughlin*, 742 A.2d at 259. Under this version of events, Wierbinski did not injure himself while getting coffee; he injured himself in attempting to fulfill his duty to go back out on patrol after having completed his errand. *Id.* Accordingly, even assuming Wierbinski's trip to Starbucks had no connection to his official duties, *McLaughlin* controls, and he is therefore entitled to benefits under the Heart and Lung Act.

B. Error of the Hearing Examiner

The hearing examiner below reached a contrary conclusion. Of course, arbiters of legal disputes can, and often do, reach different conclusions as to the law and facts, as well as the application of the law to those facts. But in the context of this statutory appeal of the hearing examiner's decision, this Court, as is often said, sits as "a court of review, not of first view." *Thacker v. Tennessee Valley Authority*, 139 S.Ct. 1435, 1443 (2019). As discussed more fully in Section II(A), *supra*, in this case, that means that this Court, even if it would independently reach a different result, must affirm the hearing examiner's decision unless it rests upon an error of law or necessary factual findings unsupported by substantial evidence. *See* 2 Pa.C.S. § 754(b).

Begin with the facts. Wierbinski does not challenge the sufficiency of the evidence supporting the hearing examiner's factual findings, and for good reason, as these facts are uncontroverted. The only person to testify at the hearing was Wierbinski himself, and cross-examination did not impeach his account, nor did any of the exhibits offered into evidence. Essentially, there were no credibility issues or conflicting testimony to be resolved by the hearing examiner, and this Court would have no basis to question the veracity of the hearing examiner's factual findings even if it had the authority to do so. Instead, the only issue meaningfully in dispute in this litigation has always been whether Wierbinski was injured in the performance of his duties. This involves an application of the law (such as it is) to the facts (such as they are).

The hearing examiner did make certain factual findings relevant to this question. He found that

"[b]ased on Officer Wierbinski's testimony, and in the absence of any evidence to the contrary, Officer Wierbinski was 'on duty' as a patrolman at the time of his injury." Decision of the Adjudicator (Decision), p. 2. He further found that Wierbinski's injury occurred "[a]fter exiting the coffee shop and while walking across the sidewalk toward his cruiser[.]" Decision, p. 1.

As to the law, the hearing examiner evinced a thorough understanding of the appellate case law interpreting the Heart and Lung Act, in particular, those cases construing the phrase "in the performance of his duties." 53 P.S. § 637(a). He surveyed several relevant cases and their holdings, including *Mitchell*, *Coyler*, *Allen*, as well as *McCommons v. Pennsylvania State Police*, 645 A.2d 333 (Pa. Cmwlth. 1994), *Donnini v. Pennsylvania State Police*, 707 A.2d 591 (Pa. Cmwlth. 1998), *Lee v. Pennsylvania State Police*, 707 A.2d 595 (Pa. Cmwlth. 1998), and most notably, *McLaughlin*. Furthermore, he correctly observed that "the *McLaughlin* case and the case sub judice are very similar to one another." Decision, p. 9.

Where the hearing examiner and this Court part ways, however, is in the application of the law to the facts. While finding *McLaughlin* to be analogous, the hearing examiner nevertheless concluded that "[t]he decision of the *McLaughlin* court is not in accord with the decisions upon which it relied in making its decision." Decision, p. 7. He understood those cases to stand for the following:

In *Mitchell*, the police officer was denied benefits because he was on a "personal mission" to warm up his personal car when he was injured. *Donnini* was an off-duty officer, in civilian clothing, who was granted Heart and Lung benefits because he was injured as a result of an event which triggered an official police response, namely, the apprehension of a drive-away criminal; in other words, he was injured in the performance of his duties as a police officer. *Coyler* was granted benefits because he was mentally injured as a result of his participation in an internal affairs investigation of himself, while *McCommons* was denied benefits because he was injured while on route to a joint grievance committee meeting with his union, a personal undertaking and not at all connected with the performance of his duties as a police officer. In *Allen*, the police officer was washing his hands in the state police locker room, and in *Lee*, the officer was injured in a vehicular accident on his way to work. Both *Lee* and *Allen* were denied benefits because neither were injured in the performance of their duties as police officers.

Decision, pp. 8-9. He read *McLaughlin* as deviating from these principles:

Police officers and patrolmen get in and out of their police cruisers and walk to and from their police cruisers on a routine basis day in and day out. Certainly the Act contemplated a difference between an injury which occurs in the context of performing a police duty, and an injury which occurs in the context of performing an act which is not precisely as a police officer. *McLaughlin*, at 258. A police officer injured while getting in or out of or walking to and from his cruiser are sustained in the performance of the officer's duties where the police officer is responding to a call, investigating a crime scene, patrolling a neighborhood or in pursuit of a suspect. But injuries sustained by a police officer are not injuries sustained in the performance of the officer's duties as a police officer when the police officer is getting in or out of or walking to and from his cruiser to get

a cup of coffee, to stop at a restaurant, pick up a pack of cigarettes or make a purchase at a convenience store. Clearly the context in which the injury occurs is important to determining whether the police officer was engaged in police duties at the time he was getting in or out of or walking to or from his police cruiser.

Decision, pp. 7-8. By this reasoning, the hearing examiner concluded that “going back out on patrol is not the performance of a police duty as that term is understood under the Act.” Decision, p. 7 (internal quotation marks omitted). He then purported to correct the holding in *McLaughlin* and apply his reimagined holding to the factually analogous case at bar:

Both officers were “on duty” at the time of their injuries, both sustained injuries which, for workers’ compensation purposes, arose in the course of their employment. But neither sustained injuries in the performance of their duties “precisely as police officers.” *McLaughlin*, at 258. *McLaughlin* was injured after he stopped for lunch, and Wierbinski was injured after he stopped for coffee.

Decision, p. 9.

Accepting the hearing examiner’s findings of fact, this Court nonetheless holds that the hearing examiner erred as a matter of law in refusing to apply *McLaughlin*’s understanding of the phrase “injured in the performance of his duties” to those facts. On one level, the hearing examiner’s claim that *McLaughlin* is “not in accord with the decisions upon which it relied” belies the careful review of prior case law undertaken by the *McLaughlin* Court. In holding “that the dispositive inquiry is whether the officer suffered an injury as a result of engaging in an obligatory task, conduct, service, or function that arose precisely from his or her position as a State Police officer[.]” the Court cited favorably to several cases, including *Colyer* and *McCommons*. *McLaughlin*, 742 A.2d 257. It recognized that two cases, *Allen* and *Lee*, “appear somewhat not in accord with the foregoing principles.” *Id.* at 258. But the Court ultimately distinguished these cases, noting “[i]n both *Allen* and *Lee*, it is beyond cavil that the officers had a duty to come to work for their scheduled shifts properly attired and in a timely fashion. However, in both cases, notwithstanding this duty, we concluded that they were not entitled to benefits pursuant to the Act” because:

the phrase “in the performance of his duties” means officers’ duties in their capacities precisely as police officers. In other words, **an off-duty officer’s obligation to show up on time to work and be properly prepared to undertake one’s tasks is not a duty arising from their capacity as police officers but rather a general duty of every employee** and, as such, not within the meaning of the statutory language of the Act ... We find that construing the statutory phrase, “in the performance of his duties” to exclude those activities necessary to arrive at work on time and in appropriate attire gives effect to the narrow construction we are mandated to give to the statutory language ... Thus, *Allen* and *Lee* are indeed in accord with the general principle distilled above that “in the performance of his duties” means in the performance of his duties which arise from his capacity as a police officer.

Id. (emphasis added). Having distinguished the line of cases dealing with off-duty officers, the Court went on to conclude that:

Having finished his lunch, his patrol was no longer suspended and **he had an obligation as a police officer to resume that patrol. In attempting to perform this duty, he, of necessity, had to go to and reenter his patrol car.** In attempting to do so, he tripped and injured himself ... As *McLaughlin* sustained injuries in the performance of his duty in his capacity as a police officer to go out on patrol, he is entitled to benefits pursuant to the Act.

Id. (emphasis added).

The hearing examiner obviously disagreed with this logic. He favored a more context-specific approach in “determining whether the police officer was engaged in police duties at the time he was getting in or out of or walking to or from his police cruiser[.]” eschewing any bright-line rule. Decision, p. 8. Applying this approach, he disagreed with *McLaughlin* that the act of walking to a patrol vehicle is performing in a capacity precisely as a police officer, although the hearing examiner appeared to agree that the patrol itself would be an action taken in performance of one’s duties. *See* Decision, p. 8 (citing “patrolling a neighborhood” as an example of an action taken in performance of one’s duties). The hearing examiner’s disagreement with *McLaughlin* thus centers on the narrow factual scenario in which an on-duty officer is injured while walking to his patrol vehicle in order to begin his patrol.⁷

There is some persuasive allure to the hearing examiner’s reasoning; after all, *McLaughlin* was not a unanimous decision.⁸ Perhaps the dissent too believed that the ruling was “not in accord with the decisions upon which it relied” or that “injuries sustained by a police officer are not injuries sustained in the performance of the officer’s duties as a police officer when the police officer is getting in or out of or walking to and from his cruiser to get a cup of coffee, to stop at a restaurant, pick up a pack of cigarettes or make a purchase at a convenience store.” Decision, pp. 7-8.⁹ But the dissenting view was just that, the dissenting view.

Reasonable minds may differ as to whether the *McLaughlin* Court or the hearing examiner has the better argument, and this Court expresses no opinion on the matter one way or the other. But in finding *McLaughlin* to be factually analogous, yet refusing to apply that

⁷ It is unclear whether the hearing examiner found that Wierbinski was on a “personal mission” pursuant to *Mitchell* when he entered the Starbucks. His analogy of ordering a cup of coffee to eating at a restaurant, buying a pack of cigarettes, or making a purchase at a convenience store arguably suggests that he did, although he may be simply drawing a contrast to the more traditional duties of police officers referenced immediately before. It is a dubious proposition, however, whether such a factual finding would be supported by substantial evidence given that Wierbinski testified that he was not only on duty, but on patrol, while in the Starbucks, and the City of Erie could offer no evidence similar to the field regulation offered in *McLaughlin*, despite the hearing examiner properly inquiring as to the existence of “any guidelines or regulations, or even [a] collective bargaining agreement” to that effect. Tr., p. 45. Even assuming that the hearing examiner could, and did, find that Wierbinski was returning to patrol from a personal mission when he fell, *McLaughlin* remains on point as he, by necessity, had to reenter his patrol cruiser in order to recommence his patrol. The City of Erie argues that the lack of field regulation, or something akin to it, creates a meaningful distinction between *McLaughlin* and this case. The Court addresses the merits of that argument in Section III(C), pp. 25-26, *infra*.

⁸ Senior Judge Giulianti dissented without opinion.

⁹ The Court observes that *McLaughlin* did not hold that an officer walking into a restaurant to begin his lunch was acting in the performance of his duties, only that an officer walking out of a restaurant after finishing his regulation-permitted lunch was performing his duties, precisely because his patrol was no longer suspended and because it was necessary to reenter the vehicle in order to recommence his patrol.

precedent — instead refashioning the holding to say something that it did not — the hearing examiner defied the longstanding principle of *stare decisis* at the heart of our common law judicial system. And that brings us to the crux of this case, the error upon which this appeal turns, for on a more fundamental level, the hearing examiner erred not because he disagreed with *McLaughlin* as a matter of first principles, but because he failed to dutifully apply that decision in spite of his misgivings as to the soundness of its rationale.

“*Stare decisis* is a principle as old as the common law itself. The phrase derives from the Latin maxim ‘*stare decisis et non quieta movere*,’ which means to stand by the thing decided and not disturb the calm.” *Commonwealth v. Alexander*, 243 A.3d 177, 195 (Pa. 2020) (citations and internal quotation marks omitted). “The doctrine of *stare decisis* maintains that for purposes of certainty and stability in the law, a conclusion reached in one case should be applied to those which follow, if the facts are substantially the same, even though the parties may be different.” *In re Angeles Roca First Judicial District Philadelphia County*, 173 A.3d 1176, 1187 (Pa. 2017) (citation and internal quotation marks omitted).

“Respecting *stare decisis* means sticking to some wrong decisions.” *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 455 (2015). It “reflects a policy judgment that in most matters it is more important that the applicable rule of law be settled than that it be settled right.” *Id.* (quoting *Agostini v. Felton*, 521 U.S. 203, 235 (1997)) (internal quotation marks omitted). In doing so, it “promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” *Alexander*, 243 A.3d at 196 (quoting *Payne v. Tennessee*, 501 U.S. 808, 827 (1991)).

“As the mountain of decisions overturned by courts every year would suggest, *stare decisis* is not an inexorable command[.]” *Commonwealth v. Mason*, 247 A.3d 1070, 1091 (Pa. 2021) (Wecht, J., dissenting) (citation and internal quotation marks omitted); *see also Flagiello v. Pennsylvania Hospital*, 208 A.2d 193, 209 (Pa. 1965) (Roberts, J., concurring) (“The principle of *stare decisis* is more a stabilizing anchor than a permanent deadweight.”). We refer to this deferential, but not quite absolute, form of *stare decisis* — whereby a court, with special justification, may overrule its own precedent — as horizontal *stare decisis*. *See* Black’s Law Dictionary (11th ed. 2019) (defining horizontal *stare decisis* as “[t]he doctrine that a court, esp. an appellate court, must adhere to its own prior decisions, unless it finds compelling reasons to overrule itself.”); *see also McGrath v. Bureau of Professional and Occupational Affairs, State Board of Nursing*, 173 A.3d 656, 661 n.7 (Pa. 2017) (noting that “[a]lthough *stare decisis* applies as a general policy in Pennsylvania courts, ... an *en banc* panel of an intermediate court is authorized to overrule a three-judge panel decision of the same court.”)

On the other hand, “[i]t is a fundamental precept of our judicial system that a lower tribunal may not disregard the standards articulated by a higher court.” *Commonwealth v. Randolph*, 718 A.2d 1242, 1245 (Pa. 1998) (admonishing the Superior Court for its “cavalier disregard” of precedent, “motivated not by the facts of [the] case, but instead by [its] steadfast disagreement with [the Supreme] Court’s rationale[.]”). This unyielding form of *stare decisis* is known as vertical *stare decisis*, and it is sacrosanct. *See* Black’s Law Dictionary (11th ed. 2019) (defining vertical *stare decisis* as “[t]he doctrine that a court must strictly follow the decisions handed down by higher courts within the same jurisdiction.”); *see also Walnut*

Street Associates, Inc. v. Brokerage Concepts, Inc., 20 A.3d 468, 480 (Pa. 2011) (holding lower tribunal “duty-bound” to effectuate law from higher court); *Ramos v. Louisiana*, 140 S.Ct. 1390, 1416 n.5 (2020) (Kavanaugh, J., concurring in part) (“vertical *stare decisis* is absolute, as it must be in a hierarchical system[.]”); *Payne v. Taslimi*, 998 F.3d 648, 654 (4th Cir. 2021) (“as an inferior court, the Supreme Court’s precedents do constrain us. In looking up to the Supreme Court, we may not weigh the same factors used by the Supreme Court to evaluate its own precedents in deciding whether to follow their guidance. We must simply apply their commands.”) (citations omitted).

If a precedent is to be overturned, then that ruling must come from the Court that originally rendered the decision, or a higher court, but never a lower one. In this case, that means if *McLaughlin* is to be overruled, “the pronouncement must come from the Commonwealth Court sitting *en banc*, our Supreme Court, or better yet, the General Assembly.” *Lay v. County of Erie Tax Claim Bureau*, 2022 WL 610120, *5 (Pa. Cmwlth. 2022) (unpublished) (quoting Trial Court Opinion, p. 56 (Erie Co. 2021) (Piccinini, J.)); *see also Commonwealth v. Johnson*, 107 A.3d 52, 74 n.12 (Pa. 2014) (noting “[c]onsiderations of *stare decisis* have special force in the area of statutory interpretation, for here, unlike in the context of constitutional interpretation, the legislative power is implicated, and [the General Assembly] remains free to alter what we have done.”) (citation and internal quotation marks omitted).

While a determination as to whether an officer is injured in the performance of his duties is necessarily “fact-sensitive” and should be made on a “case-by-case” basis, *Pennsylvania State Corrections Officers Association*, 235 A.3d at 430, where the factfinder makes specific factual findings, and those findings neatly align with the facts of a higher precedential case, *stare decisis* mandates that a lower tribunal apply the holding, regardless of whether the jurist finds its rationale unpersuasive. As our Supreme Court was in *Randolph*, this Court is “troubled, to say the least, by the [hearing examiner’s] cavalier disregard of the [*McLaughlin*] standard, which appears to be motivated not by the facts of this case, but instead by [his] steadfast disagreement with [the Commonwealth] Court’s rationale set forth therein.” *Randolph*, 718 A.2d at 1245.

The hearing examiner, as is this Court, is “obligated to apply and not evade” published Commonwealth Court decisions. *Id.* In evading *McLaughlin*, the hearing examiner ignored foundational principles of *stare decisis*, and therefore, committed an error of law. What is more, given the hearing examiner’s factual findings, and his explicit analogy of the facts in this case to those in *McLaughlin*, that error was undeniably dispositive as to the outcome below. It logically follows from this error of law that this Court is not obligated to affirm the hearing examiner’s decision pursuant to Section 754(b) of the Local Agency Law.

C. Counterarguments of the City of Erie

The City of Erie offers several reasons why the hearing examiner’s ruling should nonetheless be affirmed. None are persuasive. The City contends that the hearing examiner’s decision is not subject to reversal considering the claimant’s burden of proof and the standard of review on appeal. Post-Argument Br., p. 7. As the Court made clear in the preceding section, it recognizes the deferential standard of review, but all the same finds that the hearing examiner regrettably committed an error of law, and as a result, Section 754(b) does not compel affirmance. The City obfuscates the real issue meriting reversal, claiming “there has been no argument that [the hearing examiner] did not follow the law in rendering his

decision, either from a substantive or procedural standpoint. The only potential argument that Officer Wierbinski can raise to support the reversal of the claim is that [the hearing examiner] did not render a decision based upon necessary findings of fact.” Post-Argument Br., p. 8. However, Wierbinski does not mince words in asserting that the hearing examiner did not properly apply *McLaughlin*, and *McLaughlin* is undeniably law. Thus, the hearing examiner’s failure to apply *McLaughlin* to a factually analogous case is a textbook example of a failure to adhere to *stare decisis*, i.e. an error of law.

As to the burden of proof below, as this Court has reiterated, Wierbinski was the only party to offer relevant evidence as to the question presented in this case (recall much of the facts were already stipulated to), and the City of Erie did not meaningfully impeach his testimony or offer documentary evidence or witnesses of its own to contradict his assertions. There is consequently no merit to the City’s contention that Wierbinski did not satisfy his burden of proof as evinced by the hearing examiner’s own findings of fact.

Next, the City asserts that *McLaughlin* “is not on point with the pending claim” and “is also not binding precedent.” Post-Argument Br., p. 4. The City frames Wierbinski’s argument as relying solely on the fact that he was on-duty and in uniform at the time he was injured, a contention, it argues, *McLaughlin* does not support. Post-Argument Br., p. 4. *McLaughlin* does, indeed, reject the proposition that an officer’s on-duty status, alone, is sufficient to entitle that officer to benefits under the Heart and Lung Act, 742 A.2d at 258 n.2, but this argument misapprehends the nature of Wierbinski’s claims. Wierbinski’s argument rests on the fact that he was not only on-duty, but on patrol, at the time of his injury. And even if Wierbinski is technically mistaken in his belief that he remained on patrol during his brief venture into Starbucks, that detour had ended by the time he fell on the ice while making his way back to the police cruiser, bringing the fact-pattern precisely within *McLaughlin*’s holding.

The City further contends that the lack of a field regulation expressly permitting the coffee run factually distinguishes this case from *McLaughlin*, but this is a distinction without a difference for a finding that a jaunt to Starbucks was regulation-permitted or not does not change the fact that it was completed by the time Wierbinski fell, and that he was walking to the police cruiser when he was injured, an action which, “of necessity,” had to precede his reentry into the vehicle in order to continue or recommence his patrol. *Id.* at 259. Critically, *McLaughlin* found the fact that the trooper had finished eating his lunch to have “significance,” not the field regulation itself. *Id.* The field regulation was merely evidence in support of the consequential fact that the suspension of duties was complete, at which point, the officer “was duty bound to return to his patrolling.” *Id.*

While some language in the opinion, taken out of context, may appear to lend credence to the City’s position, *see id.* at 258 n.2 (“Trooper McLaughlin’s returning to his patrol car, after he finished his lunch was pursuant to a police duty imposed upon him by FR 1–2.27[.]”), it is clear from the remainder of the analysis that the officer’s duty to return to his patrol vehicle was implied from his general “obligation as a police officer to resume that patrol[.]” which itself was premised on the conclusion that the patrol was no longer suspended, as revealed by the regulation. *Id.* at 259.¹⁰ Here Wierbinski too undoubtedly had a general obligation

¹⁰ It appears that the express terms of the field regulation in *McLaughlin* only detailed how long the lunch suspension would last: “for such period of time as is reasonable or necessary and not to exceed thirty minutes.” *McLaughlin*, 742 A.2d at 259.

to return to his patrol, assuming it was even suspended in the first place, which is precisely what he was attempting to do at the time he was injured.¹¹

In the absence of a field regulation, other evidence could have been conceivably offered which would have led to the same factual finding, and thus, the same conclusion of law. Here, although there is no regulation speaking to the propriety of suspensions of patrol, the hearing examiner apparently found that Wierbinski had, in fact, finished any such suspension (if, indeed, he found any suspension occurred at all); otherwise, his focus would have been on *Mitchell*, not *McLaughlin*, and the hearing examiner would have had no need to recast the holding in *McLaughlin* the way he did. Thus, the hearing examiner’s own factual findings belie the City’s attempts to distinguish *McLaughlin* on the absence of a field regulation.¹²

The Court need not belabor an analysis of the City’s ancillary argument that *McLaughlin* is not binding precedent. It is well-settled that a published opinion of the Commonwealth Court remains binding on subsequent three-judge panels and lower courts unless there is intervening precedent compelling a different result. *DeGrossi v. Commonwealth, Department of Transportation, Bureau of Driver Licensing*, 174 A.3d 1187, 1191 (Pa. Cmwlth. 2017). The City offers no such intervening precedent and the Court is aware of none. Contrary to the City’s assertion, the Commonwealth Court continues to cite favorably to *McLaughlin*. *See, e.g., Justice*, 829 A.2d 415, 416; *Pennsylvania State Corrections Officers Association*, 235 A.3d 426, 431.

At oral argument the City further maintained that the hearing examiner “did not rely on *McLaughlin per se*,” but actually relied on cases like *Lee*, *Allen*, and *Colyer*. Although the hearing examiner did discuss *Lee*, *Allen*, and *Colyer*, believing that *McLaughlin* was “not in accord” with those earlier cases, he ultimately relied upon *McLaughlin* (or more accurately, his revised version of it) to resolve the case, as the last page of his decision makes clear. *See* Decision, p. 9 (“the *McLaughlin* case and the case sub judice are very similar to one another ... neither sustained injuries in the performance of their duties ‘precisely as police officers.’ ... *McLaughlin* was injured after he stopped for lunch, and Wierbinski was injured after he stopped for a cup of coffee. Accordingly, the decision of the City of Erie is hereby AFFIRMED[.]”). Moreover, had he not read those earlier precedents without the gloss of later cases like *McLaughlin*, then he would have erred for a different reason since “controlling precedent is to be discerned from developmental accretions in the decisional law, attributing due and substantial weight to pronouncements made in the most recent decision.” *Hammons v. Ethicon, Inc.*, 240 A.3d 537, 564 (Pa. 2020) (Saylor, C.J., dissenting).

In a similar vein, the City argues that *Lee* and *Allen* are more analogous to the facts of this case. But *Lee* and *Allen* dealt with injuries sustained by officers who were not yet on duty, and so, have little bearing on a case such as this, as *McLaughlin* noted. The City (and the hearing examiner) may well draw an analogy with the present scenario to the fact that “an off-duty officer’s obligation to show up on time to work and be properly prepared to undertake one’s tasks is not a duty arising from their capacity as police officers but rather a general duty of every employee and, as such, not within the meaning of the statutory

¹¹ In light of Wierbinski’s uncontroverted testimony that he remained on patrol at all times, the absence of a regulation suspending patrol in these circumstances actually hurts the City’s position.

¹² Even if the City were correct in its claim that *McLaughlin* is distinguishable, this would result not in an affirmance, but a remand for the hearing examiner to clarify whether he finds that Wierbinski was on a personal mission pursuant to *Mitchell*.

language of the Act.” *McLaughlin*, 742 A.2d at 258. But *McLaughlin* rejected this argument, and understandably so, since a duty to return to a vehicle to begin a patrol is not “a general duty of every employee[.]” *Id.*

Moving on, the City argues that Wierbinski “was injured on a ‘personal mission,’ i.e., the purchase of a latte, for his own pleasure.” Post-Argument Br., p. 4. As such, it argues *Mitchell* should control rather than *McLaughlin*. But just as in *McLaughlin*, the City’s reliance on *Mitchell* is “unfounded” as Wierbinski “was duty bound to return to his car and resume patrolling” if he was even off patrol at all. *McLaughlin*, 742 A.2d at 259-60. Moreover, there are insufficient factual findings from the hearing examiner below to definitively rely on *Mitchell* as it is unclear whether he found Wierbinski was on such a personal mission.

The City also finds support in *Justice v. Department of Public Welfare*. There the Commonwealth Court “decline[d] the invitation” to follow *McLaughlin* because “McLaughlin was injured while on duty, returning to his official vehicle after completing a regulation-permitted mid-shift meal.” *Justice*, 829 A.2d at 418. The City places great emphasis on the “regulation-permitted mid-shift meal” distinction, Post-Argument Br., p. 6, but the City omits the next sentence of the opinion, which clarifies that the distinguishing feature is that “[c]laimant here was not yet on duty.” *Justice*, 829 A.2d at 418. This is confirmed by the nature of the preceding paragraph as well, discussing *Allen* and the relevance of an officer’s “on-duty/off-duty status” to the analysis. *Id.* at 417-18. *Justice* thus comports with the distinction made in *McLaughlin* of the *Allen* and *Lee* line of cases, of which *Justice* is a continuation. As such, *Justice* does not support the City’s position.

Putting case law aside, the City suggests that reading the Heart and Lung Act too broadly would render the Workers’ Compensation Act superfluous as it applies to firefighting and police work. Not so. Given the Workers’ Compensation Act’s more liberal construction and the distinctive inquiries applicable under each statute, it is doubtful that an analysis regarding whether a particular injury arose in the course of employment or arose in the performance of one’s duties will always yield the same result, although there may well be substantial overlap.¹³

While it is true that “[l]aws which apply to the same persons or things or the same class of persons or things are in *pari materia* and, as such, should be read together where reasonably possible[.]” *DeForte v. Borough of Worthington*, 212 A.3d 1018, 1022 (Pa. 2019); *see also* 1 Pa.C.S. § 1932 (directing that statutes in *pari materia* shall be read together as one statute), it is not apparent that the relevant class of persons are the same in each Act. Although both statutes could be said to apply broadly to workers or workers injured on-the-job, the Heart and Lung Act applies only to enumerated classes of individuals. *See Jones v. County of Washington*, 725 A.2d 255, 256 (Pa. Cmwlth. 1999). And even if the applicable standards

¹³ For instance, under the Workers’ Compensation Act, “pertinent case law establishes that, typically, a claimant who is at lunch and sustains an injury off of the employer’s premises is not acting in furtherance of the employer’s business” while “employees who remain on an employer’s premises for their lunch break and sustain an injury are generally considered to be in furtherance of the employer’s business, unless the activity they are engaged in was so wholly foreign to their employment.” *Smith*, 15 A.3d at 953. Yet the analysis in *McLaughlin* properly focused on whether the claimant’s patrol — the duty to which he had been assigned — was suspended because “the site of the injury is completely irrelevant when determining an officer’s entitlement to Heart and Lung Act benefits;” *Allen*, 678 A.2d at 439, instead, the relevant question is whether the claimant was “engaging in an obligatory task, conduct, service, or function that arose from his or her position as a” police officer when the injury occurred. *McLaughlin*, 742 A.2d at 257.

under the two statutes will lead to the same result in most cases, total coverage under the Heart and Lung Act necessarily will not subsume total coverage under the Workers’ Compensation Act as the Heart and Lung Act only compensates for temporary disability, and so, “was not intended to displace other forms of disability compensation such as [Workers’] Compensation benefits and payments under the Occupational Disease Act, which cover more prolonged or permanent disabilities.” *Cunningham*, 507 A.2d at 43-44.¹⁴ The two Acts therefore retain their distinctive purposes within Pennsylvania’s comprehensive statutory scheme for dealing with occupational injury and disease.

The City further cautioned at oral argument that the holding in *McLaughlin* is “unorthodox” in light of the “spirit” of the Heart and Lung Act and represents a “rogue case.” It maintains that the spirit of the Heart and Lung Act necessitates that the phrase “in the performance of his duties” be interpreted to mean duties performed as a “community service” and accompanied by a “heightened chance of being injured.” It warns as a matter of policy that ruling in Wierbinski’s favor would result in a “broad finding across all factual scenarios” that would “eradicate the need for a workers’ compensation option for uniformed service.” Such a result, it contends, was certainly not the intention of the General Assembly in enacting the Heart and Lung Act.

From the outset, the Court observes that “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa.C.S. § 1921(b). Even so, assuming the phrase “injured in the performance of his duties” is ambiguous as a matter of law, this Court does not interpret the phrase on a blank slate, but is bound by principles of *stare decisis* to apply the holding in *McLaughlin*, which both this Court and the hearing examiner agree is factually analogous to the case at bar. *See* Section III(B), *supra*. Principles of *stare decisis* apply with particular force here given *McLaughlin* interprets a statute, and critics of the ruling can take their objections to Harrisburg where the General Assembly can correct any mistake that it sees. *Kimble*, 576 U.S. at 456. As such, the policy considerations outlined by the City are better addressed to the legislative, not the judicial branch. And while the *en banc* Commonwealth Court or our Supreme Court remain free to revisit *McLaughlin*, this Court most certainly is not. *Randolph*, 718 A.2d at 1245.

Moreover, is not apparent that the parade of horrors identified by the City will come to pass if this Court rules in Wierbinski’s favor. After all, *McLaughlin* has been the law in this Commonwealth for over 22 years, and the sky has not yet fallen on police departments faced with Heart and Lung Act claims. Nor is it a particularly surprising result if a majority of Heart and Lung Act claims prove meritorious, as one would expect on-duty officers to spend a majority of their time performing their duties, duties which, at all times, remain inherently dangerous.

The City would read the operative phrase to encompass only duties that are especially dangerous or life-threatening — for instance, the actual pursuit and apprehension of a suspect — as opposed to mere patrol for suspicious behavior. As the Commonwealth Court concluded

¹⁴ The same is also true of Act 534, applicable to “state workers in positions at institutions considered more dangerous than normal[.]” such as state prisons or mental hospitals. *Lynch v. Commonwealth*, --- A.3d ---, 2022 WL 1274783, *4 (Pa. Cmwlth. 2022) (noting “[s]ignificantly, Act 534 benefits are intended to supplement, not replace, workers’ compensation and occupational disease benefits.”) (citation internal quotation marks omitted). “Act 534 is similar in ‘purpose and construction’ to the Heart and Lung Act. *Id.* at *5.

in *Colyer*, however, the City’s “interpretation assumes language not contained in the statute, contradicting the requirement that this statute be strictly construed. Such an interpretation would lead to unjust results, eliminating countless members whose assignments, whether permanent or temporary, are not innately hazardous, despite the plain language of the Act[.]” which contains no qualification of the sort. *Colyer*, 644 A.2d at 234. “Surely the [City] would not have us hold that only assignments typically deemed hazardous are essential to the community.” *Id.* If it would, then it presumably takes umbrage not only with *McLaughlin*, but with *Colyer* as well.¹⁵

Doubtless, our Supreme Court has described the purpose of the Heart and Lung Act as “to make more attractive to competent persons service in the police and fire departments of our municipalities” in light of the “hazardous” nature of the duties they perform, for “[t]he prospect of uninterrupted income during periods of disability well may attract qualified persons to these vocations[.]” *Kurtz v. City of Erie*, 133 A.2d 172, 177 (Pa. 1957) (citation omitted). However, “[t]he statute’s plain language generally provides the best indication of legislative intent[.]” *A.S. v. Pennsylvania State Police*, 143 A.3d 896, 903 (Pa. 2016) (citation omitted), and the language in the Heart and Lung Act provides benefits for covered employees if they are injured in the performance of their duties, not if they are “injured in the performance of hazardous duties.”¹⁶ In that sense, *Colyer* correctly focused not on some generalized notion

¹⁵ Despite *Colyer*’s lack of support (to put it mildly) for the City’s position, at oral argument the City argued that the Commonwealth Court’s holding in *Colyer* is actually in accord with its more narrow reading of the Heart and Lung Act because, although the ethics investigation against the claimant in *Colyer* — which the Court found he was duty-bound to participate in, and which ultimately led to his diagnosis of major depression — does not, in the City’s view, qualify as an injury in performance of one’s duty, the investigation was nonetheless predicated upon what it considers to be the performance of a duty, namely, the earlier investigation of a murder (albeit one in which the claimant allegedly tampered with evidence). It follows, or so the City contends, that the Commonwealth Court was correct to conclude that the claimant in *Colyer* was entitled to Heart and Lung benefits, although for the wrong reasons. The City further claims the present case is factually distinguishable from *Colyer* in this regard because Wierbinski’s stop at the coffee shop was not predicated upon the performance of his duties, such as responding to a call at the Starbucks. While the holding of *Colyer* may be squared with the City’s position, it certainly does not comport with its rationale, which was premised on the reasoning that the claimant had a “duty to participate in the investigation” itself, not the earlier murder investigation. *Colyer*, 644 A.2d at 233.

There is a strong jurisprudential basis for the proposition that this Court is not bound by the rationale, but merely by the conclusion or holding of a precedential case. See *Pennsylvania Independent Oil & Gas Association v. Commonwealth, Department of Environmental Protection*, 146 A.3d 820, 827 (Pa. Cmwlth. 2016) (en banc) (Brobson, J.) (“Pennsylvania generally follows the rule of *stare decisis*, under which “a conclusion reached in one matter should be applied to future substantially similar matters . . . *Stare decisis*, the decision of the court, forms the precedent; it is the court’s judgment that controls . . . It follows that, although the *rationes decidendi* are extremely important in determining how courts arrive at their decisions, they should not be confused with actual precedents, *qua* precedents. We follow the doctrine of *stare decisis*, not *stare rationes decidendi*.”) (quoting RUGGERO J. ALDISERT, *The Judicial Process: Readings, Materials and Cases* 818 (1976)) (other citation omitted; emphasis in original). This position is not without its detractors. See *Ramos*, 140 S.Ct. at 1404 (Opinion of Gorsuch, J., joined Ginsburg J. and Breyer, J.) (It is usually a judicial decision’s reasoning — its *ratio decidendi* — that allows it to have life and effect in the disposition of future cases.”); F. SCHAUER, *Precedent, in Routledge Companion to Philosophy of Law* 129 (A. Marmor ed. 2012) (“[T]he traditional answer to the question of what is a precedent is that subsequent cases falling within the *ratio decidendi* — or rationale — of the precedent case are controlled by that case”).

Even assuming that this Court is bound only by the holding, and not the rationale of *Colyer*, the Court finds its analysis concerning the plain language of the Heart and Lung Act to be persuasive, and in any event, this Court is nevertheless bound by the Commonwealth Court’s holding in *McLaughlin*, which cannot be reconciled with the City’s position here today.

¹⁶ The City’s argument would have more persuasive force in construing the other provision of the Heart and Lung Act not at issue here, pertaining to “diseases of the heart and tuberculosis . . . caused by extreme overexertion in *times of stress or danger* or by exposure to heat, smoke, fumes or gases, arising directly out of the employment.” 53 P.S. § 637(b) (emphasis added). Where, as here, the General Assembly “includes particular language in one section of a statute but omits it in another section of the same Act, we generally take the choice to be deliberate.” *Badgerow v. Walters*, 142 S.Ct. 1310, 1318 (2022); see also *Doe v. Franklin County*, 174 A.3d 593, 608 (Pa. 2017); *Thompson v. Thompson*, 23 A.3d 1272 (Pa. 2020) (“although one is admonished to listen attentively to what a statute says; one must also listen attentively to what it does not say.”) (citation and internal quotation marks omitted).

of legislative intent, but on the specific language before it, and in hard cases, “[w]hen the express terms of a statute give us one answer and extratextual considerations suggest another, it’s no contest. Only the written word is the law, and all persons are entitled to its benefit.” *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, 1737 (2020). Thus, the City’s reliance on legislative purpose cannot hold the weight it would place on it.

In the end, because the hearing examiner committed an error of law, an error which proved to be dispositive to his analysis, this Court need not affirm his decision pursuant to Section 754(b) of the Local Agency Law, nor would it be appropriate to do so. The City’s counterarguments cannot change this inescapable conclusion.

D. Disposition on Appeal

In the event that an agency adjudication is not affirmed, Section 754(b) directs that “the court may enter any order authorized by 42 Pa.C.S. § 706.” 2 Pa.C.S. § 754. Section 706 of the Judicial Code, in turn, states that “[a]n appellate court may affirm, modify, vacate, set aside or reverse any order brought before it for review, and may remand the matter and direct the entry of such appropriate order, or require such further proceedings to be had as may be just under the circumstances.” 42 Pa.C.S. § 706. Section 701 of the Judicial Code further clarifies that the provision applies “to all courts of this Commonwealth, including the courts of common pleas when sitting as appellate courts.” 42 Pa.C.S. § 701.

Here, the Court finds error in one of the hearing examiner’s conclusions of law, that is, his “inference on a question of law, made as a result of a factual showing[.]” Black’s Law Dictionary (11th ed. 2019). The Commonwealth Court has held “[n]owhere in Section 754 is the reviewing court given general authority to make its own findings of fact and conclusions of law when the local agency has developed a full and complete record but omitted making its findings of fact and conclusions of law.” *Society Created to Reduce Urban Blight v. Zoning Board of Adjustment, City of Philadelphia*, 804 A.2d 147, 150 (Pa. Cmwlth. 2002) (emphasis added). If the dispositive question had been whether Wierbinski was on a “personal mission” pursuant to *Mitchell* when he entered the Starbucks, then there would be stronger case for remand, for although the evidence appears uncontroverted that Wierbinski was on patrol at the time, it is unclear from the hearing examiner’s written Decision if he indeed drew such a conclusion, whether supported by substantial evidence or not.

In any event, regardless of his findings and conclusions on that point, he unmistakably found that “[b]ased on Officer Wierbinski’s testimony, and in the absence of any evidence to the contrary, Officer Wierbinski was ‘on duty’ as a patrolman at the time of his injury” and furthermore, that Officer Wierbinski was injured “[a]fter exiting the coffee shop and while walking across the sidewalk toward his cruiser[.]” Decision, pp. 1-2. He then concluded that “the *McLaughlin* case and the case sub judice are very similar to one another.” Decision, p. 9. As such, he did not omit making findings of fact and conclusions of law concerning the *McLaughlin* scenario, *i.e.*, an on-duty officer returning to his patrol vehicle in order to recommence his patrol; he merely refused to apply the holding in *McLaughlin* to the analogous facts that he found, resulting in an erroneous conclusion as to the law.

Under such circumstances the Court need not remand to the hearing examiner to engage in a meaningless exercise of applying the correct holding to facts he already found. The facts have already been determined. The holding in *McLaughlin* is clear, and there is but one conclusion that may be reasonably drawn applying *McLaughlin* to these facts: Wierbinski was

injured in the performance of his duties because he was on-duty, his activity at the Starbucks was complete, and he, by necessity, needed to return to his police cruiser in order to continue or recommence his patrol, whatever the case may be. The only reasonable conclusion of law that can be drawn in light of *McLaughlin* is that Wierbinski is entitled to compensation under the Heart and Lung Act for the temporary injuries he sustained on January 27, 2021. As such, this Court now reverses the contrary decision of the hearing examiner.

Nor do the parties suggest that there remain any unresolved factual issues relating to the amount of benefits to which Wierbinski is entitled under the Heart and Lung Act that would require remand to the hearing examiner for further proceedings consistent with this Opinion. *See Colyer*, 644 A.2d 234 (holding remand to Commissioner was necessary to determine amount of award due since the agency's factual findings on this issue were not supported by substantial evidence). Wierbinski's salary does not appear to be in dispute, and uncontroverted evidence was presented that Wierbinski did not "finish the day" on January 27, 2021, that thereafter, he was "approximately off seven days[.]" returning to light duty on February 4, 2021, and that his last day on the job prior to surgery was March 23, 2021. Tr., pp. 28-29. The parties also agree that he returned to work on June 21, 2021. Pet.'s Post-Argument Br. in Supp. of Granting Pet. for Review, p. 7; Post-Argument Brief for the City of Erie, p. 2. Determining Wierbinski's benefit amount thus involves a simple mathematical calculation by the City of Erie. Remand for appropriate factual findings is therefore unnecessary.

IV. CONCLUSION

This appeal highlights several contradistinctions: contrasting laws, contrasting interpretations of the law, and contrasting applications of the law to the facts of this case. One distinction that cannot be drawn, however, is to the facts of the Commonwealth Court's prior precedential decision in *McLaughlin*, as the hearing examiner below correctly observed. That ruling held that an on-duty patrolman engages in an obligatory task, conduct, service, or function arising from his position as a police officer — that is, he performs his duties precisely as a police officer — when he walks to his patrol car to resume his patrol because he, of necessity, must enter the vehicle in order to do so. Because the facts in this case and in *McLaughlin* "are substantially the same," the hearing examiner was "duty-bound" to apply that holding here. *In re Angeles Roca*, 173 A.3d at 1187; *Walnut Street Associates*, 20 A.3d at 480. But since *McLaughlin*'s rationale contradicted the hearing examiner's own understanding of the law, he instead chose to rewrite *McLaughlin* rather than apply it. In doing so, he contravened basic principles of *stare decisis*, and therefore, committed an error of law in denying Wierbinski benefits under the Heart and Lung Act. The decision of the hearing examiner is accordingly reversed.

It is so ordered.

BY THE COURT

/s/ **MARSHALL J. PICCININI, Judge**

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CHANGE OF NAME NOTICE
In the Court of Common Pleas of Erie County Pennsylvania
Docket No. 11191-22

In re: Keaton Joseph Coverdale, a minor

Notice is hereby given that a Petition has been filed in the above named Court by Stephanie Hall, requesting an Order to change the name of Keaton Joseph Coverdale to Keaton Joseph Hall.

The Court has fixed the 5th day of July, 2022 at 2:30 p.m. in Courtroom D, Room 214 of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and place for the hearing on said petition, when and where all parties may appear and show cause, if any they have, why the prayer of the petitioner should not be granted.

June 3

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 11181-22 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Victoria Goguen-Miller to Gavin Daniel Quirk.

The Court has fixed the 14th day of July, 2022 at 9:00 a.m. in Courtroom D, Room 214, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

June 3

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 11193-2022 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of JOANNE ELIZABETH NELSON to Joanne Elizabeth Nelson.

The Court has fixed the 5th day of July, 2022 at 3:00 p.m. in Courtroom D, Room 214, of the Erie County Court House, 140 West 6th Street, Erie,

Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

June 3

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County Pennsylvania
Docket No. 11188-22

In re: Auraelia Hope Isabel Pallu, a minor

Notice is hereby given that a Petition has been filed in the above named Court by Andraya Thomson, requesting an Order to change the name of Auraelia Hope Isabel Pallu to Auraelia Hope Isabel Pallu Thomson. The Court has fixed the 6th day of July, 2022 at 11:30 a.m. in Courtroom D, Room 214 of the Erie County Courthouse, 140 W. 6th St., Erie, PA 16501 as the time and place for the hearing on said petition, when and where all parties may appear and show cause, if any they have, why the prayer of the petitioner should not be granted.

June 3

LEGAL NOTICE

ATTENTION: TAJAH HOUSTON BOYD
INVOLUNTARY TERMINATION OF PARENTAL RIGHTS IN THE MATTER OF THE ADOPTION OF MINOR MALE CHILD D.R.B.
DOB: 08/12/2019
MINOR FEMALE CHILD J.G.B.
DOB: 09/10/2020
MINOR MALE CHILD T.H.B., JR.
DOB: 09/29/2021
BORN TO: JAZLYN NOEL PETERS

23 A-C IN ADOPTION, 2022
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, Senior Judge Shad Connelly, Courtroom D #214, City of Erie on July 12, 2022 at 9:30 a.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) 451-6688, or contact your adoption attorney, if you have one.

June 3

LEGAL NOTICE

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

v.

JOHN EY, Defendant
TO THE DEFENDANT:

**NOTICE TO DEFEND
AND CLAIM RIGHTS**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the court. A judgment may also be entered against you for any other claim or relief requested in these papers. You may lose money or property rights or other rights important to you, including custody or visitation of your children. When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary, Erie County Courthouse, Erie, Pennsylvania.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

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.

Lawyer's Referral &
Information Service
PO Box 1792
Erie, Pennsylvania 16507
(814) 459-4411

Respectfully submitted,
Bruce Sandmeyer, Esquire
Attorney ID No. 83569
Attorney for Plaintiff
1001 State Street, Ste 1400
Erie, Pennsylvania 16501
(814) 480-5772

June 3

LEGAL NOTICE

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

v.

VINCENT MILONE, Defendant
TO THE DEFENDANT:

**NOTICE TO DEFEND
AND CLAIM RIGHTS**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take prompt action. You are warned that if you fail to do so, the case may proceed without you and a decree of divorce or annulment may be entered against you by the court. A judgment may also be entered against you for any other claim or relief requested in these papers. You may lose money or property rights or other rights important to you, including custody or visitation of your children. When the ground for the divorce is indignities or irretrievable breakdown of the marriage, you may request marriage counseling. A list of marriage counselors is available in the Office of the Prothonotary, Erie County Courthouse, Erie, Pennsylvania.

IF YOU DO NOT FILE A CLAIM FOR ALIMONY, DIVISION OF PROPERTY, LAWYER'S FEES OR EXPENSES BEFORE A DIVORCE OR ANNULMENT IS GRANTED, YOU MAY LOSE THE RIGHT TO CLAIM ANY OF THEM.

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.

Lawyer's Referral &
Information Service
PO Box 1792
Erie, Pennsylvania 16507
(814) 459-4411

Respectfully submitted,
Bruce Sandmeyer, Esquire
Attorney ID No. 83569
Attorney for Plaintiff
1001 State Street, Ste 1400
Erie, Pennsylvania 16501
(814) 480-5772

June 3

LEGAL NOTICE

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY,
PENNSYLVANIA
CIVIL DIVISION
No. 10399 of 2022

Tax Map No. 35-006-025.0-009.00
LITTLE GIRAFFE 2020, LLC,

Plaintiff

vs.

JEFFERY P. MOREALLI,
Defendant

**PUBLIC NOTICE TO
JEFFERY P. MOREALLI:**

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ON AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**Lawyer Referral &
Information Service
P.O. Box 1792
Erie, PA 16507
(814) 459-4411**

June 3

SHERIFF SALES

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

JUNE 17, 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.

Chris Campanelli
Sheriff of Erie County

May 27 and June 3, 10

SALE NO. 2

Ex. #11590 of 2019
WILMINGTON SAVINGS
FUND SOCIETY, FSB, AS
TRUSTEE OF STANWICH
MORTGAGE LOAN TRUST I,
Plaintiff

v.

SETH S. TUTTLE; THE
UNITED STATE OF AMERICA
C/O THE UNITED STATES
ATTORNEY FOR THE
WESTERN DISTRICT OF PA,
Defendants

DESCRIPTION

By virtue of a Writ of Execution No. 11590-19, WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE OF STANWICH MORTGAGE LOAN TRUST I v.

SETH S. TUTTLE; THE UNITED STATE OF AMERICA C/O THE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF PA, owner(s) of property situate in the TOWNSHIP OF HARBORCREEK, ERIE County, Pennsylvania, being 2231 AND 2233 SALTSMAN ROAD, ERIE, PA 16510

Tax ID No. (27) 40-143-10.01

Improvements thereon:

RESIDENTIAL DWELLING

Judgment Amount: \$142,687.52

Attorneys for Plaintiff

Brock & Scott, PLLC

2011 Renaissance Boulevard,

Suite 100

King of Prussia, PA 19406

May 27 and June 3, 10

SALE NO. 3

Ex. #10346 of 2022

FIRST NATIONAL BANK OF
PENNSYLVANIA, Plaintiff

v.

BRUCE A. BRYAN AND
TAMMY L. BRYAN, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 10346-2022, FIRST NATIONAL BANK OF PENNSYLVANIA vs. BRUCE A. BRYAN AND TAMMY L. BRYAN, owners of property situated in the Borough of Lake City, Erie County, Pennsylvania being known as 10182 Dunn Avenue, Lake City, PA 16423.

Acreage: 0.1742

Tax Index Parcel No. (28) 14-30-9

Assessed Value figure: \$68,700.00

(Land & Building)

Improvement thereon: Residential

2-story dwelling.

FIRST NATIONAL BANK OF
PENNSYLVANIA

David W. Raphael, Esquire

Attorney for First National Bank of Pennsylvania

100 Federal Street - 4th Floor

Pittsburgh, PA 15212

412-465-9718

May 27 and June 3, 10

SALE NO. 4

Ex. #10215 of 2022

FIRST NATIONAL BANK OF
PENNSYLVANIA, Plaintiff

v.

EBONY M. HENDERSON,
Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 10215-2022 FIRST NATIONAL BANK OF PENNSYLVANIA vs. EBONY M. HENDERSON, owner of property situated in the City of Erie, Erie County, Pennsylvania being known as 1201 East Lake Road, Erie, PA 16507.

Acreage: 0.112

Tax Index Parcel No.

(14) 1043-209.

Assessed Value figure: \$67,650.00

(Land & Building)

Improvement thereon: Residential two-story brick veneer dwelling with detached brick garage.

FIRST NATIONAL BANK OF
PENNSYLVANIA

David W. Raphael, Esquire

Attorney for First National Bank of Pennsylvania

100 Federal Street - 4th Floor

Pittsburgh, PA 15212

412-465-9718

May 27 and June 3, 10

SALE NO. 5

Ex. #12721 of 2021

N.A.G. PROPERTIES, LLC,
Plaintiff

v.

TROY S. JENNINGS and
SABRINA M. HOLES,
Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 12721-2021, N.A.G. PROPERTIES, LLC v. TROY S. JENNINGS and SABRINA M. HOLES, owners of property situated in the City of Erie, County of Erie, Pennsylvania, being further identified as follows: 1517 Prospect Avenue, Erie, Pennsylvania 16510

0.1376 + acres

Tax Index Number

(18) 051-013.0-115.00

Assessment Value: \$64,480.00

Improvements: Single family home Said property being more fully described in a Deed to TROY S. JENNINGS and SABRINA M. HOLES dated June 29, 2020 and recorded July 2, 2020 in Erie County

SALE NO. 7

Ex. #12496 of 2021

WILMINGTON SAVINGS
FUND SOCIETY, FSB, AS
TRUSTEE OF QUERCUS
MORTGAGE INVESTMENT
TRUST c/o CARRINGTON
MORTGAGE SERVICES, LLC,
1600 South Douglass Rd.,
Suite 200-A, Anaheim, CA 92806,
Plaintiff

v.

TODD HUGH TALBOT,
Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2021-12496, WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE OF QUERCUS MORTGAGE INVESTMENT TRUST c/o CARRINGTON MORTGAGE SERVICES, LLC vs. TODD HUGH TALBOT, owner of property situated in the City of Erie, Erie County, Pennsylvania being 2008 Cascade Street, Erie, PA 16502 2,113 square feet, 0.49 acres
Assessment Map number: 19-060-030.0-204.00
Assessed Value figure: \$48,440.00
Improvement thereon: Residential
Jill M. Fein, Esquire
Attorney I.D. 318491
Hill Wallack LLP
777 Township Line Rd., Suite 250
Yardley, PA 19067
(215) 579-7700

May 27 and June 3, 10

SALE NO. 8

Ex. #11592 of 2019

BAYVIEW LOAN SERVICING,
LLC, Plaintiff

v.

ANTHONY MANKOSKI and
BARBRA L. MANKOSKI,
Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 11592-2019, BAYVIEW LOAN SERVICING, LLC vs. ANTHONY MANKOSKI and BARBRA L. MANKOSKI, owner(s) of the property situated in Erie County, Pennsylvania being 2662 PUTNAM DRIVE, ERIE, PA 16511
Assessment Map Number: 29006012001800

Assessed Value Figure: \$101,600.00
Improvement Thereon:
A Residential Dwelling
KML LAW GROUP, P.C.
ATTORNEY FOR PLAINTIFF
701 MARKET STREET,
SUITE 5000
PHILADELPHIA, PA 19106
(215) 627-1322

May 27 and June 3, 10

SALE NO. 9

Ex. #12943 of 2019

NATIONSTAR MORTGAGE
LLC D/B/A MR. COOPER,
Plaintiff

v.

ROBERT E. MISTEROVICH
and THERESA M.
MISTEROVICH, Defendants
DESCRIPTION

By virtue of a Writ of Execution filed to No. 2019-12943, NATIONSTAR MORTGAGE LLC D/B/A MR. COOPER vs. ROBERT E. MISTEROVICH and THERESA M. MISTEROVICH, owner(s) of the property situated in Erie County, Pennsylvania being 1034 WEST 27TH STREET, ERIE, PA 16508
Assessment Map Number: 19060037033200
Assessed Value Figure: \$63,800.00
Improvement Thereon:
A Residential Dwelling
KML LAW GROUP, P.C.
ATTORNEY FOR PLAINTIFF
701 MARKET STREET,
SUITE 5000
PHILADELPHIA, PA 19106
(215) 627-1322

May 27 and June 3, 10

SALE NO. 10

Ex. #11733 of 2018

WILMINGTON SAVINGS
FUND SOCIETY, FSB, AS
TRUSTEE OF FINANCE OF
AMERICA STRUCTURED
SECURITIES ACQUISITION
TRUST 2018-HB1, Plaintiff

v.

BRUCE STANKO AKA
BRUCE E. STANKO, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 11733-18, WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE OF FINANCE

OF AMERICA STRUCTURED SECURITIES ACQUISITION TRUST 2018-HB1 vs. BRUCE STANKO AKA BRUCE E. STANKO, owner(s) of the property situated in Erie County, Pennsylvania being 4222 WEST LAKE ROAD, ERIE, PA 16505

Assessment Map Number: (33) 019-001.0-075.00
Assessed Value Figure: \$363,900.00
Improvement Thereon:
A Residential Dwelling
KML LAW GROUP, P.C.
ATTORNEY FOR PLAINTIFF
701 MARKET STREET,
SUITE 5000
PHILADELPHIA, PA 19106
(215) 627-1322

May 27 and June 3, 10

SALE NO. 11

Ex. #10273 of 2022

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff

v.

JILL R. COLETTA, Defendant
DESCRIPTION

By virtue of a Writ of Execution No. 10273-22, U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. JILL R. COLETTA, Defendant
Real Estate: 1112 EAST 9TH STREET, ERIE, PA 16503
Municipality: City of Erie
Erie County, Pennsylvania
Dimensions: 35 x 106.36
Deed Book/Inst#: 2011-012374
Tax I.D. (15) 2047-223
Assessment: \$5,700.00 (Land)
\$37,290.00 (Bldg)
Improvement thereon: a residential dwelling house as identified above.
Leon P. Haller, Esquire
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17104
(717) 234-4178

May 27 and June 3, 10

SALE NO. 12

Ex. #12352 of 2021

PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff

v.

MARCUS J. ENGLE, Defendant
DESCRIPTION

By virtue of a Writ of Execution No. 12352-21, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. MARCUS J. ENGLE, Defendant
Real Estate: 248 FRANKLIN STREET, CORRY, PA 16407
Municipality: Third Ward City of Corry
Erie County, Pennsylvania
Dimensions: 50.9 x 127
Deed Book/Inst#: 2015-024823
Tax I.D. (7) 26-78-4
Assessment: \$13,000 (Land)
\$31,360 (Bldg)
Improvement thereon: a residential dwelling house as identified above.
Leon P. Haller, Esquire
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17104
(717) 234-4178

May 27 and June 3, 10

SALE NO. 15

Ex. #11988 of 2019

PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff
v.

MAKAYLEE MENNINI, KNOWN HEIR OF MICHAEL J. MENNINI, DECEASED; AND THE UNKNOWN HEIRS OF MICHAEL J. MENNINI, DECEASED, Defendants

DESCRIPTION

By virtue of a Writ of Execution No. 2019-11988, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. MAKAYLEE MENNINI, KNOWN HEIR OF MICHAEL J. MENNINI, DECEASED; AND THE UNKNOWN HEIRS OF MICHAEL J. MENNINI, DECEASED, Defendants
Real Estate: 1648 WEST 23RD STREET, ERIE, PA 16502
Municipality: City of Erie
Erie County, Pennsylvania
Dimensions: 61.5 x 135.1
Deed Book/Inst#: 2012-027918
Tax I.D. (19) 6206-223
Assessment: \$18,700 (Land)
\$52,100 (Bldg)
Improvement thereon: a residential

dwelling house as identified above.
Leon P. Haller, Esquire
Purcell, Krug & Haller
1719 North Front Street
Harrisburg, PA 17104
(717) 234-4178

May 27 and June 3, 10

SALE NO. 17

Ex. #12715 of 2021

The Huntington National Bank, Plaintiff

v.

Marvin L. Perkins, Jr., as Executor of the Estate of Bettylou Perkins, Defendant
DESCRIPTION

By virtue of a Writ of Execution file to No. 2021-12715, The Huntington National Bank vs. Marvin L. Perkins, Jr., as Executor of the Estate of Bettylou Perkins, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 448 West 29th Street, Erie, PA 16508
0.0882
Assessment Map Number: 19-6047
Assessed Value figure: \$70,570.00
Improvement thereon:
Single Family Dwelling
Kimberly J. Hong, Esquire
Manley Deas Kochalski LLC
P.O. Box 165028
Columbus, OH 43216-5028
614-220-5611

May 27 and June 3, 10

SALE NO. 19

Ex. #12939 of 2019

U.S. Bank Trust National Association, not in its individual capacity but solely as Delaware trustee and U.S. Bank National Association, not in its individual capacity but solely as Co-Trustee for Government Loan Securitization Trust 2011-FV1, Plaintiff

v.

Noelle M. Mountain a/k/a Noelle M. Mattix, Individually and as Heir to the Estate of James P. Mattix, Deceased and Cameron J. Mattix, Solely in His capacity as Heir to the Estate of James P. Mattix, Deceased and The Known and Unknown Heirs of James P. Mattix, Defendants

DESCRIPTION

By virtue of a Writ of Execution filed to No. 12939-19, U.S. Bank Trust National Association, not in its individual capacity but solely as Delaware trustee and U.S. Bank National Association, not in its individual capacity but solely as Co-Trustee for Government Loan Securitization Trust 2011-FV1 v. Noelle M. Mountain a/k/a Noelle M. Mattix, Individually and as Heir to the Estate of James P. Mattix, Deceased and Cameron J. Mattix, Solely in His capacity as Heir to the Estate of James P. Mattix, Deceased and The Known and Unknown Heirs of James P. Mattix, owner(s) of property situated in City of Erie, Erie County, Pennsylvania being 613 West 22nd Street, Erie, PA 16502
613 W. 22 ST. 35 X 135 SINGLE FAMILY
Assessment Map number: 19060018010800
Assessed Value figure: \$59,100
Improvement thereon: N/A
STERN & EISENBERG, PC
ANDREW J. MARLEY, ESQUIRE
1581 MAIN STREET., SUITE 200
THE SHOPS AT VALLEY SQUARE
WARRINGTON, PA 18976
TELEPHONE: (215) 572-8111
FACSIMILE: (215) 572-5025
(COUNSEL FOR PLAINTIFF)

May 27 and June 3, 10

SALE NO. 20

Ex. #12324 of 2021

Pennsylvania Housing Finance Agency, Plaintiff

v.

Brian R. Page, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 12324-21, Pennsylvania Housing Finance Agency vs. Brian R. Page, owner of property situated in the City of Erie, Erie County, Pennsylvania being: 316 Parkway Drive, Erie, PA 16511
Dimensions: Square Feet: 2,112
Acreage: 0.0895
Assessment Map Number: (14)-11-12-104
Assess Value figure: \$51,300.00
Improvement thereon: two-family frame flat
Lois M. Vitti, Esquire
Attorney for Plaintiff
663 Fifth Street
Oakmont, PA 15139
(412) 281-1725

May 27 and June 3, 10

ORIGINAL DATE OF SALE
MAY 20, 2022

SALE NO. 3

Ex. #10714 of 2013

BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP F/K/A COUNTRYWIDE HOME LOANS SERVICING, LP, Plaintiff

v.

JASON R. LLOYD, Defendant
DESCRIPTION

By virtue of a Writ of Execution filed to No. 10714-13, BANK OF AMERICA, N.A., AS SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP F/K/A COUNTRYWIDE HOME LOANS SERVICING, LP vs. JASON R. LLOYD, owner of property situated in the Borough of Waterford, Erie County, Pennsylvania being 509 Cherry Street, Waterford, PA 16441
1,512 square feet, 0.1486 acres
Assessment Map number: 46006016001500
Assessed Value figure: \$97,440.00
Improvement thereon: Residential
Jill M. Fein, Esquire
Attorney I.D. 318491
Hill Wallack LLP
777 Township Line Rd., Suite 250
Yardley, PA 19067
(215) 579-7700

May 27 and June 3, 10

LOOKING FOR A LEGAL AD PUBLISHED IN ONE OF PENNSYLVANIA'S LEGAL JOURNALS?



- Look for this logo on the Erie County Bar Association website as well as Bar Association and Legal Journal websites across the state.
- It will take you to THE website for locating legal ads published in counties throughout Pennsylvania, a service of the Conference of County Legal Journals.

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Edinboro, PA 16412
814/734-3787

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.

ERIE COUNTY LEGAL JOURNAL

ORPHANS' COURT

LEGAL NOTICE

ORPHANS' COURT

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

**DEASEY, DONALD M.,
deceased**

Late of North East Township, Erie County, PA
Executrix: Karen D. Messina, 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

**DUPLANTI, CYNTHIA F., a/k/a
CYNTHIA DUPLANTI,
deceased**

Late of the Borough of North East, County of Erie and Commonwealth of Pennsylvania
Executrix: Christina Maria Bennett, 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

**HETHERINGTON, MARADEE
EDITH,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administratrix: Patricia Ann Marnella
Attorney: Andrew J. Sisinni, Esquire, 1314 Griswold Plaza, Erie, PA 16501

**KREDOVSKI, RUTH L.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executrix: Deborah K. Seng, 1831 West 23rd Street, Erie, PA 16502
Attorney: Joseph G. Zerbe, Esquire, Zerbe Law Offices, 111 East Market Street, Pottsville, PA 17901

**KUEHL, PATRICIA JANE, a/k/a
JANE KUEHL, a/k/a
PATRICIA JANE SWEENEY,
deceased**

Late of Millcreek Township, County of Erie, and Commonwealth of Pennsylvania
Executor: Christopher M. Kuehl, c/o Gary D. Bax, Esquire, 2525 West 26th Street, Erie, PA 16506
Attorney: Gary D. Bax, Esquire, 2525 West 26th Street, Erie, PA 16506

**LARICCIA, ANTHONY H.,
a/k/a ANTHONY LARICCIA,
a/k/a TONY H. LARICCIA, a/k/a
TONY LARICCIA,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administrator: Joseph J. Lariccia, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**LARICCIA, SYLVIA T., a/k/a
SYLVIA LARICCIA,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administrator: Joseph J. Lariccia, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**LESNIEWSKI, IRENE B., a/k/a
IRENE LESNIEWSKI,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executor: Michael A. Lesniewski, 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

**LYNN, VIKKI M., a/k/a
VIKKI MAE LYNN, a/k/a
VIKKI LYNN,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Brenda Henry, 219 Pine Street, Edinboro, PA 16412
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**McLAUGHLIN, BRIAN P., a/k/a
BRIAN PATRICK McLAUGHLIN,
a/k/a BRIAN McLAUGHLIN,
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executor: Jon J. McLaughlin, c/o James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509
Attorney: James J. Bruno, Esquire, 3820 Liberty Street, Erie, PA 16509

**MORSE, DAVID G.,
deceased**

Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Executrix: Melissa K. Kerr, c/o Michael A. Agresti, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Michael A. Agresti, Esq., MARSH SCHAAF, LLP, Suite 300, 300 State Street, Erie, PA 16507

**PERSON, RODNEY M.,
deceased**

Late of the City of Corry in Erie County
Executrix: Krista D. Soares, 4119 Powell Court, Augusta, GA 30909
Attorney: Michael S. Butler, Esq., Heritage Elder Law, 318 South Main Street, Butler, PA 16001

**RZOMP, RYAN C., a/k/a
RYAN CASEY RZOMP,
deceased**

Late of the City of Erie, Erie County, Commonwealth of Pennsylvania
Administrator: James R. Rzomp, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**STEWART, LAWRENCE J.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administrator: PA Soldiers and Sailors Home
Attorney: None

**ZELINA, WILLIAM B., SR.,
a/k/a WILLIAM BENJAMIN
ZELINA, SR.,
deceased**

Late of Elk Creek Township, County of Erie, and Commonwealth of Pennsylvania
Executrix: Kathleen J. Brady, c/o Gary D. Bax, Esquire, 2525 West 26th Street, Erie, PA 16506
Attorney: Gary D. Bax, Esquire, 2525 West 26th Street, Erie, PA 16506

TRUST NOTICES

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

**THE DAVID AND
ANGELINE HOFFMAN TRUST
DATED MARCH 9, 2012,
DAVID M. HOFFMAN,
deceased**

Late of Summit Township, County of Erie, Commonwealth of Pennsylvania
Trustees: Andrew D. Hoffman and Jennifer L. DeCecco, c/o 2530 Village Common Drive, Suite B, Erie, PA 16506
Attorney: Barbara J. Welton, Esquire, 2530 Village Common Drive, Suite B, Erie, PA 16506

SECOND PUBLICATION

**BEER, RICHARD D.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executrix: Jennifer Hoderny, c/o Jerry C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerry C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**BUSECK, FRANCES Q.,
deceased**

Late of the Township of Fairview, County of Erie and Commonwealth of Pennsylvania
Co-executors: Kurt F. Buseck and Mark S. Buseck, c/o 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, QUINN, BUSECK, LEEMHUIS, TOOHEY & KROTO, INC., 2222 West Grandview Blvd., Erie, PA 16506

**CARO, CAROL E., a/k/a
CAROL E. LUCAROTTI, a/k/a
CAROL LUCAROTTI,
deceased**

Late of the City of Erie, Commonwealth of Pennsylvania
Executrix: Andrea M. Lucarotti, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509

**CRAFT, JOHN H.,
deceased**

Late of Greene Township, Erie County, Waterford, PA
Executor: Norman A. Craft, 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

**DIPPO, CHARLES M., SR.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executor: Charles M. Dippo, Jr., 1161 East 21st Street, Erie, PA 16503
Attorney: Michael Harmon, Esquire, 333 State Street, Ste. 203, Erie, PA 16507

**FROMBACH, FRANK, SR.,
deceased**

Late of Girard, Erie County, Pennsylvania
Executrix: Karlea Frombach, 11531 Pennside Road, Albion, PA 16401
Attorney: Michael Harmon, Esquire, 333 State Street, Ste. 203, Erie, PA 16507

**HILL, WILLIAM D.,
deceased**

Late of Fairview Township, Erie County, Pennsylvania
Executrix: Beverly Jenks, c/o Kenzie P. Ryback, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Kenzie P. Ryback, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**HOLCOMB, BARBARA A.,
deceased**

Late of the City of Erie, County of Erie
Executrix: Patricia Young, 257 East 31st Street, Erie, PA 16504
Attorney: John C. Melaragno, Esquire, MELARAGNO, PLACIDI & PARINI, 502 West Seventh Street, Erie, Pennsylvania 16502

**HUDY, FRANK P., a/k/a
FRANK HUDY,
deceased**

Late of the Borough of Lake City, County of Erie, Commonwealth of Pennsylvania
Executrix: Cynthia L. Williams, 3534 Scarboro Road, Erie, PA 16506
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**LONG, NANCY E.,
deceased**

Late of the Township of Harborcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Sally Long Skelly, c/o 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Thomas E. Kuhn, Esquire, QUINN, BUSECK, LEEMHUIS, TOOHEY & KROTO, INC., 2222 West Grandview Blvd., Erie, PA 16506

**SHERMAN, DALE E., a/k/a
DALE SHERMAN,
deceased**

Late of the Township of Elk Creek, County of Erie, Commonwealth of Pennsylvania
Executrix: Joyce A. Sherman, 9735 Sherman Road, Albion, PA 16401
Attorney: Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**TWISS, GRANT R.,
deceased**

Late of Millcreek Township, County of Erie, Pennsylvania
Executrix: Wendy M. Gentile-McCullough, 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

**WEIGLE, RUTH M.,
deceased**

Late of the City of Erie, Erie County, PA
Executrix: Carol Gerbracht, 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

THIRD PUBLICATION

**BARRINGER, DOROTHY MAE,
a/k/a DOROTHY M. BARRINGER,
a/k/a DOROTHY BARRINGER,
deceased**

Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Administrator: Frederick W. Barringer, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**BOSTWICK, MATTHEW J.,
deceased**

Late of the Township of North East, County of Erie, Commonwealth of Pennsylvania
Co-administrators: Joshua K. Bostwick or Robert C. Bostwick, 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

**ENGLERT, JEROME R.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Daniel Englert, 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

**GATEWOOD, RANDALL S.,
deceased**

Late of the City of Erie, Erie County, Pennsylvania
Executrix: Melissa Swanson, P.O. Box 11, Mt. Jewett, PA 16740
Attorneys: WOODS BAKER & ROSS, P.O. Box 360, Kane, PA 16735

**GDANETZ, JEANNE E.,
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administrator: David Gdanetz, 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

**JEWELL, PAUL W., a/k/a
PAUL WINSOR JEWELL, a/k/a
PAUL JEWELL,
deceased**

Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Co-executors: Jonathan W. Jewell and Christy J. DeLullo, 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

**KENWOOD, JEROME R., a/k/a
JEROME ROBERT KENWOOD,
a/k/a JEROME KENWOOD,
deceased**

Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Administratrix: Joan M. Francis, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

**RIZZO, DARLENE M., a/k/a
DARLENE R. RIZZO,
deceased**

Late of the City of Erie, County of Erie, PA
Administrator C.T.A.: Gregory Cermak, c/o Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507
Attorney: Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507

**RIZZO, SALVATORE MARTIN,
a/k/a SALVATORE M. RIZZO,
a/k/a MARTY RIZZO,
deceased**

Late of the City of Erie, County of Erie, PA
Administrator C.T.A.: Gregory Cermak, c/o Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507
Attorney: Mary Alfieri Richmond, Esq., 502 Parade Street, Erie, PA 16507

**SAMPLE, MICHAEL D.,
deceased**

Late of the Wayne Township, County of Erie, Commonwealth of Pennsylvania
Administratrix: Debra B. Sample, 17495 Buffalo Rd., Corry, PA 16407
Attorney: Henry W. Gent, III, Esquire, DALE WOODARD GENT McFATE LAW FIRM, 1030 Liberty Street, Franklin, PA 16323

**SCHNEIDER, WILLIAM L., JR.,
deceased**

Late of the City of Erie, County of Erie, Pennsylvania
Executor: Daniel S. Schneider, 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

**TRAUTMAN, DONALD W.,
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executor: Robert J. Smith, 400 East Gore Road, Erie, PA 16509-3726
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**WURST, GEORGE H.,
deceased**

Late of the Township of Summit, County of Erie, Commonwealth of Pennsylvania
Executor: Douglas P. Wurst, 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

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Tuesday, June 21, 2022

**The Will J. Schaaf & Mary B. Schaaf
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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

Speaker



Ellen Freedman, CLM, serves as the Law Practice Management Coordinator for the Pennsylvania Bar Association. In that capacity she assists PBA's members with management issues and decisions on the business side of their practice, including areas like technology, financial management and profitability, human resources, marketing, risk management and setting up a practice.
Ellen is founder and President of Freedman Consulting, which assists PA law firms with a full range of issues and projects on the business side of the practice.

Ellen holds the designation of Certified Legal Manager through the Association of Legal Administrators (ALA), the credentialing body for the CLM degree. Of the 11,000+ members of the ALA, approximately 260 are certified legal managers. Ellen was one of the first 20 in the nation to have achieved this designation. She holds a Certification in Computer Programming from Maxwell Institute, and a Certification in Web Site Design and a B.A. from Temple University.

Ellen was inducted as a Fellow of the College of Law Practice Management in October, 2020. Membership in the College is by invitation only. Eligible nominees include those who have made significant contributions to the field of law practice management for over 10 years. Since its establishment over 20 years ago, nearly 300 practitioners from five different countries have become Fellows of the College.

Ellen managed inside law firms for 20 years. Most of that time was spent in a midsize (35+ attorney) firm environment. She launched her consulting practice in 1998, and joined the Pennsylvania Bar Association in 1999.

Ellen is an associate member of the American Bar Association, and its Law Practice Management and General Practice & Small Firm sections. She was a member of the Association of Legal Administrators for over 20 years, and founded the Independence Chapter. She is a frequent author and speaker on law firm management issues on a national level.

Seminar

Managing mountains of information, while coping with the relentless daily responsibilities of servicing your clients, can be a stressful and daunting task for any attorney. This fast-paced session addresses the persistent challenges you are likely to face, and explores the tools readily available to help you meet those challenges head-on and stay on top of your game.

This session examines the variety of reasons we fail to maximize productivity. It illuminates how to incorporate better organization and communication, and how to overcome procrastination, to ensure that work flows smoothly and efficiently, while avoiding ethical blunders and disciplinary complaints.

ATTENTION ALL ATTORNEYS

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CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

MICHAEL J. NIES814-459-1138
 2409 State Street, Suite A.....(f) 814-456-9398
 Erie, PA 16503mike@michaeljnies.com

ALEXANDRIA M. IWANENKO814-454-1314
 Amicangelo & Theisen(f) 814-454-1313
 1314 Griswold Plaza, Third Floor
 Erie, PA 16501alexandria@amicangelothaisen.com

JANINE M. MCCLINTIC.....814-870-7715
 MacDonald, Illig, Jones & Britton LLP.....(f) 814-454-4647
 100 State Street, Suite 700
 Erie, PA 16507jmclintic@mijb.com

Change of phone number

CATHY M. LOJEWSKI814-453-3735

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WEEKLY WRAP-UP

June 3, 2022

Saving faces - Johnson & Johnson Consumer was hit with a biometric privacy class action Thursday in New Jersey District Court. The complaint contends that the company's Neutrogena Skin360 app, which delivers personalized skin care recommendations, collects and stores facial scans in violation the Illinois Biometric Information Privacy Act. The suit is backed by brought by Mazie Slater Katz & Freeman; Parasma Lieberman Law and the Law Office of Allen Schwartz. Counsel have not yet appeared for the defendant. The case is 3:22-cv-03149, *Melzer v. Johnson & Johnson Consumer Inc.*

Patient billed about \$230K for surgery after \$1,300 estimate is protected by contract law, state supreme court says - Contract law protects a patient who was billed about \$230,000 for surgery, despite being told that her cost after insurance would be about \$1,300, the en banc Colorado Supreme Court ruled last week. The state supreme court ruled that the patient, Lisa Melody French, didn't have to pay the high charge because the price wasn't disclosed in hospital service agreements that she signed, and those agreements didn't incorporate the hospital's internal database of charges. Read more ... <https://www.abajournal.com/web/article/patient-billed-230k-for-surgery-after-1300-estimate-is-protected-by-contract-law-court-says>

Woman slips after taking off shoes at Philadelphia International TSA checkpoint - A woman alleges she slipped after removing her shoes at a security checkpoint at Philadelphia International. Jacqueline Allen-Fillmore filed a complaint April 26 in the U.S. District Court for the Eastern District of Pennsylvania against the Transportation Security Administration (TSA), Philadelphia International Airport and the City of Philadelphia alleging negligence. The plaintiff alleges that she was flying out of the Philadelphia International Airport on Jan. 14, 2021, to visit family in North Carolina. She claims that at the TSA security checkpoint, she removed her shoes and was processed by TSA officers through the luggage and body scans. The plaintiff alleges that she was only wearing socks when she slipped and fell on a slippery floor and that the rubber mats in the area were placed in a "haphazard manner." She alleges the defendants' negligence for failing to prevent travelers from walking in area where a dangerous condition existed, failing to warn of the hazard, failing to inspect and maintain its premises in a safe condition or to correct the dangerous condition. Read more ... <https://pennrecord.com/stories/625475734-suit-woman-slips-after-taking-off-shoes-at-philadelphia-international-tsa-checkpoint>

Big tech bedfellows? - Google, parent company Alphabet, Apple and both companies' chief executives were hit with an antitrust lawsuit Friday in California Northern District Court. The suit alleges that Apple and Google struck an anti-competitive pact whereby Apple agreed not to compete with Google in the search business and Google agreed to pay Apple billions of dollars to be the default search engine on Apple devices. The suit, brought on behalf of more than 25 individuals, is backed by the Alioto Law Firm, Bonsignore Trial Lawyers, the Veen Firm, and other plaintiffs firms. Counsel have not yet appeared for the defendants. The case is 3:22-cv-02499, *Arcell et al v. Google LLC et al.*

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