



VOL. 105  
NO. 39

105  
ERIE

SEPTEMBER 30  
2022

# ERIE COUNTY LEGAL JOURNAL

OPINION  
INSIDE

In the United States District Court for the Western District of Pennsylvania  
Robert Repa and Jean Repa v. Frank Napierkowski, Hill Trux Tank Lines, Inc.

## INDEX

**NOTICE TO THE  
PROFESSION**..... 4

**OPINION**..... 7

### COURT OF COMMON PLEAS

Certificate of Authority..... 20

Change of Name Notices... 20

Fictitious Name Notices..... 20

Incorporation Notice..... 20

Withdrawal Notice..... 20

Sheriff Sales..... 21

### ORPHAN'S COURT

Audit List..... 24

Estate & Trust Notices..... 25

### CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

..... 30

**WEEKLY WRAP-UP**..... 31

## ON THE COVER

**MEETING**, Nominating  
Committee

**MEETING**, Diversity &  
Inclusion Section Leadership

**MEETING**, Defense Bar  
Section

## ERIE COUNTY LEGAL JOURNAL

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

Managing Editor: Megan E. Anthony

PLEASE NOTE: NOTICES MUST BE RECEIVED AT THE ERIE  
COUNTY BAR ASSOCIATION OFFICE BY 3:00 P.M. THE  
FRIDAY PRECEDING THE DATE OF PUBLICATION.

All legal notices must be submitted in typewritten form  
and are published exactly as submitted by the advertiser.  
The Erie County Bar Association will not assume any  
responsibility to edit, make spelling corrections, eliminate  
errors in grammar or make any changes in content.

The *Erie County Legal Journal* makes no representation  
as to the quality of services offered by an advertiser in  
this publication. Advertisements in the *Erie County Legal  
Journal* do not constitute endorsements by the Erie County  
Bar Association of the parties placing the advertisements  
or of any product or service being advertised.

ERIE COUNTY LEGAL JOURNAL is published every  
Friday for \$57.00 per year (\$1.50 single issues/\$5.00 special  
issues, i.e. Seated Tax Sales). Owned and published by the  
Erie County Bar Association (Copyright 2022©), 429 West  
6th St., Erie, PA 16507 (814/459-3111). POSTMASTER:  
Send address changes to THE ERIE COUNTY LEGAL  
JOURNAL, 429 West 6th St., Erie, PA 16507-1215.

## ERIE COUNTY BAR ASSOCIATION CALENDAR OF EVENTS AND SEMINARS

### MONDAY, OCTOBER 3, 2022

Red Mass  
5:15 p.m.  
Mary, Seat of Wisdom Chapel -  
Gannon University  
513 Peach St., Erie, PA 16501  
*Click link for details*  
[https://www.eriebar.com/events/public-  
registration/1734](https://www.eriebar.com/events/public-registration/1734)

### FRIDAY, OCTOBER 7, 2022

Flu Shots administered by  
LECOM Center for Health and Aging  
11:00 a.m. - 2:00 p.m.  
The Will J. Schaaf & Mary B. Schaaf  
Education Center

### TUESDAY, OCTOBER 11, 2022

Personnel Committee Meeting  
9:00 a.m.  
ECBA Headquarters in-person or via Zoom

### WEDNESDAY, OCTOBER 12, 2022

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

### THURSDAY, OCTOBER 13, 2022

Live ECBA Seminar  
*Being a Professional and Practicing  
Professionally*  
3:00 - 4:30 p.m.  
The Will J. Schaaf & Mary B. Schaaf  
Education Center  
*Click link for details*  
[https://www.eriebar.com/events/public-  
registration/1769](https://www.eriebar.com/events/public-registration/1769)

### SATURDAY, OCTOBER 15, 2022

Wills for Heroes  
10:00 a.m. - 1:00 p.m.  
The Will J. Schaaf & Mary B. Schaaf  
Education Center

### TUESDAY, OCTOBER 18, 2022

Solo/Small Firms Division Meeting  
Meeting  
Noon  
ECBA Headquarters in-person or via Zoom

### WEDNESDAY, OCTOBER 19, 2022

Civil Litigation Section Meeting  
Meeting  
Noon  
ECBA Headquarters in-person or via Zoom

### FRIDAY, OCTOBER 21, 2022

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

### MONDAY, OCTOBER 24, 2022

ECBA Board of Directors Meeting  
Noon  
ECBA Headquarters in-person or via Zoom

### 2022 BOARD OF DIRECTORS

Jennifer K. Fisher, *President*  
J. Timothy George, *First Vice President*  
William S. Speros, *Second Vice President*  
Nicholas R. Pagliari, *Past President*  
S. Craig Shamburg, *Treasurer*  
Emily S. Antolik, *Secretary*

John M. Bartlett  
Alexander K. Cox  
Jonathan M. D'Silva  
Catherine Moodey Doyle  
Rachel A. George  
Gregory J. Grasinger  
William B. Helbling  
Elizabeth A. Hirz  
Jamie R. Schumacher  
John J. Shimek, III



### **SAFENET - LEGAL DEPT - PFACS ATTORNEY**

#### **DUTIES:**

Provide legal consultation/representation to victims of domestic violence in civil procedures.  
Provide legal consultation to PFACS staff & meet with contract attorneys.  
Participate in task forces and trainings, maintain CLE credits.

#### **QUALIFICATIONS:**

Juris Doctor Degree; experience in family law preferred; PA license to practice law and membership in ECBA required. Must demonstrate sensitivity to the complexity of domestic violence issues.

Applicants should submit resumes to: [lmartz@safenerie.org](mailto:lmartz@safenerie.org)

Sept. 30 and Oct. 7, 14, 21, 28 and Nov. 4, 11, 18

### **NOTICE – POSITIONS AVAILABLE 2023**

The Erie County Court of Common Pleas has contract positions available for attorneys to provide representation for indigent criminal defendants (adult & juvenile), indigent criminal defendants in PCRA's, homicide defendants, parents and/or children in dependency and IVT cases, as well as Guardian Ad Litem.

The breakdown of available positions for 2023 is as follows:

<b>Indigent criminal defendants – Adult</b>	<b>6 positions</b>
<b>Indigent criminal defendants – Juvenile</b>	<b>3 positions</b>
<b>Dependency/IVT Hearings</b>	<b>7 positions</b>
<b>PCRAs</b>	<b>1 position</b>
<b>Guardian Ad Litem</b>	<b>5 positions</b>
<b>Coordinating Guardian Ad Litem</b>	<b>1 position</b>
<b>Indigent criminal defendants – Homicide</b>	

All contracts may be reviewed in the Court Administrators Office. Please direct all letters of interest and/or resume to Robert J. Catalde, Esquire, District Court Administrator. Please specify each position or positions for which you are applying.

#### **DEADLINE: October 28, 2022**

In order to be considered for the 2023 contract year, **all** Attorneys currently under contract must reapply by the deadline date above.

Sept. 23, 30 and Oct. 7, 14, 21

### **U.S. BANKRUPTCY JUDGESHIP VACANCY**

WESTERN DISTRICT OF PENNSYLVANIA (Erie). Refer to [www.ca3.uscourts.gov](http://www.ca3.uscourts.gov) for detailed announcement. Due date: October 19, 2022.

Sept. 23, 30 and Oct. 7, 14

### **PART-TIME ATTORNEY NEEDED**

Part-time attorney needed in North Millcreek. Flexible hours and could be largely remote once trained. High volume online law practice. Potential to grow with the firm. You: sharp, fast, tenacious, self-motivated. Please email resume and cover letter to [jimcainrsemail@gmail.com](mailto:jimcainrsemail@gmail.com).

Sept. 30

## **Being a Professional and Practicing Professionally**

**Thursday, October 13, 2022**

**The Will J. Schaaf & Mary B. Schaaf Education Center  
at the ECBA, 429 West 6th Street, Erie (IN-PERSON ONLY!)**

**Registration:** 2:45 p.m.  
**Seminar:** 3:00 - 4:30 p.m.  
**Cost:** \$70 - ECBA Members  
(Judges & Attorneys)  
and their Paraprofessional Staff  
\$90 - Non-members



**1 Hour Substantive CLE Credit / 0.5 Hour Ethics CLE Credit**

#### **Seminar:**

A panel comprised of a member of the bench and members of the bar will discuss various topics surrounding the "unique" practice of law in Erie. Specifically, the discussion will include what the bench appreciates from local attorneys versus what they wish out of town counsel knew/did; how to simultaneously be an adversary and a professional (and maybe even a friend); how your actions/inactions impact the community at large; and how do you get "in" to the Erie County bar when you're not an Erieite.

#### **Speakers:**



**Judge Marshall J. Piccinini** was appointed judge of the Erie County Court of Common Pleas by Governor Tom Wolf in 2019, and was unanimously confirmed by the Pennsylvania Senate. He served for 20 years as Assistant U.S. Attorney for the Western District of Pennsylvania, including Chief of the Erie Division from 2001 to 2019 and Senior Litigation Counsel and Professional Responsibility Officer from 2016 to 2018. He previously served as an Erie County Assistant and Deputy District Attorney. Judge Piccinini serves on the Erie County Policy and Planning Council for Youth and Families, the Board of Directors of the Erie City Mission and the Association of Recovery in Higher Education. Judge Piccinini earned a Juris Doctorate from the University of Pittsburgh School of Law and a bachelor's degree from Washington and Jefferson College. He served in the U.S. Army as a Judge Advocate with the 1st Infantry Division, Fort Riley, Kansas, from 1990 to 1994, and as a U.S. Army Reserve Commander of the 430th and 322nd MP (CID) Detachments in Erie from 1994 to 1999.



**Atty. Neal R. Devlin** focuses his practice on litigating complex disputes. He has litigated such disputes in state and federal courts throughout the country. He is also experienced in addressing all manner of disputes in arbitration and other forms of alternative dispute resolution. Atty. Devlin's practice includes litigating contract, business and intellectual property disputes, as well as white collar crime matters. After law school and working for Knox Law for one year, he clerked for the Honorable Richard L. Nygaard on the U.S. Court of Appeals for the Third Circuit. He serves as a Board member and General Counsel of Knox Law.



**Atty. Steven E. George** focuses his practice on litigation, estate planning and administration, and real estate transactions. Atty. George has extensive experience litigating in complex custody matters, including grandparents' rights and interstate custody cases, as well as the termination of parental rights. Additionally, Atty. George represents children involved in Erie County abuse and neglect proceedings and frequently serves as a guardian ad litem representing the best interest of children in custody cases.



**Atty. Emilie A. Swan** is a member of the Business Transactions Department at MacDonald Illig. Prior to attending law school, Atty. Swan pursued a Bachelor of Arts degree in Legal Studies from Gannon University. This degree proved to be highly instrumental both for law school, as well as in her current practice. She then earned her Juris Doctorate from Duquesne University in 2017. During law school and prior to joining the Firm, Atty. Swan focused her practice on real estate law. She has now expanded that focus to include estate and tax planning, estate and trust administration, elder law, and business law.

**FOR MORE INFORMATION AND TO REGISTER, VISIT:**  
<https://www.eriebar.com/events/public-registration/1769>

# LAWPAY IS FIVE STAR!



LawPay has been an essential partner in our firm's growth over the past few years. I have reviewed several other merchant processors and no one comes close to the ease of use, quality customer receipts, outstanding customer service and competitive pricing like LawPay has.

— Law Office of Robert David Malove

**LAWPAY**<sup>®</sup>  
AN AFFINIPAY SOLUTION

## THE #1 PAYMENT SOLUTION FOR LAW FIRMS

Getting paid should be the easiest part of your job, and with LawPay, it is! However you run your firm, LawPay's flexible, easy-to-use system can work for you. Designed specifically for the legal industry, your earned/unearned fees are properly separated and your IOLTA is always protected against third-party debiting. Give your firm, and your clients, the benefit of easy online payments with LawPay.

**877-506-3498**

or visit

<https://lawpay.com/member-programs/erie-county-bar/>

**ROBERT REPA AND JEAN REPA, HUSBAND AND WIFE, Plaintiffs**  
**v.**  
**FRANK NAPIERKOWSKI, HILLTRUX TANK LINES, INC., Defendants**

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

1:19-CV-00101-RAL

RICHARD A. LANZILLO  
UNITED STATES MAGISTRATE JUDGE

MEMORANDUM OPINION ON PLAINTIFFS' MOTION FOR NEW TRIAL [ECF NO. 167]

### MEMORANDUM OPINION

#### I. Introduction

Robert Repa, a fire police officer, was directing traffic away from a fire scene when he was struck by the driver-side rear wheel of a tanker-truck operated by Frank Napierkowski. Mr. Repa and his spouse, Jean Repa, commenced this negligence action against Napierkowski and his employer, Hilltrux Tank Lines, Inc. (Hilltrux), to recover damages for the injuries sustained as a result of that accident.<sup>1</sup> At the conclusion of trial, the jury returned a verdict in favor of the Defendants. The jury found that Napierkowski was not negligent in the operation of his vehicle.

Plaintiffs have moved for a new trial pursuant to Federal Rule of Civil Procedure 59. ECF Nos. 167, 168, 172. They argue that the Court erred in its charge to the jury and that the jury rendered a verdict against the clear weight of the evidence. For the following reasons, Plaintiffs' motion for a new trial will be denied.

#### II. Factual Background<sup>2</sup>

Mr. Repa is a fire police officer associated with the Cambridge Springs, Pennsylvania, Fire Department. During the early morning hours of May 2, 2017, he was present at the intersection of Zillhaver Road/Kreitz Road and U.S. Route 19, a four-way intersection in the Borough of Cambridge Springs. Mr. Repa was directing traffic away from a major fire in the town of Cambridge Springs, approximately 2.4 miles away. Napierkowski was driving a Hilltrux tanker-truck southwest on Route 19 at approximately 4:30 a.m. when he approached the intersection where Mr. Repa was directing traffic. Napierkowski observed Mr. Repa and stopped his truck just short of the intersection. At that point, Mr. Repa and Napierkowski conversed for a short time. Although the parties disagree regarding Mr. Repa's precise instructions to Napierkowski, both acknowledged that Mr. Repa directed Napierkowski to execute a left turn onto Zillhaver Road. As Napierkowski executed his left turn, the rearmost

<sup>1</sup> This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1332 based upon complete diversity of citizenship between Plaintiffs and Defendants and an amount in controversy more than \$75,000, exclusive of interest and costs.

<sup>2</sup> As of the issuance of this Opinion, no party has ordered a trial transcript.



driver-side tire of his tanker-truck struck and severely injured Mr. Repa's legs.

The parties offered conflicting testimony and other evidence regarding Mr. Repa's actions and his position leading up to the accident as well as the track Napierkowski's tanker truck took through his execution of the left turn. The jury returned a verdict in favor of the Defendants. Special jury interrogatory No. 1 asked whether Napierkowski was negligent in the operation of his tanker-truck. The jury answered this question in the negative. As a result, the jury did not reach the questions relating to causation or the Defendants' comparative negligence defense.

### III. Assertions of Error and Grounds for Request for a New Trial

Plaintiffs argue that a new trial is necessary because (1) the Court erred in two aspects of its instructions to the jury and, alternatively, (2) the jury returned a verdict against the clear weight of the evidence. Plaintiffs assert that the Court incorrectly instructed the jury regarding the standard of care that applied to Mr. Repa at the time of the accident by including "the standard of care for pedestrians in a roadway having a particular amount of duty to watch for traffic, despite Mr. Repa being a traffic officer and not a pedestrian." ECF No. 168, p. 1. Plaintiffs also argue that the Court erred when it declined to instruct the jury on the statutory definition of the term "roadway" and the specific duty of a driver as to a person on the shoulder or berm of the road. *Id.*

### IV. Standard of Review

A district court may grant a new trial "to all or any of the parties and on all or part of the issues in an action in which there has been a trial by jury." Fed. R. Civ. P. 59(a). A motion for new trial rests in the district court's sound discretion. *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 556 (1984) (citing *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940)). The extent of this discretion varies depending on the nature of error alleged. *See Moussa v. Commonwealth of Pa. Dep't of Pub. Welfare*, 289 F. Supp. 2d 639, 648 (W.D. Pa. 2003) (citing *Klein v. Hollings*, 992 F.2d 1285, 1289–90 (3d Cir. 1993)). When a party seeks a new trial based on erroneous jury instructions, the district court "must first determine whether an error was made" and, if so, it "must then determine whether that error was so prejudicial that refusal to grant a new trial would be inconsistent with substantial justice." *Jackson v. City of Pittsburgh*, 2011 WL 3443951, at \*8 (W.D. Pa. Aug. 8, 2011) (cleaned up). The purported errors must be "substantial." *Murray v. Ennis*, 523 Fed. Appx. 901, 902 (3d Cir. 2013) (citing *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940)). Jury instructions are to be assessed based on the "totality of the charge..." not merely a particular paragraph or sentence." *Dressler v. Busch Entm't Corp.*, 143 F.3d 778, 780 (3d Cir. 1998) (citing *In re Braen*, 900 F.2d 621, 626 (3d Cir. 1990)). The "charge, taken as a whole and viewed in light of the evidence, [must] fairly and adequately submit[ ] the issues in the case to the jury." *Id.* (citing *Tigg Corp. v. Dow Corning, Corp.*, 962 F.2d 1119, 1123 (3d Cir. 1992)). "The trial court should be reversed only if the instruction was capable of confusing and thereby misleading the jury." *Id.* (quoting *United States v. Rockwell*, 781 F.2d 985, 991 (3d Cir. 1986)).

"[A] party has no vested interest in any particular form of instructions; the language of the charge is for the trial court to determine." *Tigg Corp.*, 962 F.2d at 1124; *James v. Continental Ins. Co.*, 424 F.2d 1064, 1065 (3d Cir. 1970). The district court should not give a proposed instruction that misstates the law, *Acevedo-Luis v. Pagan*, 478 F.3d 35, 38 (1st Cir. 2007), or does not match the evidence at trial. *See Shaw v. Lauritzen*, 428 F.2d 247, 250 (3d Cir.

1970) ("it was not reversible error for the trial judge to refuse" a proposed instruction that "was worded in a confusing manner in the light of the evidence"). And parties "must propose a lawful instruction or correction, and not one that substantially overstates the law in that party's favor." *Parker v. City of Nashua, N.H.*, 76 F.3d 9, 12 (1st Cir. 1996); *cf. Russell v. Plano Bank & Tr.*, 130 F.3d 715, 719 (5th Cir. 1997) (on appeal, the party must "show as a threshold matter that the proposed instruction correctly stated the law.").

Furthermore, "[t]he district court [is] under no obligation to tinker with [a] flawed proposed instruction until it [is] legally acceptable." *Rogers v. Ingersoll-Rand Co.*, 144 F.3d 841, 845 (D.C. Cir. 1998) (citing *Parker v. City of Nashua, N.H.*, 76 F.3d 9, 12 (1st Cir. 1996)) ("[W]hen the instruction offered... is manifestly overbroad, the district judge may reject without assuming the burden of editing it down to save some small portion that may be viable."). The district court is only obligated to rewrite an improper proposed instruction if a reformed version is needed to "accurately and fairly set[ ] forth the current status of the law" on a necessary point of law that is not already encompassed by the whole jury charge. *Douglas v. Owens*, 50 F.3d 1226, 1233 (3d Cir. 1995).

Moreover, if a jury instruction or the failure to give one was erroneous, a new trial is not required if the error was harmless. *See Komis v. Sec'y of United States Dep't of Lab.*, 918 F.3d 289, 297 (3d Cir. 2019) (citing *Harvey v. Plains Tp. Police Dep't*, 635 F.3d 606, 612 (3d Cir. 2011)). That is, "an error is harmless if it is highly probable that the error did not contribute to the judgment." *Id.* (internal quotation marks and citation omitted). *See also Murray v. United of Omaha Life Ins. Co.*, 145 F.3d 143, 156 (3d Cir. 1998).

In contrast to a challenge to a jury instruction, the district court's "discretion is more limited when granting a new trial on the basis that the jury's verdict is against the weight of the evidence." *Moussa v. Pa. Dep't of Pub. Welfare*, 289 F. Supp. 2d 639, 648 (W.D. Pa. 2003). The district court may grant a new trial only if the verdict was "contrary to the great weight of the evidence; that is, where a miscarriage of justice would result if the verdict were to stand." *Pryer*, 251 F.3d at 453, or the verdict "cries out to be overturned or shocks our conscience." *Williamson v. Consolidated Rail Corp.*, 926 F.2d 1344, 1353 (3d Cir. 1991). A new trial is not justified "because the evidence was sharply in conflict, because the jury could have drawn different inferences or conclusions, or because another result is more reasonable." *Shushereba v. R.B. Indus., Inc.*, 104 F.R.D. 524, 527 (W.D. Pa. 1985). That is, "a verdict may not be set aside when it is plausible or when it has a rational basis." *Moussa*, 289 F. Supp. 2d at 648 (citing *Delli Santi v. CNA Ins. Cos.*, 88 F.3d 192, 202 (3d Cir. 1996)). This limit on the district court's power respects the jury's role by "ensur[ing] that a district court does not substitute its judgment of the facts and the credibility of witnesses for that of the jury." *Fineman v. Armstrong World Indus., Inc.*, 980 F.2d 171, 211 (3d Cir. 1992) (citation and internal quotation marks omitted).

### V. Discussion

#### A. The Asserted Errors in the Court's Instructions Regarding Repa's Duty of Care Were Harmless.

When a party seeks a new trial based on an erroneous jury instruction, the court typically first considers whether the assertion of error has merit and, if the court finds that it does, then it assesses the extent to which the error has prejudiced the moving party. *Jackson*, 2011 WL 3443951, at \*8. In this case, however, the Court will reverse this order of analysis as to the

asserted errors in the Court’s instructions regarding Mr. Repa’s duty of care because any such errors were facially harmless. As noted, an error in a civil case is harmless “if it is highly probable that the error did not contribute to the judgment.” *Komis v. Sec’y of United States Dep’t of Lab.*, 918 F.3d 289, 297 (3d Cir. 2019). In this case, the verdict slip listed six questions. The first question asked: “Was Defendant Frank Napierkowski negligent?”—to which the jury answered “no.” ECF No. 166, p. 1. The jury never reached the question whether Mr. Repa was negligent. Thus, any flaw in the instruction regarding his duty of care could not have affected the jury’s verdict. Having found that Mr. Napierkowski was not negligent in the operation of his vehicle, the jury had no reason or occasion to reach issues regarding Mr. Repa’s duty of care. The instructions regarding Mr. Repa’s duty of care related to the Defendants’ contributory/comparative negligence defense, which the jury never reached. Because any flaw in those instructions could not have affected the jury’s verdict, it necessarily follows that any such error was harmless. *See Komis*, 918 F.3d at 297-98 (concluding alleged error in jury instructions was harmless when “the jury would have reached the same result had it been instructed according to” the party’s desired instruction) (quoting *Murray v. United of Omaha Life Ins. Co.*, 145 F.3d 143, 156–57 (3d Cir. 1998)); *Co. Wrench, Ltd. v. Highway Equip. Co.*, 2014 WL 4546793, at \*8 (W.D. Pa. Sept. 12, 2014) (holding harmless the alleged error in a jury instruction when the jury never reached that issue’s relevant question on its verdict form because it answered “no” to a necessary preceding question).

#### B. The Court Properly Instructed the Jury on Mr. Repa’s Duty of Care.

In any event, the Court properly instructed the jury concerning Mr. Repa’s duty of care. The Court instructed the jury that both Napierkowski and Mr. Repa had a duty to exercise reasonable care under the circumstances based on what a reasonably careful person would do or not do under the circumstances. *See* ECF No. 167-1. The Court charged the jury as follows:

Mr. and Mrs. Repa are pursuing a negligence claim against Mr. Napierkowski and Hilltrux Tank Lines relating to Mr. Napierkowski’s alleged careless or unreasonable operation of his tanker truck on May 2, 2017. The Repas assert that as a result of this alleged negligence, Robert Repa sustained serious personal injuries and incurred other losses, and that Mrs. Repa was also damaged as a result.

#### General Liability Instruction: Negligence

In order to recover on their negligence claim against Mr. Napierkowski and Hilltrux, the Repas must prove by a preponderance of the evidence that Mr. Napierkowski breached or violated a duty of care to Mr. Repa and that Mr. Repa suffered injury or damages as a result of that breach of duty. The mere happening of an accident does not establish negligence.

#### Negligence: Duty to Act with Reasonable Care

A person must act in a reasonably careful manner to avoid injuring or harming others.

The care required varies according to the circumstances and degree of danger at a particular time.

You must decide how a reasonably careful person would act under the circumstances established by the evidence in this case.

A person who does something a reasonably careful person would not do under the circumstances is negligent.

A person can also be negligent by failing to act. A person who fails to do something a reasonably careful person would do under the circumstances is negligent.

The scope of an individual’s duty of care extends to those risks that are reasonably foreseeable under the circumstances.

A driver has a duty to operate his vehicle in a manner so as not to expose others on the road to an unreasonable risk of harm.

When a driver is starting his vehicle from a stopped position, he must ascertain whether he can make such a movement safely. Thus, a driver has a duty to maintain a proper lookout and to assure himself that no pedestrians will be injured by his movement.

At the same time, a person has a duty to use reasonable care to maintain a lookout for vehicles lawfully and foreseeably operated in the roadway.

ECF No. 167-1, pp. 13-16.

The Court modelled its duty of care instruction on § 13.10 of the Pennsylvania Suggested Standard Civil Jury Instructions. *See* § 13.10 (Civ) Negligence, Pa. SSJI (2020). Pennsylvania courts have repeatedly approved this Standard Jury Instruction as an accurate statement of Pennsylvania law and as an appropriate instruction concerning the standard of care in a negligence action.<sup>3</sup> *See Grove v. Port Auth. of Allegheny Cty.*, 218 A.3d 877, 889 (2019) (reversing the Pennsylvania Commonwealth Court’s remand for new trial and noting that trial court’s use of § 13.10 (Civ) Negligence, Pa. SSJI (2020) was the appropriate jury charge on duty of care). *See also, Reppond by Reppond v. Ferrante*, 2018 WL 460963, at \*3 (Pa. Super. Ct. Jan. 17, 2018) (citing *Krepps v. Snyder*, 112 A.3d 1246, 1256 (Pa. Super. Ct. 2015) (in a case about allegedly negligent operation of a vehicle, “[t]he trial court’s instruction of negligence from Section 13.10 of the Pennsylvania Suggested Standard Civil Jury Instructions accurately reflected Appellee’s duty of care and was sufficient to guide the jury in its deliberations.”); *Medley v. Se. Pa. Trans. Auth.*, 238 A.3d 531 (Pa. Commw. Ct. 2020) (approving use of Pennsylvania Suggested Standard Civil Jury Instruction 13.10 (2012) for the duty of care).

<sup>3</sup> The parties agree that Pennsylvania substantive law applies in this diversity action.

Plaintiffs argue that the portion of the charge that instructed that “[a] person has a duty to use reasonable care to maintain a lookout for vehicles lawfully and foreseeably operated in the roadway” improperly “included the standard of care for pedestrians in a roadway having a particular amount of duty to watch for traffic, despite Mr. Repa being a traffic officer and *not a pedestrian*.” ECF No. 168, p. 1 (emphasis added). The Court overruled Plaintiffs’ objection on the grounds that (1) the Court’s instruction, as drafted, properly accounted for Mr. Repa’s status as a traffic officer when it instructed the jury to consider the conduct of each actor in the context of the circumstances existing at the time of the accident, and (2) the premise of the objection—that differing standards of care apply to pedestrians and traffic control officers—is not consistent with Pennsylvania law and, if incorporated in the charge, likely would have misled and confused the jury.

The Court also declined to give the following additional instruction proposed by Plaintiffs:

In considering the degree of care which the plaintiff was required to exercise for his own safety, an important factor is the nature and requirements of his work.

An officer directing traffic, in order to properly discharge his duties, is required to assume a position on a highway that is necessarily a place of danger. In order to perform his assigned duties with reasonable adequacy, an officer directing traffic is not legally required to watch constantly and continuously for the approach of vehicles from any and all directions.

ECF No. 125, p. 3. The Court rejected this proposed instruction because the relevant negligence and reasonable care principles applicable to all actors, including Mr. Repa, were adequately covered by the Court’s charge as drafted, and Plaintiffs’ proposed charge was factually unbalanced and misstated Pennsylvania law.

Plaintiffs cited two Pennsylvania Supreme Court cases, *Shaffer v. Torrens*, 58 A.2d 439 (Pa. 1948) and *Phillips v. Philadelphia Transp. Co.*, 358 Pa. 265, 56 A.2d 225 (Pa. 1948), in support of their requested charge. In their motion for new trial, they contend that Pennsylvania law “has long held that the duties of a traffic officer discharging his duties on a roadway with respect to his own safety are lesser than that of pedestrians walking upon on (sic) that same roadway.” ECF No. 168, pp. 4-5 (emphasis in original). Neither case supported Plaintiffs’ position. The language from each case upon which Plaintiffs relied did not adopt a “lesser” standard of care for traffic officers but, instead, simply summarized the facts and circumstances that supported the verdict in each case. In other words, the language upon which Plaintiffs relied reflected a specific factual application of the general standard of care, not a statement of law to be incorporated in a charge to the jury. The precise language of *Shaffer* upon which Plaintiffs relied in support of their proposed charge states:

In considering the degree of care which the plaintiff was required to exercise for his own safety, an important factor is the nature and requirements of his work: *Phillips v. Philadelphia Transportation Co.*, 358 Pa. 265, 268, 56 A.2d 225, 226. *The proper discharge of the duties of*

*his employment required him to assume a position on the highway which, in view of the heavy traffic, was necessarily a place of danger. In order to perform his assigned duties with reasonable adequacy, he could not be expected, nor did the law require him, to watch constantly and continuously for the approach of cars from any and all directions.*

*Shaffer*, 359 Pa. at 190, 58 A.2d at 440 (emphasis supplied).

As the foregoing language reflects, the *Shaffer* Court was describing the plaintiff’s specific circumstances relevant to the jury’s finding that the plaintiff exercised due care prior to the accident. In sustaining the verdict based on the evidence in that case, the Pennsylvania Supreme Court noted that the “proper discharge of the duties of [the plaintiff’s] employment,” required that he “assume a position on the highway.” *Id.* The Court also noted “the heavy traffic” at the scene that made it “necessarily a place of danger.” *Id.* In the present case, the evidence at trial was that no other traffic was present at the intersection where Mr. Repa was directing traffic when the accident occurred. And the record includes little evidence, if any, regarding Mr. Repa’s specific employment responsibilities. Nevertheless, based on the Court’s general charge, Plaintiffs’ counsel was free to argue, and did argue, to the jury that Mr. Repa’s actions and the degree of care and lookout he exercised were entirely reasonable considering his employment responsibilities and the specific circumstances at the scene under which he was performing them.

Plaintiffs have not cited, and the Court’s own research has not disclosed, any reported decision holding that an instruction like the one proposed by Plaintiffs should be given when the plaintiff is an officer directing traffic. Charging the jury on the general standard of care was sufficient and allowed each party to argue to the jury how that standard should be applied to all relevant actors based on the evidence. *See Medley*, 238 A.3d 531 (rejecting need for trial court to instruct on the duty of care beyond Pennsylvania Suggested Standard Civil Jury Instruction 13.10).

The Court’s charge was factually neutral. In contrast, Plaintiffs’ proposed charge would have included an interpretation of the evidence that favored Plaintiffs, which the Court deemed improper. In addition, the premise upon which Plaintiffs proposed their instruction is not supported by Pennsylvania law. No court has held that a traffic control officer is subject to a “lesser” standard of care than others, including a pedestrian. Rather, as recognized by the model charge, the general standard of care accounts for the circumstances of the actor at issue, including his or her job responsibilities and the conditions under which he or she is required to perform those responsibilities. The appropriateness of the Court’s charge is further supported by *Phillips*, wherein the Pennsylvania Supreme Court described the duty of the plaintiff in that case as requiring that he “keep a reasonable lookout and to exercise care in the circumstances commensurate with the dangers and consistent with his faithful performance of the duties of his employment.” 358 Pa. at 268, 56 A.2d at 226. Indeed, in *Shaffer*, the Court similarly stated that the plaintiff had a duty “to keep a reasonable lookout for his safety, commensurate with the dangers of his place of work and consistent with the faithful and efficient performance of his work.” *Shaffer*, 58 A.2d at 192. Such a person retains a “duty of making proper observations of oncoming traffic and, in general, taking reasonable precautions for his own safety.” *Id.* at 433. *See also Lonasco v. Veill*,

45 A.2d 417, 418 (Pa. Super. Ct. 1946) (jury question existed whether plaintiff stood in a “dangerous” position and if he exercised reasonable care while cleaning snow off his parked truck when he was struck by a taxicab); *Susser v. Wiley*, 350 Pa. 427, 432 (Pa. 1944) (a person engaged in activity on the highway “is not relieved from the duty of paying some reasonable amount of attention to traffic, and in such cases it is for the jury to determine whether he exercised the degree of care to be expected of an ordinarily prudent man under all the circumstances and commensurate with the danger of the place he was occupying”). The Court’s charge incorporated these principles. “The trial court was not obligated to use any specific language to convey these principles to the jury.” *Medley*, 238 A.3d 531. While the Court could have referred to “job responsibilities” and other relevant considerations in its duty of care instruction, this was not required to make the instruction an accurate and fair statement of Pennsylvania law on the subject. Further, Plaintiffs’ proposed jury instruction on this subject was factually unbalanced. They never proposed a less sweeping instruction on duty of care in the circumstances presented by this case, and the Court “was under no obligation to tinker with the flawed proposed instruction until it was legally acceptable.” *Rogers*, 144 F.3d at 845 (citation omitted).

For these reasons, Plaintiffs’ motion for new trial based on asserted errors in the Court’s instructions concerning Mr. Repa’s duty of care must be denied.<sup>4</sup>

C. Plaintiffs are not Entitled to a New Trial Based on the Court’s Refusal to Charge the Jury on the Definition of “Roadway.”

Plaintiffs also seek a new trial because the Court declined to define the term “roadway” in its instructions to the jury. Pennsylvania law defines “roadway” as follows:

“Roadway.” That portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the sidewalk, berm or shoulder even though such sidewalk, berm or shoulder is used by pedalcycles. In the event a highway includes two or more separate roadways the term “roadway” refers to each roadway separately but not to all such roadways collectively.

75 Pa. C.S. § 102.

Plaintiffs requested that the Court provide this statutory definition to the jury as a supplement to its instruction that “a person has a duty to use reasonable care to maintain a lookout for vehicles lawfully and foreseeably operated on the roadway.” The Court declined to do so because (1) the definition would not have aided the jury in applying the law to the evidence, (2) Plaintiffs did not propose a negligence *per se* jury instruction or any other proper jury instruction that might have made the definition necessary for the jury’s understanding, and, in any event, (3) the record included insufficient evidence upon which the jury could apply the definition to differentiate the “roadway” from any sidewalk, berm, or shoulder.

An instruction defining “roadway” was unnecessary, especially considering the instructions proposed and *not proposed* by Plaintiffs. That term is self explanatory and within the common understanding of the jury. As such, the jury did not need the court to define it. *See United States v. El-Battouty*, --- F.4th ---, No. 20-1674 (3d Cir. June 28, 2022) (“Transporting’

<sup>4</sup> Given the foregoing, the Court need not address Defendants’ argument that Plaintiffs waived their right to submit jury instructions on the duty of care applicable to a traffic officer.

and ‘distributing’ are ordinary terms that the jury could understand without further detail. The same is true of ‘in concert with’ — which connotes mutual agreement or a common plan.”). And “[a]s long as the instructions are accurate in substance and understandable to lay persons, the failure to use the exact words requested by counsel is not reversible error.” *DiFiore v. CSL Behring, LLC*, 879 F.3d 71, 79 (3d Cir. 2018) (internal quotation marks and citation omitted). Conflicting evidence was presented at trial regarding Mr. Repa’s location at the time he was struck by the rear wheel of Napierkowski’s tanker-truck. Plaintiffs offered evidence that Mr. Repa was standing along the edge of the road next to the guardrail when he was struck. Defendants offered evidence that Mr. Repa moved from a place of safety into the path of Napierkowski’s rear driver’s-side wheel as Napierkowski executed his turn. The statutory definition of “roadway” would not have assisted the jury in evaluating this conflicting evidence or any other issue in the case.

In their reply brief in support of their motion for a new trial, Plaintiffs argue for the first time that the definition of “roadway” was necessary to demonstrate Mr. Napierkowski’s violation of Pennsylvania motor vehicle law. In support of this position, they cite 75 Pa.C.S.A. § 3309.<sup>5</sup> ECF No. 172, pp. 4-5. This section of the Pennsylvania Motor Vehicle Code provides in relevant part:

Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others not inconsistent therewith shall apply:

(1) Driving within single lane.--A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.

\*\*\*

(4) Prohibitions against changing lanes.--Official traffic-control devices may be installed prohibiting the changing of lanes on a section of roadway and drivers of vehicles shall obey the directions of every such device.

The potential relevance of the foregoing statute to any party’s version of the events that led to the accident is dubious, at best. It appears to speak to the responsibilities of a driver when switching lanes on a roadway that “has been divided into two or more clearly marked lanes for traffic.” It does not appear to speak to a scenario where one of the rear tires of a vehicle enters the shoulder or berm of the road as the vehicle executes a turn, as reflected by the heading “Driving in a single lane.” Given the apparent inapplicability of the statute

<sup>5</sup> Plaintiffs’ argument here is difficult to follow. They appear to argue that this section of the Motor Vehicle Code was relevant to whether Mr. Repa reasonably should have anticipated that Napierkowski’s rear tire would cross onto the shoulder or berm of the road. ECF No. 172, pp. 4-5. To the extent this is their argument, it is irrelevant because the jury never reached the issue of Mr. Repa’s potential comparative negligence. To the extent they are arguing that Mr. Napierkowski was negligent *per se*, the argument is waived because they never raised this position at trial. And, in any event, the statute does not speak to any version of the facts supported by the trial evidence.



to the evidence adduced at trial, any charge based on this statute would have served no purpose other than to confuse the jury.

More importantly, Plaintiff never requested a negligence *per se* or any other form of jury instruction based on this statute. Thus, they have waived any issue regarding a charge based on or related to the statute. Plaintiffs' untimely invocation of § 3309 appears to be an attempt to bolster their argument that charging the jury on the definition of "roadway" was necessary or as support for their position that Napierkowski's liability should have been obvious to the jury. Such requests and arguments should have been presented prior to finalization of the charge. Having failed to raise them in a timely fashion, they cannot serve as a basis for granting a new trial.

Plaintiffs also argue that the jury should have been instructed "that travelling upon the shoulder without first ascertaining whether it can be done safely is unlawful." ECF No. 68, p. 8. Again, however, Plaintiffs never proposed such an instruction. They never proposed a negligence *per se* charge or any other charge relating to Napierkowski's duty of care to a person located on the shoulder of the road.<sup>6</sup> Therefore, they waived this assertion of error. *See Simmons v. Philadelphia*, 947 F.2d 1042, 1078 (3d Cir. 1991) (citing Fed. R. Civ. P. 51) ("in order to preserve an objection...to a failure to instruct the jury on an issue...", a party must clearly "object[ ] thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection."); *McAdam v. Dean Witter Reynolds*, 896 F.2d 750, 759 (3d Cir. 1990) (declining to consider newly developed argument about a jury charge deficiency where party "failed to specifically and clearly object to either the charge or the entry of a judgment...based on this charge").

Moreover, Plaintiffs argued to the jury that Mr. Repa was standing at or near the guardrail when he was struck by the rear wheel of Napierkowski's vehicle and that Napierkowski executed his turn in a manner that caused his driver's-side rear wheel to enter an area that Mr. Repa reasonably assumed was a position of safety. The charge as given fairly instructed the jury on Napierkowski's duty of care under the interpretation of the facts argued by Plaintiffs. The Court provided an appropriate jury instruction specific to these circumstances supported by the evidence at trial without adopting or favoring either party's proposed interpretation of the evidence. The Court instructed:

When a driver is starting his vehicle from a stopped position, he must ascertain whether he can make such a movement safely. Thus, a driver has a duty to maintain a proper lookout and to assure himself that no pedestrians will be injured by his movement.

ECF No. 167-1. The Court charged that Napierkowski's duty of care included maintaining a lookout for persons as he went from a stopped position and proceeded to execute his left turn. No "fundamental" or "highly prejudicial" error or one that led to a "miscarriage of justice" existed in the charge as given. *Cooper Distrib'g v. Amana Refrig.*, 180 F.3d 542,

<sup>6</sup> The only proposed charge relating to a person located on the shoulder of the road dealt with comparative negligence and apportionment of fault: "If you find that Defendant's trailer struck Plaintiff while Plaintiff was located on the shoulder of the road (*i.e.* between the white line and the guardrail), and you also find that Defendant had room in which he could have safely passed the plaintiff without his trailer crossing onto the shoulder, you may not apportion any percentage of fault to the plaintiff." ECF No. 163.

549–550 (3d Cir. 1999). The jury charge, "as a whole, stated the correct legal standard." *Ryder v. Westinghouse Elec. Corp.*, 128 F.3d 128, 135 (3d Cir. 1997).

Finally, a party's proposed jury instruction requires evidentiary support. *See United States v. Davis*, 183 F.3d 231, 250 (3d Cir. 1999); *Shaw*, 428 F.2d at 250. No testimony or exhibits distinguished between the roadway and the shoulder such that the jury could reasonably differentiate between them based on the statutory definition. While the record includes some testimony about a possible faded white line on the edge of the road before the accident scene, no testimony or exhibit supported that any marking or other feature distinguished the roadway from a berm or shoulder in the immediate area where the accident occurred. Indeed, the evidence at trial indicated that any distinguishing mark that may have existed between the road and any berm or shoulder at the intersection no longer existed as of the date of the accident.

Therefore, the Court's failure to charge the jury on the definition of "roadway" and any further duty of a driver as to persons on the berm or shoulder do not support the granting of a new trial.

#### D. The Jury's Verdict Was Not Against the Clear Weight of the Evidence.

The parties presented conflicting evidence at trial regarding Mr. Repa's location and movements at the time of the accident, the course Napierkowski's vehicle took as he executed his left turn, and the extent to which Napierkowski made proper observations as he executed that turn. The jury concluded that Plaintiffs had failed to prove by a preponderance of the evidence that Napierkowski acted negligently when he executed his left turn and his rear wheel struck Mr. Repa. Because the record includes evidence to support this finding, Plaintiffs have failed to meet the "stringent standard" to show that the verdict contravened the clear weight of the evidence. *Sheridan v. E.I. DuPont de Nemours and Co.*, 100 F.3d 1061, 1076 (3d Cir. 1996).

The Court has even less discretion to order a new trial on this ground because "[w]here the subject matter of the litigation is simple and within a layman's understanding, the district court is given less freedom to scrutinize the jury's verdict than in a case that deals with complex factual determinations." *Williamson v. Consol. Rail Corp.*, 926 F.2d 1344, 1352 (3d Cir. 1991) (internal citations omitted). The issue of whether Napierkowski exercised reasonable care at the time of the accident was relatively straightforward. Based on the evidence, the jury found that Napierkowski did not breach his duty of care when he proceeded from a stopped position and executed his left turn. Where, as here, the trial produces conflicting evidence "subject to two interpretations," the court should not substitute its judgment for that of the jury and order a new trial. *Klein v. Hollings*, 992 F.2d 1285, 1295 (3d Cir. 1993). Because the evidence, viewed in the light favorable to verdict-winner, reasonably supports the jury's verdict, the Court has no discretion to set aside the verdict. *See Moussa*, 289 F. Supp. 2d at 648 (citing *Delli Santi*, 88 F.3d at 202). The Court cannot say that the verdict represents a "miscarriage of justice" that "cries out to be overturned," or "shock[s] [the Court's] conscience."<sup>7</sup> *Pryer*, 251 F.3d at 453; *Williamson*, 926 F.2d at 1353.

<sup>7</sup> The Court also notes that Plaintiffs have not ordered a trial transcript. This omission cuts against their weight-of-the-evidence argument because they carry the burden of persuasion on a motion for new trial. *See U.S. Sec. & Exch. Comm'n v. Knight*, 694 Fed. Appx. 853, 855 n.1 (2d Cir. 2017), as amended (June 7, 2017) ("failure to provide the entire trial transcript precludes meaningful review of whether, based on all the evidence submitted at trial, the verdict was "(1) seriously erroneous or (2) a miscarriage of justice," dismissing appellant's challenge to denial of motion for new trial). "Without the transcript and citation to the testimony upon which [P]laintiffs rely," the Court has no basis to rule that the jury's verdict contravened the great weight of the evidence. *See Warr v. Liberatore*, 2019 WL 3288148, at \*3 (W.D.N.Y. July 22, 2019).

Plaintiffs also argue that the jury's verdict was against the weight of the evidence because Napierkowski was negligent per se for allegedly violating the Pennsylvania Motor Vehicle Code. This argument is unavailing for at least two reasons. First, as discussed above, Plaintiffs waived the issue because they never requested a jury instruction on negligence *per se*. See *Lesende v. Borrero*, 752 F.3d 324, 335 (3d Cir. 2014) (“[A] party objecting to...the lack of an instruction must raise the objection ‘on the record,’” (citation and internal quotation marks omitted); *Sharrow v. Roy*, 2009 WL 3101031, at \*3 (M.D. Pa. Sept. 23, 2009) (moving party failed to preserve issue of failure to charge on negligence *per se* when failing to object at trial). Plaintiffs needed to specifically request such an instruction because negligence *per se* “is a separate legal theory having elements and underlying rationales different from the other two theories.” *McCloud v. McLaughlin*, 837 A.2d 541, 544 (Pa. Super. Ct. 2003) (issue of negligence *per se* waived when appellant argued absolute liability and ordinary negligence at trial). Because Plaintiffs did not request instructions on negligence *per se* or otherwise raise this argument at trial, they have waived this argument as a basis of their motion for new trial.

Second, the evidence at trial was far from clear that Napierkowski violated any statutory duty at the time of the accident.<sup>8</sup> As noted, the parties presented conflicting evidence concerning Mr. Repa's location, the path of Napierkowski's vehicle, and his observations as he executed the turn. The jury could reasonably interpret this evidence as insufficient to support a finding that Napierkowski violated any statutory duty or his duty of reasonable care. Thus, the Court has no discretion to order a new trial on this ground.

#### VI. Conclusion

Plaintiffs' Motion for New Trial will be DENIED. A separate Order follows.

DATED this 10th day of August, 2022

BY THE COURT:  
RICHARD A. LANZILLO  
UNITED STATES MAGISTRATE JUDGE

<sup>8</sup> When a party fails to preserve an issue, a district court may still order a new trial if the instruction's absence was a “fundamental and highly prejudicial” error. *Wagner v. Firestone Tire & Rubber Co.*, 890 F.2d 652, 658 (3d Cir. 1989). Here, Plaintiffs have not shown that it was a “miscarriage of justice” for Court not to instruct on negligence *per se*. *Beardshall v. Minuteman Press Int'l, Inc.*, 664 F.2d 23, 27 (3d Cir. 1981). The jury was still able to assess whether Napierkowski acted reasonably under the circumstances by following the Court's charge on negligence. See *Sharrow*, 2009 WL 3101031, at \*4 (M.D. Pa. Sept. 23, 2009) (district court “unconvinced that the failure to give the negligence *per se* instruction was highly prejudicial.”).

#### BUSINESS PARTNER



## Forensic Accounting Specialists

fraud detection, prevention and investigation

3703 West 26<sup>th</sup> St.  
Erie, PA 16506  
814/833-8545

113 Meadville St.  
Edinboro, PA 16412  
814/734-3787

## MALONEY, REED, SCARPITTI & COMPANY, LLP

Certified Public Accountants and Business Advisors

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

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](mailto:mrsinfo@mrs-co.com).

#### BUSINESS PARTNER



## THOMSON REUTERS®

Whether you practice, support, create, or enforce the law, Thomson Reuters delivers best-of-class legal solutions that help you work smarter, like Westlaw, FindLaw, Elite, Practical Law, and secure cloud-based practice management software Firm Central™. Intelligently connect your work and your world through unrivaled content, expertise, and technologies. See a better way forward at <https://legalsolutions.thomsonreuters.com/law-products/practice/small-law-firm/>

#### BUSINESS PARTNER



## Northwest

16 offices to  
serve you in  
Erie County.

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

Bank | Borrow | Invest | Insure | Plan

Only deposit products offered by Northwest Bank are Member FDIC.

**CERTIFICATE OF  
AUTHORITY**

**SOWASSET COLLECTIONS AND REPOSSESSIONS, INC.** filed a Foreign Registration Statement with the Commonwealth of Pennsylvania. The address of its principal office under the laws of its jurisdiction is 646 Main St., Suite 105, Port Jefferson, NY 11777. The Commercial Registered Office Provider's address is 101 State Street, #1400, Erie, PA 16501 in the county of Erie. The Corporation is in compliance with the requirements of the applicable provision of 15 Pa. C.S. 412.

Sept. 30

**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 12098-2022 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Zachary Thomas Esser to Zachary Thomas Sidun. The Court has fixed the 11th day of October, 2022 at 9:30 a.m. in Courtroom B, Room 208, 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.

Sept. 30

**CHANGE OF NAME NOTICE**

In the Court of Common Pleas of Erie County, Pennsylvania 12167-22 Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Faith Marie Sullivan to Sylvanna Faith Marie Sullivan. The Court has fixed the 31st day of October, 2022 at 2:15 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.

Sept. 30

**FICTITIOUS NAME NOTICE**

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

**FICTITIOUS NAME NOTICE**

1. Fictitious Name: Bonnell's Truck & RV Collision Center
2. Address of the principal place of business, including street and number: 7695 West Ridge Road, Fairview, PA 16415
3. The real names and addresses, including street and number, of the persons who are parties to the registration: Bonnell's Auto Group LLC, of 7695 West Ridge Road, Fairview, PA 16415
4. An application for registration of fictitious name under the Fictitious Names Act was filed on or about September 16, 2022 with the Pennsylvania Department of State.

Sept. 30

**FICTITIOUS NAME NOTICE**

1. Fictitious Name: Diverse Erie
2. Address of the principal place of business, including street and number: 1128 State Street, Suite 300, Erie, PA 16501
3. The real names and addresses, including street and number, of the entities who are parties to the registration: Erie County Diversity, Equity and Inclusion Commission, 1128 State Street, Suite 300, Erie, PA 16501
4. An application for registration of a fictitious name under the Fictitious Names Act was filed on August 16, 2022 with the Department of State.

Sept. 30

**INCORPORATION NOTICE**

Digital Banjara America, Inc., hereby gives notice that articles of incorporation have been filed on June 8, 2022 with the Department of State of the Commonwealth of Pennsylvania, under the provisions of the Pennsylvania Business Corporation Law of 1988, approved December 21, 1988, P.L. 1444, No. 177, effective October 1, 1989, as amended. The purpose for which the corporation is to be organized is to provide marketing and business services.

Sept. 30

**WITHDRAWAL NOTICE**

Notice is hereby given that, pursuant to the Business Corporation Law of 1988, SOLMade INC, a corporation incorporated under the laws of the State of New York, intends to withdraw from doing business in Pennsylvania. The address of its principal office in its jurisdiction of incorporation is 39 W. 29th St., 10th Fl., NY, NY 10001, and the name of its commercial registered office provider in Pennsylvania is Registered Agents Inc.

Sept. 30

**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

**OCTOBER 21, 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

Sept. 30 and Oct. 7, 14

**SALE NO. 1**

**Ex. #10694 of 2022**

**ERIEBANK, a division of  
CNB BANK, Plaintiff  
v.**

**DUSTIN L. CHARCALLA,  
Defendant**

**DESCRIPTION**

By virtue of a Writ of Execution filed at No. 2022-10694, ERIEBANK, a division of CNB BANK v. DUSTIN L. CHARCALLA, owner of property situated in the Township of Greenfield, Erie County, Pennsylvania being commonly known as 11278 Rich Hill Road, North East, PA 16428 with 2,213 square footage and 28 acres. Assessment Map No. (26) 3-11-12 Assessed Value Figure: \$188,500 Improvement thereon: Two story

family dwelling  
Mark G. Claypool, Esquire  
Knox McLaughlin Gornall &  
Sennett, P.C.

120 West Tenth Street  
Erie, Pennsylvania 16501  
(814) 459-2800

Sept. 30 and Oct. 7, 14

**SALE NO. 2**

**Ex. #12312 of 2018**

**KEITH A. SHADE and  
AUDREY L. SHADE, Plaintiff  
v.**

**DENNIS R. BAILEY, Defendant  
DESCRIPTION**

By virtue of a Writ of Execution filed to No. 12312-2018, KEITH N. SHADE and AUDREY L. SHADE vs. DENNIS R. BAILEY, owner(s) of property situated in the City of Erie, Erie County, Pennsylvania being 2622 Perry Street, Erie, Pennsylvania 16504

32.5 x 86.12  
Assessment Map number:

(18) 050-056.0-110.00

Assessed Value figure: \$60,800.00

Improvement thereon: Two-story frame dwelling house and one-car frame garage

Grant M. Yochim, Esquire  
24 Main Street East

Girard, PA 16417

(814) 774-2628

Sept. 30 and Oct. 7, 14

**SALE NO. 3**

**Ex. #11076 of 2022**

**FREEDOM MORTGAGE  
CORPORATION, Plaintiff  
v.**

**ERIC M. WATKINS, Defendant  
DESCRIPTION**

By virtue of a Writ of Execution No. 2022-11076, FREEDOM MORTGAGE CORPORATION v. ERIC M. WATKINS, owner(s) of property situate in the BOROUGH OF LAKE CITY, ERIE County, Pennsylvania, being 9907 MARTIN AVE., LAKE CITY, PA 16423 Tax ID No. 28016021001928

Improvements thereon:

RESIDENTIAL DWELLING

Judgment Amount: \$138,843.06

Attorneys for Plaintiff

Brock & Scott, PLLC

2011 Renaissance Boulevard,

Suite 100

King of Prussia, PA 19406  
844-856-6646

Sept. 30 and Oct. 7, 14

**SALE NO. 4**

**Ex. #10888 of 2021**

**Wilmington Savings Fund Society,  
FSB d/b/a Christiana Trust not in  
its individual capacity but solely as  
Trustee for SC Park Lane II Trust  
2019-1, Plaintiff  
v.**

**Kimberly L. Lowe, Defendant  
DESCRIPTION**

By Virtue of Writ of Execution filed to No. 10888-21, Wilmington Savings Fund Society, FSB d/b/a Christiana Trust not in its individual capacity but solely as Trustee for SC Park Lane II Trust 2019-1 vs. Kimberly L. Lowe, owner(s) of property situated in Erie County, Pennsylvania being 622 Beverly Drive, Erie, PA 16505

1,560 sq. ft.

Assessment Map number:

(17) 4131-405

Assessed figure: \$117,960.00

Improvement thereon: Single Family Residential Dwelling

Hladik, Onorato & Federman, LLP  
289 Wissahickon Avenue

North Wales, PA 19454

(215) 855-9521

Sept. 30 and Oct. 7, 14

**SALE NO. 6**

**Ex. #10675 of 2022**

**PENNSYLVANIA HOUSING  
FINANCE AGENCY, Plaintiff  
v.**

**DANIELLE HODERNY AND  
NATHAN HUGHES HODERNY,  
Defendants  
DESCRIPTION**

By virtue of a Writ of Execution No. 10366-22, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. DANIELLE HODERNY AND NATHAN HUGHES HODERNY, Defendants Real Estate: 3666 DOGLEG TRAIL, ERIE, PA 16510

Municipality:

TOWNSHIP OF HARBORCREEK

Erie County, Pennsylvania

Dimensions: 68.96 X 135.12 IRR

Deed Book/Inst#: 2016-018760

Tax I.D. (27) 81-211-118

Assessment: \$39,200 (Land)

\$157,300 (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

Sept. 30 and Oct. 7, 14

**SALE NO. 7**

**Ex. #10275 of 2022**

**PENNSYLVANIA HOUSING  
FINANCE AGENCY, Plaintiff**  
**v.**

**THE UNKNOWN HEIRS OF  
DEBORAH L. McMUNN,  
DECEASED, Defendant**

**DESCRIPTION**

By virtue of a Writ of Execution No. 10275-2022, PENNSYLVANIA HOUSING FINANCE AGENCY, Plaintiff vs. THE UNKNOWN HEIRS OF DEBORAH L. McMUNN, DECEASED, Defendant Real Estate: 529 EAST 5TH STREET, ERIE, PA 16507

Municipality: City of Erie  
Erie County, Pennsylvania  
Dimensions: 32 x 100

Deed Book/Inst#: Book 1088,  
page 1759

Tax I.D. (14) 1017-115

Assessment: \$6,600 (Land)  
\$28,800 (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

Sept. 30 and Oct. 7, 14

**SALE NO. 8**

**Ex. #11823 of 2019**

**The Huntington National Bank,  
Plaintiff**  
**v.**

**Christopher R. Thomas;  
Durham Dickerson, Defendants**  
**DESCRIPTION**

By virtue of a Writ of Execution file to No. 2019-11823, The Huntington National Bank vs. Christopher R. Thomas; Durham Dickerson, owner(s) of property situated in the Township of Millcreek, Erie County, Pennsylvania being 3444 Anne Marie Drive, Erie, PA 16506 2,222 sq. ft.

Assessment Map Number:  
33-125555121000  
Assessed Value figure: \$213,800.00  
Improvement thereon: Single Family Dwelling  
Kimberly J. Hong, Esquire  
Manley Deas Kochalski LLC  
P.O. Box 165028  
Columbus, OH 43216-5028  
614-220-5611

Sept. 30 and Oct. 7, 14

**SALE NO. 10**

**Ex. #11917 of 2021**

**Reverse Mortgage Funding LLC,  
Plaintiff**  
**v.**

**Tammy Dey, Known Surviving  
Heir of Olga L. Quinn, Sue  
Harriger, Known Surviving Heir  
of Olga L. Quinn, Dan Quinn,  
Known Surviving Heir of Olga L.  
Quinn, and Unknown Surviving  
Heirs of Olga L. Quinn,  
Defendants**  
**DESCRIPTION**

By virtue of a Writ of Execution filed to No. 11917-21, Reverse Mortgage Funding LLC v. Tammy Dey, Known Surviving Heir of Olga L. Quinn, Sue Harriger, Known Surviving Heir of Olga L. Quinn, Dan Quinn, Known Surviving Heir of Olga L. Quinn, and Unknown Surviving Heirs of Olga L. Quinn  
Tammy Dey, Known Surviving Heir of Olga L. Quinn, Sue Harriger, Known Surviving Heir of Olga L. Quinn, Dan Quinn, Known Surviving Heir of Olga L. Quinn, and Unknown Surviving Heirs of Olga L. Quinn, owners of property situated in the Township of Millcreek Township, Erie County, Pennsylvania being 3915 Roxbury Road, Erie, Pennsylvania 16506.  
Tax I.D. No. 33093560000100  
Assessment: \$204,981.04  
Improvements: Residential Dwelling  
McCabe, Weisberg & Conway, LLC  
123 South Broad Street, Suite 1400  
Philadelphia, PA 19109  
215-790-1010

Sept. 30 and Oct. 7, 14

**SALE NO. 11**

**Ex. #11199 of 2022**

**NEWREZ LLC D/B/A  
SHELLPOINT MORTGAGE  
SERVICING, Plaintiff**

**v.**  
**SHAWN KITCEY, Defendant(s)**  
**DESCRIPTION**

ALL THOSE CERTAIN LOTS OR PIECES OF GROUND SITUATE IN THE TOWNSHIP OF SPRINGFIELD, ERIE COUNTY, PENNSYLVANIA:  
BEING KNOWN AS: 4402 NASH RD., EAST SPRINGFIELD, PA 16411  
BEING PARCEL NUMBER: 39-016-051.0-006.00  
IMPROVEMENTS: RESIDENTIAL PROPERTY  
Robert Flacco, Esquire  
ID No. 325024  
Robertson, Anschutz, Schneid, Crane & Partners, PLLC  
A Florida professional limited liability company  
133 Gaither Drive, Suite F  
Mt. Laurel, NJ 08054  
(855) 225-6906  
Attorneys for Plaintiff

Sept. 30 and Oct. 7, 14

**SALE NO. 12**

**Ex. #11737 of 2021**

**U.S. BANK TRUST NATIONAL  
ASSOCIATION, AS TRUSTEE  
OF AMERICAN HOMEOWNER  
PRESERVATION TRUST  
SERIES 2014B, Plaintiff**  
**v.**

**Hal M. Wortman, U.S. Bank  
Trust National Association, as  
Trustee of American Homeowner  
Preservation Trust Series 2014B,  
Defendants**  
**DESCRIPTION**

ALL THAT CERTAIN piece or parcel of land situate in the City of Erie, County of Erie and Commonwealth of Pennsylvania, bounded and described as follows, to wit:  
BEING KNOWN AS: 1044 West 8th Street, Erie, PA 16502  
PARCEL #17-0400-310.1-330.0  
Improvements: Residential Dwelling  
Jennie Shnyder, Esquire  
Id. No. 315213  
Attorney or Plaintiff  
148 East Street Road, Suite 352  
Feasterville, PA 19053  
(215) 834-3103

Sept. 30 and Oct. 7, 14

**BUSINESS PARTNER**

# When we talk about IT, we mean business.

featuring:  
**IT Services**  
**Internet**  
**Voice**  
**HDTV**

Matt Wiertel  
Director of Sales & Marketing

**VNET**  
velocity network

With our vast fiber optic network, we deliver scalable internet, voice services, and HDTV to empower businesses to compete in a global market.

And with our team's broad range of expertise and cutting-edge solutions, we offer IT assurance to business owners across the region allowing them to focus on one thing – running their business.

Contact us at (814) 833-9111 or [sales@velocitynetwork.net](mailto:sales@velocitynetwork.net)



# AUDIT LIST NOTICE BY

**AUBREA HAGERTY-HAYNES**

**Clerk of Records**

**Register of Wills and Ex-Officio Clerk of  
the Orphans' Court Division, of the**

**Court of Common Pleas of Erie County, Pennsylvania**

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, September 7, 2022** and confirmed Nisi.

**October 19, 2022** is the last day on which Objections may be filed to any of these accounts.

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

<u>2022 ESTATE</u>	<u>ACCOUNTANT</u>	<u>ATTORNEY</u>
<b>280</b> Janice W. Lindsey..... aka Janice Ann Lindsey aka Janice A. Lindsey aka Janice Lindsey	Lesa Kimball ..... <i>Executrix</i>	Melissa Hayes Shirey, Esq.
<b>281</b> Henry J. Schauerma.....	Reva Revak ..... <i>Executrix</i>	David R. Devine, Esq.

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

Sept. 23, 30

## ESTATE NOTICES

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

## FIRST PUBLICATION

**ALBERT, JUNE A., a/k/a  
JUNE ANN ALBERT,  
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Kathleen Marie Seth, 9986 Pine St., Lake City, PA 16423  
*Attorney:* Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**BELAN, JOSEPH A. JR., a/k/a  
JOSEPH A. BELAN, a/k/a  
JOSEPH BELAN,  
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania  
*Co-executors:* Jason A. Belan, 33 Yale St., Jeannette, PA 15644 and Hallie M. Estep, 891 Castleview Dr., North Huntingdon, PA 15642  
*Attorney:* Vanda Raszewski, Esquire, Raszewski Law P.C., 121 N. Main St., Suite 114, Greensburg, PA 15601

**BIRKNER, MARK L., a/k/a  
MARK LEX BIRKNER, a/k/a  
MARK BIRKNER,  
deceased**

Late of the Borough of Lake City, County of Erie, Commonwealth of Pennsylvania  
*Executor:* Darren Birkner, 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

**BIXBY, PAULA J., a/k/a  
PAULA JEAN BIXBY,  
deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executor:* Chester J. Bixby, 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

**BOWES, PATRICK G.,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Administratrix:* Mary T. Beuchert  
*Attorney:* James H. Richardson, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**DELINSKI, LOIS VIRGINIA,  
a/k/a LOIS V. DELINSKI,  
deceased**

Late of the City of Erie, County of Erie, Pennsylvania  
*Administrator:* David Michael Delinski, 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

**EBNER, KATHLEEN R., a/k/a  
KATHLEEN ROSE EBNER,  
a/k/a KATHLEEN EBNER, a/k/a  
KATHY R. EBNER,  
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania  
*Executor:* Ryan A. Ebner, 214 West Northview Avenue, New Castle, PA 16105  
*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**ECCLES, BEVERLY ANN,  
deceased**

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania  
*Administrator:* Daniel L. Eccles, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
*Attorney:* Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**KOMISARSKI, JOSEPH R.,  
deceased**

Late of the Township of Girard, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Karen Anne Schnaekel, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506  
*Attorney:* Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

**MAJCHZRZAK, JOAN MARY,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Administrator:* Gregory Majchrzak  
*Attorney:* Craig A. Zonna, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

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

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania  
*Executor:* Erwin A. Martin, c/o 337 West 10th Street, Erie, PA 16502  
*Attorneys:* THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

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.

LOGIN DIRECTLY AT [WWW.PALEGALADS.ORG](http://WWW.PALEGALADS.ORG). IT'S EASY. IT'S FREE.

**MINIGER, LENORA E., a/k/a  
LENORA MINIGER,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Administrator C.T.A.:* James P. Miniger, 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

**OBOURN, SUZANNE C., a/k/a  
SUZANNE OBOURN,  
deceased**

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania  
*Executor:* Michael R. Plummer, 181 West Main Street, Galetton, PA 16922

*Attorney:* Patrick H. Larsen, Esq., 217 North Main Street, Coudersport, PA 16915

**PIAZZA, RAMONA LEE,  
deceased**

Late of North East Borough, Erie County, PA

*Co-executrices:* Caroline M. Mulson and Deanna R. Leamer, 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

**SCHWENK, JILL FRANCES,  
a/k/a JILL F. SCHWENK,  
deceased**

Late of the Township of Harborcreek, County of Erie, Commonwealth of Pennsylvania  
*Administratrix:* Elizabeth Gowen  
*Attorney:* David J. Rhodes, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

**TOBOLEWSKI, DAVID J., a/k/a  
DAVID JOHN TOBOLEWSKI,  
a/k/a DAVID TOBOLEWSKI,  
deceased**

Late of the Borough of Lake City, County of Erie, Commonwealth of Pennsylvania

*Executor:* Mark Tobolewski, 426 Miles Avenue, Girard, PA 16417

*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**VALIGA, GREGORY, a/k/a  
GREGORY D. VALIGA,  
deceased**

Late of the City of Erie, County of Erie, Pennsylvania

*Executor:* John M. Hrinda, Jr., c/o 502 Parade Street, Erie, PA 16507

*Attorney:* Gregory L. Heidt, Esquire, 502 Parade Street, Erie, PA 16507

**YOCHIM, NANCY J., a/k/a  
NANCY YOCHIM,  
deceased**

Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania

*Executor:* Christopher D. Yochim, 6301 Bear Creek Road, Fairview, PA 16415

*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**TRUST NOTICES**

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

**CECILE L. KELLEY  
REVOCABLE TRUST,  
CECILE L. KELLEY,  
deceased**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania

*Trustee:* Sandra L. Bartlett, c/o 3213 West 26th Street, Erie, Pennsylvania 16506

*Attorney:* Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

**SECOND PUBLICATION**

**AMENDOLA, DANIEL A.,  
deceased**

Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania

*Executor:* Jessie Cofini Rathbun, 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

**BUBRZYK, LOTTIE A., a/k/a  
LOTTIE BUBRZYK, a/k/a  
LOTTIE ALBINA BUBRZYK,  
a/k/a L. A. BUBRZYK,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Executor:* Theresa Paluh, c/o 3952 Avonia Road, P.O. Box 9, Fairview, PA 16415  
*Attorney:* Alan Natalie, Esquire, 3952 Avonia Road, P.O. Box 9, Fairview, PA 16415

**CHIMENTI, PAULINE L., a/k/a  
PAULINE CHIMENTI,  
deceased**

Late of 4855 West Ridge Road, Millcreek Township, Erie County, Pennsylvania

*Executor:* Matthew J. Chimenti, c/o 2580 West 8th Street, Erie, Pennsylvania 16505

*Attorney:* Ralph R. Riehl, III, Esquire, 2580 West 8th Street, Erie, Pennsylvania 16505

**CHURCH, ROBERT LEE, SR.,  
deceased**

Late of the City of Corry, County of Erie, Pennsylvania

*Administratrix:* Michelle L. Jackson, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

*Attorney:* Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**DILIMONE, KATHLEEN M.,  
a/k/a KATHLEEN DILIMONE,  
deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania

*Executrix:* Melanie Veit, c/o 3952 Avonia Road, P.O. Box 9, Fairview, PA 16415

*Attorney:* Alan Natalie, Esquire, 3952 Avonia Road, P.O. Box 9, Fairview, PA 16415

**DONALDSON, JAMES K., JR.,  
deceased**

Late of the Township of Concord, County of Erie, Pennsylvania

*Co-executors:* Sean J. Donaldson, Tara L. Donaldson and James K. Donaldson, III, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

*Attorney:* Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**FABIAN, ELEANORE, a/k/a  
ELEANORE E. FABIAN,  
deceased**

Late of Millcreek Township, Erie County, Pennsylvania

*Executrix:* Bernadette Carroll, 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

**GANSKA, DAVID A.,  
deceased**

Late of 5541 Mill Street, Erie, PA 16509

*Administratrix:* Karen Chiocco, c/o 502 West Seventh Street, Erie, PA 16502

*Attorney:* Matthew J. Parini, Esquire, 502 West Seventh Street, Erie, Pennsylvania 16502

**JONES, RICHARD ALBERT,  
a/k/a RICHARD A. JONES,  
deceased**

Late of the Township of Waterford, Erie County, Pennsylvania

*Executrix:* Diana S. Jones, 14285 Flatts Road, Waterford, PA 16441

*Attorney:* Stephen H. Hutzelman, Esquire, 333 State Street, Ste 203, Erie, PA 16507

**KALA, NANCY ANN,  
deceased**

Late of the City of Erie, County of Erie, and State of Pennsylvania  
*Co-executrices:* Ann M. Iavarone, Charlotte T. BugDon & Michele Perkins, Erie, PA

*Attorney:* Gerald J. Vilella, Esquire, Dailey, Karle & Vilella, 731 French Street, Erie, PA 16501-1207

**KENNELLY, JAMES J.,  
deceased**

Late of Albion, Erie County, Pennsylvania

*Executrix:* Mary E. Pollock, 826 Cedar Avenue, Sharon, PA 16146

*Attorneys:* FRUIT, DILL, GOODWIN and SCHOLL, Attorneys at Law, 32 Shenango Avenue, P.O. Box 673, Sharon, PA 16146

**KIEFFER, BETTY, a/k/a  
BETTE K. KIEFFER,  
deceased**

Late of the Township of Waterford, Erie County, Pennsylvania

*Executor:* Michael Kieffer, P.O. Box 409, Waterford, PA 16441

*Attorney:* Michael W. Harmon, Esquire, 333 State Street, Ste 203, Erie, PA 16507

**LESIK, JOSEPH R., a/k/a  
JOSEPH RICHARD LESIK, SR.,  
a/k/a JOE LESIK,  
deceased**

Late of LeBoeuf Township, Erie County, Commonwealth of Pennsylvania

*Executrix:* Robin Mae Lesik-Carone, 5956 Courtland Drive, Erie, PA 16509

*Attorney:* None

**WILLIAMSON, JULIE ANN,  
a/k/a JULIE A. WILLIAMSON,  
a/k/a JULIE WILLIAMSON,  
deceased**

Late of the Borough of Platea, County of Erie, Commonwealth of Pennsylvania

*Administrator:* James Williamson, 9674 Franklin Center Road, Cranesville, PA 16410

*Attorney:* Grant M. Yochim, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

**THIRD PUBLICATION**

**BUTCHER, PAUL L., deceased**

Late of the Township of Concord, County of Erie, Pennsylvania  
*Administratrix:* Gloria A. Mulson, c/o Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407  
*Attorney:* Paul J. Carney, Jr., Esq., 224 Maple Avenue, Corry, PA 16407

**CARR, DELBERT RICHARD, deceased**

Late of Greenfield Township, Erie County, Pennsylvania  
*Executrix:* Sabrina M. Thomas, c/o Denise C. Pekelnicky, Esq., 36 West Main St., North East, Pennsylvania 16428  
*Attorney:* Denise C. Pekelnicky, Esq., DCP Law Office, LLC, 36 West Main St., North East, Pennsylvania 16428

**CATTELL, RUSSELL H., a/k/a RUSSELL HALL CATTELL, deceased**

Late of the City of Erie, Erie County, Pennsylvania  
*Executrix:* Deborah L. Mallin, 649 Marne Road, Erie, PA 16511  
*Attorney:* Stephen H. Hutzelman, Esquire, 333 State Street, Ste. 203, Erie, PA 16507

**CLARKE, GEORGE A., JR., deceased**

Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania  
*Executrix:* Jennifer Munoz, c/o Anthony Angelone, Esquire, Nietupski Angelone, LLC, 818 State Street, Suite A, Erie, PA 16501  
*Attorney:* Anthony Angelone, Esquire, Nietupski Angelone, LLC, 818 State Street, Suite A, Erie, PA 16501

**CONNER, PATRICK THOMAS, JR., a/k/a PATRICK T. CONNER, deceased**

Late of the City of Erie, Erie County, Pennsylvania  
*Administratrix:* Austin Nicholas Conner  
*Attorney:* Bernard M. Tully, Esquire, Bernard M. Tully, L.L.C., 428 Forbes Ave., Suite 2301, Pittsburgh, PA 15219

**CYRANOWSKI, HENRY J., JR., a/k/a HENRY J. CYRANOWSKI, a/k/a HENRY CYRANOWSKI, deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Mary J. Warner, c/o Jeffery D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501  
*Attorney:* Jeffery D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

**HAIGHT, JULIA S., deceased**

Late of Summit Township, Erie County, Commonwealth of PA  
*Executor:* Michael J. Lubowicki, 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

**HARACZY, TOM JOSEPH, a/k/a THOM JOSEPH HARACZY, a/k/a THOM J. HARACZY, deceased**

Late of the City of Erie, County of Erie, and Commonwealth of Pennsylvania  
*Executrix:* Alyssa Rose Haraczy Kramer, 1147 Bauer Farm Drive, Batesville, IN 47066  
*Attorney:* Gregory P. Sesler, Esquire, Sesler and Sesler, 107 East Tenth Street, Erie, PA 16501

**HOPKINS, KATHERINE NARVETT, a/k/a KATHERINE FRANCES NARVETT HOPKINS, deceased**

Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania  
*Administrator:* Richard E. Narvett, 950 Willow Valley Lakes Dr., Apt. I-407, Willow Street, PA 17584  
*Attorney:* None

**OAKES, JOHN ALLEN, deceased**

Late of the City of Canal Fulton, County of Stark, State of Ohio  
*Administratrix:* Karen E. Henning, c/o 337 West 10th Street, Erie, PA 16502  
*Attorneys:* THE FAMILY LAW GROUP, LLC, 337 West 10th Street, Erie, PA 16502

**RANDALL, DAVID J., deceased**

Late of North East Township, Erie County, Pennsylvania  
*Executor:* Jon David Randall, c/o Denise C. Pekelnicky, Esq., 36 West Main St., North East, Pennsylvania 16428  
*Attorney:* Denise C. Pekelnicky, Esq., DCP Law Office, LLC, 36 West Main St., North East, Pennsylvania 16428

**ROWARD, STEPHEN R., deceased**

Late of Harborcreek Twp., Erie County, Pennsylvania  
*Executrix:* Mary A. Roward, 3315 Buffalo Road, #1, Erie, PA 16510  
*Attorney:* Stephen H. Hutzelman, Esquire, 333 State Street, Ste. 203, Erie, PA 16507

**SCOZZIE, FRANK C., a/k/a FRANK SCOZZIE, deceased**

Late of the Township of Summit, Commonwealth of Pennsylvania  
*Executrix:* Kimberly A. Sambuchi, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509  
*Attorney:* Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509

**WOLBACH, SHIRLEY A., deceased**

Late of Fairview Township, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Sheryl A. Williams, c/o Marci S. Miller, Esquire, P.O. Box 5349, Lancaster, PA 17606  
*Attorneys:* Gibbel Kraybill & Hess LLP, P.O. Box 5349, Lancaster, PA 17606

**TRUST NOTICES**

Notice is hereby given of the administration of the Estate and Trust set forth below. All persons having claims or demands against the Decedent or Trust are requested to make known the same and all persons indebted to said Decedent or Trust are required to make payment without delay to the Executor, Trustee or Attorney named below:

**DIBNER, JEAN A., deceased, JEAN A. DIBNER REVOCABLE LIVING TRUST**

Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania  
*Trustee:* Jennifer A. Proulx, 222 Park Place, Apartment 4B, Brooklyn, NY 11238-4318  
*Attorneys:* MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

**TURNER, CHARLES W., deceased, THE TURNER FAMILY TRUST**

Late of the Township of McKean, County of Erie, Commonwealth of Pennsylvania  
*Executrix:* Lisa M. Squires  
*Trustee:* Lisa M. Squires, c/o 3213 West 26th Street, Erie, Pennsylvania 16506  
*Attorney:* Joseph B. Spero, Esquire, 3213 West 26th Street, Erie, Pennsylvania 16506

**Senior Lawyers Division special event**

**Tour of Erie Insurance: The Thomas B. Hagen Building**

**Friday, November 4, 2022 | 11:00 a.m.**



**\*\*\* People attending will need to arrive early to pass through Erie Insurance's security, receiving a temporary visitor's badge.**

**Lunch at Calamari's Squid Row, following the tour | 12:15 p.m.**

**FOR MORE INFORMATION AND TO REGISTER, VISIT:**  
<https://www.eriebar.com/events/ecba-events/1770-senior-lawyers-division-special-event-tour-of-erie-insurance-the-thomas-b-hagen-building>

## CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

**ANTHONY ANGELONE** .....814-454-1600  
 Nietupski and Angelone, LLC  
 3204 State Street  
 Erie, PA 16508 .....[aa@nalawfirm.net](mailto:aa@nalawfirm.net)

**GERY T. NIETUPSKI** .....814-454-1600  
 Nietupski and Angelone, LLC  
 3204 State Street  
 Erie, PA 16508 .....[gtn@nalawfirm.net](mailto:gtn@nalawfirm.net)

**MOLLY W. ANGLIN** .....814-452-0120  
 Assistant United States Attorney .....(f) 814-455-6951  
 United States Attorney's Office  
 Western District of Pennsylvania - Erie  
 17 South Park Row  
 Room A330  
 Erie, PA 16501 .....[molly.anglin@usdoj.gov](mailto:molly.anglin@usdoj.gov)

### BUSINESS PARTNER



WITH OVER 30 YEARS OF  
 EXPERIENCE, WILLIAM GOODMAN IS  
 YOUR TRUSTED ADVISOR IN:

- ◆ Structured Settlements
- ◆ Settlement Consulting
- ◆ Trusts Services
- ◆ Medicare Set Asides
- ◆ Structured Attorney's Fees
- ◆ Qualified Settlement Funds
- ◆ Financial Planning



**WILLIAM S. GOODMAN** MSL, CSSC  
 President & Co-Founder  
[wgoodman@nfp.com](mailto:wgoodman@nfp.com)

- Frequent speaker and educator for trial lawyers nationwide
- One of the nation's most creative, responsive and prominent structured settlement leaders
- Active member of the National Structured Settlement Trade Association (NSSTA)

[www.nfpstructures.com](http://www.nfpstructures.com) | Toll Free 800.229.2228

## WEEKLY WRAP-UP

September 30, 2022

**Allegheny County judge calls foul on Pittsburgh's 'jock tax,' grants pro players summary judgment** - Counsel for a trio of professional athletes and the players' associations of Major League Baseball, the National Football League and the National Hockey League, all of whom alleged that the City of Pittsburgh's "jock tax" applied to both resident and non-resident athletes is unconstitutional, have won summary judgment in their clients' case. The plaintiffs believed that the City's argument that because it financed the construction of its major sports stadiums through taxpayer funds, it has the right to tax the individuals using the facilities in order to get its money back, is faulty — and a state court judge agreed in a Sept 21. memorandum opinion and order. Read more ... <https://pennrecord.com/stories/632384578-allegheny-county-judge-calls-foul-on-pittsburgh-s-jock-tax-grants-pro-players-summary-judgment>

**What is a writ of replevin? It's being used by the DOJ against former White House adviser** - Writs of replevin have been used by creditors to recover collateral, such as cars; by tenants or landlords to recover property taken by the other; by businesses to recover items taken by employees; and by people seeking the return of pets after a breakup. It's also being cited by the U.S. Department of Justice in a lawsuit against former senior White House adviser Peter K. Navarro seeking the return of emails from his private email account. Read more ... <https://www.abajournal.com/web/article/what-is-a-writ-of-replevin-its-being-used-by-the-doj-against-former-white-house-adviser>

**Names and brand names** - A key aspect of trademarks has been at the forefront of both fiction and real-life sports news over the past few weeks: what makes a name a name and who can use a name as a trademark? While trademarks are commercial rights, trademark law also protects a person's right to control their own identity, including well-known pseudonyms and nicknames. Marvel's *She-Hulk: Attorney-at-Law* is, like most TV shows about lawyers, often cavalier with how it represents the law, but when the question of the protagonist's rights in her *nom de guerre* came up, it was more accurate than most courtroom dramas. Jen Walters (the civilian identity of the titular She-Hulk) discovers a "super-influencer" has launched a line of cosmetics under the SHE-HULK brand and based on that use, is claiming trademark rights in SHE-HULK, going so far as to sue Jen Walters for her use of the name She-Hulk. While much of the terminology is mangled, the show's hearing on the issue reaches points that are relevant in the real world. First, does "She-Hulk" identify a living person? And second, would another's use of SHE-HULK be "likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association" (as set forth in 15 U.S. Code § 1125) of that user and the person known to the public as SHE-HULK? It being a superhero show, Jen Walters ultimately vindicates her rights to the She-Hulk name and SHE-HULK Mark. Read more ... <https://www.natlawreview.com/article/names-and-brand-names>



BUSINESS  
PARTNERS



LAWPAY:

<https://lawpay.com/member-programs/erie-county-bar>



Velocity Network:

<https://www.velocity.net/>



NFP Structured Settlements:

<https://nfpstructures.com/pdf/nfp-brochure.pdf>



Northwest Bank:

<https://www.northwest.bank/>



Maloney, Reed, Scarpitti & Co.:

<https://www.maloneyreedscarpittiandco.com/>



Thomson Reuters:

<https://www.thomsonreuters.com/en.html>

