[J-47-2022]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

BAER, C.J., TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, JJ.

CHRISTOPHER ALPINI,	:	No. 2 MAP 2022
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court dated
	:	July 19, 2021 at No. 92 CD 2020
v.	:	affirming the Order of the Workers'
	:	Compensation Appeal Board dated
	:	January 15, 2020 at No. A18-0913.
WORKERS' COMPENSATION APPEAL	:	
BOARD (TINICUM TOWNSHIP),	:	ARGUED: September 14, 2022
	:	
Appellees	:	

OPINION

JUSTICE BROBSON **DECIDED: May 16, 2023**

Section 1720 of the Motor Vehicle Financial Responsibility Law (MVFRL), 75 Pa. C.S. § 1720, provides, in relevant part that, "[i]n actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits . . . or benefits paid or payable by a program, group contract or other arrangement whether primary or excess." In this discretionary appeal, we must determine whether Section 1720 precludes Tinicum Township (Employer) from subrogating against Christopher Alpini's (Claimant) third-party settlement of claims that he made pursuant to Section 493 of the Liquor Code,[1]

[1] Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. § 4-493. Section 493(1) of the Liquor Code provides, in pertinent part, that it shall be unlawful:

For any licensee . . . or any employe, servant or agent of such licensee . . . to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated . . . .

commonly referred to as the Dram Shop Act, for payments that Employer made to Claimant under what is commonly referred to as the Heart and Lung Act (HLA).[2] Stated more simply, we must determine whether Claimant's Dram Shop Act claims "arose out of the maintenance or use of a motor vehicle" such that Employer is precluded from subrogating against Claimant's third-party settlement of such claims for the payments that Employer made to Claimant under the HLA. Upon careful review, we hold that Claimant's Dram Shop Act claims "arose out of the maintenance or use of a motor vehicle," and, therefore, Section 1720 precludes Employer from subrogating against Claimant's settlement of such claims. Because the Commonwealth Court reached the opposite conclusion, we reverse the order of that court.

I. RELEVANT STATUTORY FRAMEWORK AND PRECEDENT

This appeal involves the intersection of three separate statutes: the Workers' Compensation Act (WCA),[3] the HLA, and the MVFRL.[4] We begin with a review of those statutes and how they affect an employer's right of subrogation. The WCA, which applies to both public and private employers, provides an employee who sustains an injury while in the course and scope of his employment with compensation for such injury. Under the WCA, an employee who is totally disabled—*i.e.*, suffers a complete loss of earning power—is entitled to receive 66 ⅔ percent of his/her average weekly wage. *See* Section 306(a) of the WCA, 77 P.S. § 511; *see also Vista Int'l Hotel v. Workers' Comp. Appeal Bd. (Daniels)*, 742 A.2d 649, 654 (Pa. 1999). The HLA "provides police officers and other public safety employees, who are temporarily unable to perform their duties because of a work injury, their full salary." *Stermel v. Workers' Comp. Appeal Bd. (City*

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[2] Act of June 28, 1935, P.L. 477, *as amended*, 53 P.S. §§ 637-638.

[3] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2710.

[4] 75 Pa. C.S. §§ 1701-1799.7.

of Phila.), 103 A.3d 876, 877 (Pa. Cmwlth. 2014). Public safety employees are also entitled to receive workers' compensation benefits, however, any "disability [benefits] received by the public safety employee collecting [HLA] benefits 'must be turned over to [the public employer] . . . and paid into the treasury thereof.'" *Id.* (some alterations in original) (quoting Section 1(a) of the HLA, 53 P.S. § 637(a)). Whenever a third party causes a compensable work injury, Section 319 of the WCA[5] grants an employer the right to subrogate against a claimant's recovery from such third party. While the HLA does not contain a similar provision, Pennsylvania courts have "construed [the HLA] as giving the employer the right to subrogate" against a claimant's recovery of third-party claims involving work injuries. *Stermel*, 103 A.3d at 878.

The General Assembly enacted the MVFRL in 1984. At the time of its enactment, Section 1720 of the MVFRL "abolished [an] employer's ability under Section 319 of the [WCA] to subrogate its [workers'] compensation payments against a claimant's motor vehicle tort recovery." *Id.* It provided:

> In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits, benefits available under [S]ection 1711 (relating to required benefits), 1712 (relating to availability of benefits) or 1715 (relating to availability of adequate limits)

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[5] 77 P.S. § 671. Section 319 of the WCA provides, in relevant part:

Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employe . . . against such third party to the extent of the compensation payable . . . by the employer; reasonable attorney's fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employe . . . . The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employe . . . and shall be treated as an advance payment by the employer on account of any future instalments of compensation.

> or benefits in lieu thereof paid or payable under [S]ection 1719 (relating to coordination of benefits).

75 Pa. C.S. § 1720 (amended 1990). In 1990, the General Assembly amended Section 1720, replacing the phrase "benefits in lieu thereof paid or payable" with the phrase "benefits paid or payable by a program, group contract or other arrangement whether primary or excess." 75 Pa. C.S. § 1720. Although HLA benefits are not specifically referenced therein, the Commonwealth Court has interpreted both the 1984 version and the 1990 version of "Section 1720 to designate [HLA] benefits as a type of benefit not eligible for subrogation where the injury arises from a motor vehicle accident." *Stermel*, 103 A.3d at 879. The Commonwealth Court has explained that "Section 1720's exclusion of workers' compensation and [HLA] benefits from subrogation [was] explained by Section 1722 of the [MVFRL], which prohibits a [claimant] from recovering from the third[-]party tortfeasor lost wages covered by workers' compensation or [HLA] benefits." *Id.* Specifically, Section 1722 provides:

> In any action for damages against a tortfeasor . . . arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive benefits under the coverages set forth in this subchapter, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in [S]ection 1719 (relating to coordination of benefits) shall be precluded from recovering the amount of benefits paid or payable under this subchapter, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in [S]ection 1719.

75 Pa. C.S. § 1722. In sum, as of 1990, "a [claimant] injured in a motor vehicle accident could not include workers' compensation or [HLA] benefits as an item of damages in his tort action," and an employer, likewise, could not subrogate its payment of workers' compensation or HLA benefits against a claimant's recovery in such action. *Stermel*, 103 A.3d at 879; *see also* 75 Pa. C.S. §§ 1720, 1722.

Everything changed in 1993, however, when the General Assembly enacted what is commonly referred to as Act 44.[6] Act 44, *inter alia*, amended the WCA and repealed certain provisions of the MVFRL. Relevant here, Section 25(b) of Act 44[7] repealed the provisions of Sections 1720 and 1722 of the MVFRL as they related to workers' compensation benefits, thereby "reinstat[ing] an employer's right of subrogation with respect to workers' compensation benefits in actions arising out of motor vehicle accidents, which had previously existed under the WCA prior to the MVFRL's enactment." *Oliver v. City of Pittsburgh*, 11 A.3d 960, 962 (Pa. 2011). This repeal only mentioned workers' compensation benefits, not HLA benefits, and, therefore, it "left a question about whether [HLA] benefits paid by an employer could be pursued by [an] injured public safety employee, subject to the public employer's right of subrogation." *Stermel*, 103 A.3d at 880. Following conflicting pronouncements from the Commonwealth Court on the resolution of that question, this Court issued an opinion in *Oliver*, holding that Section 25(b) of Act 44 restored an employer's right to subrogation for workers' compensation payments but, "[b]y its plain terms, . . . [did] not impact any anti-subrogation mandates pertaining to HLA benefits." *Oliver*, 11 A.3d at 965-66. This Court explained that the General Assembly's decision to treat workers' compensation benefits differently from HLA benefits in Section 25(b) of Act 44 was not absurd or unreasonable, explaining:

> The HLA applies to protect employees serving the public in essential, high-risk professions. The design is to ensure that, if they are temporarily disabled in the performance of their duties, these critical-services personnel do not suffer salary losses or incur the expense of medical care and treatment. Although the WCA also embodies a similar remedial scheme, the HLA's more favorable treatment of public-safety employees who are

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[6] Act of July 2, 1993, P.L. 190, No. 44.

[7] Section 25(b) of Act 44 provides: "The provisions of [Sections] 1720 and 1722 [of the MVFRL] are repealed insofar as they relate to workers' compensation payments or other benefits under the [WCA]."

> temporarily disabled suggests against treating an overlap as an equivalency.

Id. at 966 (citations omitted). Thus, pursuant to this Court's interpretation of Section 25(b) of Act 44 in *Oliver*, Section 1720 continues to preclude an employer from subrogating its payment of HLA benefits against a public safety employee's recovery from a "third[-]party tortfeasor whose negligence involving a motor vehicle causes the injury to the public safety employee." *Stermel*, 103 A.3d at 883 (citing *Oliver*, 11 A.3d at 966). In other words, pursuant to Section 1720 and *Oliver*, if the public safety employee's third-party recovery "arises out of the maintenance or use of a motor vehicle," an employer is precluded from subrogating thereagainst for HLA benefits that the employer paid to the public safety employee.

In *Stermel*, the Commonwealth Court had occasion to apply Section 1720 of the MVFRL and this Court's holding in *Oliver* to a situation where, according to the Workers' Compensation Appeal Board (Board), at least "part of the [HLA] benefits [the e]mployer paid were actually workers' compensation benefits." *Id.* at 877. There, a police officer employed by the City of Philadelphia (City) suffered a work-related back injury when an intoxicated driver rear-ended the police officer's cruiser with his vehicle. *Id.* at 880. The City, which was self-insured for workers' compensation, issued a notice of compensation payable accepting liability for the police officer's injury and indicating that it was paying the police officer HLA benefits in lieu of workers' compensation benefits. *Id.* at 880-81. The police officer pursued a third-party action against the intoxicated driver and the tavern owner that served the driver while he was visibly intoxicated. *Id.* at 881. The police officer settled the action, recovering a total of $100,000 from both the intoxicated driver and the tavern owner. *Id.* "The settlement was not[, however,] broken down into components and did not include the amount representing either [the police officer's] workers' compensation or [HLA] benefits paid by [the City]." *Id.* at 881 n.8.

The City filed a review petition, seeking to subrogate its payment of medical bills and wage loss benefits against the police officer's third-party settlement. *Id.* at 881. The workers' compensation judge granted the review petition, concluding that the City "was entitled to subrogation for the [HLA] benefits it paid and that [the police officer] did not enjoy immunity from [the City's] subrogation claim." *Id.* The police officer appealed to the Board, which initially reversed based on this Court's then-recent decision in *Oliver*. *Id.* Following a rehearing, however, the Board granted the review petition, concluding that the City was entitled to subrogation. *Id.* In so doing:

> The Board distinguished *Oliver* because in that case there was no evidence that the claimant had received workers' compensation benefits. The Board also pointed out that[,] in *Oliver*, the claimant pursued a declaratory judgment action in the court of common pleas and not a petition before the workers' compensation authorities. The Board found it significant that [this] Court in *Oliver* was silent on the interplay between the [MVFRL], [the HLA,] and [the WCA], which are critical in the present case. The Board determined that two-thirds of the [HLA] disability benefits paid by [the City] represented workers' compensation benefits. As such, [the City] was entitled to the right of subrogation provided in Section 319 of the [WCA].
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> The Board reasoned that if [the City] had not been self-insured, its workers' compensation carrier would have made payments and [the police officer], in turn, would have been required to "turn over" these payments to [the City]. Stated otherwise, [the City] would have been reimbursed for two-thirds of the [HLA] benefits it paid, and its workers' compensation insurer would be eligible for subrogation against the tortfeasor responsible for [the police officer's] injury. The Board concluded that a self-insured public employer's right of subrogation should not be less than that of the insured public employer.

Id. at 881-82 (citation omitted).

On appeal to the Commonwealth Court, the police officer argued, *inter alia*, that the Board erred by not following this Court's decision in *Oliver*. *Id.* at 883. The City, on the other hand, maintained that the Board properly distinguished *Oliver* and contended that, because part of the HLA benefits that it paid represented workers' compensation

benefits, it was entitled to subrogation. *Id.* The Commonwealth Court ultimately reversed the Board. *Id.* at 886. The Commonwealth Court explained:

> [T]his case . . . involve[s] the [MVFRL], and [Section 1722 thereof] prohibits a plaintiff from including as an element of damages payments received in the form of workers' compensation or other "benefits paid or payable by a program . . . or other arrangement." This language "benefits paid or payable by a program" has been construed to include the program by which [HLA] benefits are paid. Section 25(b) of Act 44 changed the Section 1720 [and Section 1722] paradigm only for workers' compensation benefits, not [HLA] benefits. This means [the police officer] continued to be "precluded" from recovering the amount of benefits paid under the [HLA] from the responsible tortfeasors. There can be no subrogation out of an award that does not include these benefits. Likewise, because the tort recovery cannot, as a matter of law, include a loss of wages covered by [HLA] benefits, [the police officer] did not receive a double recovery of lost wages or medical bills.
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> Simply, Section 1722 of the [MVFRL] did not allow [the police officer] to recover [a] loss of wages from the tortfeasor defendants because they were covered by the [HLA]. The record does not disclose the elements of the $100,000 [the police officer] received from the tortfeasor. As a matter of law, however, it was net of his [HLA] benefits.
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> The Board failed to honor the established law that Section 25(b) of Act 44 applies only to workers' compensation benefits. In its original version, the [MVFRL] made employers, not motor vehicle insurers, responsible for the payment of medical bills and lost wages on behalf of a person injured in a motor vehicle accident that occurred in the course of employment. With Act 44, the [General Assembly] shifted the responsibility for these costs from the employer (or its workers' compensation insurer)[] to the tortfeasor[] (or its insurer). However, Act 44 did not shift responsibility for [HLA] benefits, which remain with the employer. As our Supreme Court has explained, the [General Assembly's] rationale is irrelevant:
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> > Significantly, the [MVFRL's] remedial scheme has become increasingly complicated, in light of the need to address premium costs while maintaining financial viability in the insurance industry. The [General Assembly] has made numerous specific refinements impacting the competing, and legitimate, rights and interests of insurers, employers, and injured persons. In this landscape, where there are mixed

> policy considerations involved, *we decline to extend clear and specific refinements beyond their plain terms*.
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> *Oliver*, 11 A.3d at 966 (emphasis added). By treating a portion of the [HLA] benefits as workers' compensation payments, the Board extended the [General Assembly's] "specific refinements beyond their plain terms."
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> Only the [General Assembly] may undertake further refinements and eliminate the distinction between the self-insured public employer and the public employer who purchases an employer's liability policy of insurance.

Id. at 885-86 (some citations omitted).

Likewise, this Court, in *Pennsylvania State Police v. Workers' Compensation Appeal Board (Bushta)*, 184 A.3d 958 (Pa. 2018), considered whether the Pennsylvania State Police (PSP) had a right to subrogate against a state trooper's third-party settlement made pursuant to the MVFRL in a situation where the claimant did not actually receive workers' compensation benefits but the notice of compensation payable identified a weekly compensation rate and did not explicitly indicate that PSP was paying HLA benefits in lieu of workers' compensation benefits. *Bushta*, 184 A.3d at 960, 966, 968. In *Bushta*, the state trooper suffered work-related injuries when a driver struck the state trooper's police vehicle with his tractor-trailer. *Id.* at 962. PSP, which was self-insured for workers' compensation, issued a notice of compensation payable, accepting liability for the state trooper's injuries but indicating that it was paying the state trooper HLA benefits. *Id.* The state trooper and his spouse settled their claims with the tractor-trailer driver and other responsible parties. *Id.* PSP thereafter sought to subrogate against the proceeds of the state trooper's settlement with the third-party tortfeasors under Section 319 of the WCA. *Id.* at 963. Ultimately, this Court concluded that "all of the benefits [the state trooper] received were [HLA] benefits, not WCA benefits[, and, t]hus, pursuant to the MVFRL, PSP [did] not have a right of subrogation against [the state trooper's] settlement with the third-party tortfeasors." *Id.* at 969. In so doing, this Court agreed with the *Stermel* court that, "for purposes of the MVFRL, [HLA] benefits subsume

WCA benefits, and thus subrogation of such benefits is barred." *Id.* at 968. This Court further indicated that it had found "no basis upon which to conclude that a mere acknowledgement in [a notice of compensation payable] of a work injury, and the specification of the amount of benefits to which an injured employee would be entitled under the WCA, transforms an injured employee's [HLA] benefits into WCA benefits under the MVFRL." *Id.* at 969.

II. BACKGROUND

Having set forth the statutory framework and relevant precedent under which the present controversy arose, we now turn to the underlying facts and procedural history of this case, which are not in dispute. On April 17, 2011, while working for Employer as a police officer, Claimant sustained work-related injuries to his spine, ribs, left knee, left hip, and pelvis, when an intoxicated driver (Driver) struck Claimant's patrol car with his vehicle. Employer issued a temporary notice of compensation payable, accepting liability for Claimant's work-related injuries. The temporary notice of compensation payable thereafter converted to a notice of compensation payable by operation of law. Employer, however, paid HLA benefits to Claimant, and Claimant signed over his workers' compensation wage loss benefits to Employer as required by the HLA.

Claimant and his wife filed a civil action against the third-party tortfeasors responsible for Claimant's work-related injuries—*i.e.*, Driver, Sue-Deb, Inc. d/b/a Jimmy D's (Jimmy D's), and 500 Jansen Inc. d/b/a Lou Turks (Lou Turks). Claimant asserted a cause of action against Driver for negligence and separate causes of action against Jimmy D's and Lou Turks (collectively, Tavern Owners) for violations of the Dram Shop Act—*i.e.*, for selling/furnishing liquor to Driver while he was visibly intoxicated. On September 16, 2013, Claimant and his wife executed a General Release Settlement (Settlement Agreement), whereby they settled their claims against Driver and Tavern

Owners in exchange for a total settlement of $1,325,000—$25,000 paid by Driver and his insurance company; $375,000 paid by Lou Turks; and $925,000 paid by Jimmy D's. After deductions for attorneys' fees ($435,906) and legal costs ($17,280), Claimant received a net recovery of $871,814.

Thereafter, Employer filed a modification petition, seeking subrogation from Claimant's third-party recovery relative to Tavern Owners only. Employer asserted a total subrogation lien of $364,024.60, which was comprised of $186,063.41 in wage loss benefits and $177,961.19 in medical benefits. By decision and order dated November 2, 2015, a workers' compensation judge (WCJ) granted Employer's modification petition, and both Employer and Claimant appealed to the Board. The Board affirmed the WCJ's decision but remanded the matter to the WCJ to determine the method by which Employer would be permitted to recoup its subrogation lien. On remand, the WCJ determined that Employer had met its burden of proving that it had a subrogation interest against Claimant's third-party settlement with Tavern Owners and was entitled to a net recovery of $341,319.93. The WCJ further determined that, because the balance of Claimant's third-party settlement exceeded Employer's lien amount, Employer was "also entitled to an appropriate grace period against future payments of medical and [wage loss] benefits, subject to [Employer's] pro-rata payment of fees and costs, until such time as the balance of Claimant's third-party recovery [was] exhausted." (WCJ's Decision, 08/06/2018, at 6.) Based on that determination, the WCJ concluded that Employer was only required to pay weekly wage loss benefits in the amount of $297.38—*i.e.*, the pro-rata share, or 34.66%, of Claimant's weekly disability rate of $858.00.

Claimant appealed the WCJ's decision to the Board, arguing, *inter alia*, that the WCJ erred by determining that Employer was entitled to subrogate against Claimant's third-party recovery from Tavern Owners because such recovery arose out of the use of

a motor vehicle. Relying upon its prior opinion in this matter, the Board concluded that the WCJ did not err by determining that Employer was entitled to a subrogation lien against the portion of Claimant's third-party recovery that was attributable to Tavern Owners. In so doing, the Board distinguished this matter from the Commonwealth Court's prior decision in *Stermel*. The Board explained:

> [T]he Commonwealth Court, in *Stermel*, did not make any type of distinction between the two defendants in the third[-]party action, nor did it render a determination that there should be an apportionment of subrogation between the two defendants. Indeed, the Commonwealth Court noted in a footnote that the settlement in *Stermel* was not broken down into components. Therefore, it appears that the Commonwealth Court in *Stermel* was not faced with the issue presented here, that is, whether an employer is entitled to subrogation where the claimant, who sustains injuries in a motor vehicle accident, and thereafter receives [HLA] benefits, files a third[-]party action involving a theory of recovery other than the [MVFRL].
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> Here, Claimant's third[-]party settlement was broken down based on the amount of recovery against [Driver] and the amount of recovery against [Tavern Owners] . . . . Claimant's theory of recovery against [Driver] was under the MVFRL. . . . There appears to be no dispute that Claimant's theory of recovery against [Tavern Owners] was the Dram Shop Act, not the MVFRL. Unlike the MVFRL, the Dram Shop Act does not speak of subrogation or workers' compensation benefits. We conclude that [Employer] has the right to subrogation of Claimant's [HLA] benefits from the settlement of his third[-]party action against [Tavern Owners], as this settlement was based on the Dram Shop Act and not the MVFRL.

(Board's Decision, 01/15/2020, at 2-3 (footnotes omitted) (quoting Board's Decision, 11/29/2016, at 5-6).) For these reasons, the Board affirmed the WCJ's decision to the extent that it determined that Employer had a subrogation interest in Claimant's third-party settlement with Tavern Owners.[8] Claimant thereafter petitioned the Commonwealth Court for review of the Board's order.

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[8] The Board also concluded, *inter alia*, that, pursuant to this Court's decision in *Whitmoyer v. Workers' Compensation Appeal Board (Mountain Country Meats)*, 186 A.3d 947 (Pa. 2018) (holding that term "instalments of compensation" as set forth in Section 319 of WCA excludes future medical benefits), the WCJ erred by awarding Employer a credit (continued…)

In a unanimous, unpublished opinion, a three-judge panel of the Commonwealth Court affirmed the Board's order. In so doing, the Commonwealth Court concluded, *inter alia*, that the Board did not commit an error of law by determining that Employer could subrogate against Claimant's third-party settlement with Tavern Owners stemming from liability under the Dram Shop Act for the payments that Employer made to Claimant under the HLA. The Commonwealth Court reasoned:

> Claimant's complaint against the tortfeasors clearly sought damages from Driver under the MVFRL and from . . . Tavern Owners under the Dram Shop Act. The Settlement Agreement specifically described the amounts allocated to Driver and to . . .Tavern Owners. Neither Claimant's third-party complaint nor the Settlement Agreement sought to impose liability on . . . Tavern Owners for negligence arising from *their* use of a motor vehicle, but rather because they served Driver while visibly intoxicated. Driver then caused the auto accident injuring Claimant. Employer did not seek subrogation from the portion of the third-party settlement attributable to Driver's negligence under the MVFRL, and that amount correctly remains unavailable for subrogation. Although Claimant's recovery generally concerned or involved the use of a motor vehicle, . . . Tavern Owners' liability did not arise from the use of a motor vehicle, but from their negligence in serving alcohol to a visibly intoxicated patron. As the MVFRL, *Stermel*, and *Bushta* make clear, when a third-party settlement or recovery arises from the use of a motor vehicle, Employer may not seek subrogation for workers' compensation benefits paid or [HLA] reimbursement. Those restrictions do not apply to recovery under a different cause of action not arising under the MVFRL.

Alpini v. Workers' Comp. Appeal Bd. (Tinicum Twp.) (Pa. Cmwlth., No. 92 C.D. 2020, filed July 19, 2021), slip op. at 9-10 (emphasis in original) (citations omitted).

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against future payments of medical benefits. The Board explained that Employer "was entitled to be reimbursed for indemnity and medical benefits paid up to the date of the third[-]party settlement[] and [was] entitled to a credit against future payments of [wage loss] benefits, but not for future medical expenses." (Board's Decision, 01/15/2020, at 8.) As a result, the Board reversed the WCJ's decision on that basis and affirmed the WCJ's decision in all other respects. The issue of any potential credit against future workers' compensation benefits—either wage loss or medical—however, is not before this Court, and, therefore, we will not discuss it in any further detail in this opinion.

III. ISSUE

This Court granted discretionary review to consider the following issue, which we rephrased for clarity:

> Is an employer that paid [HLA] benefits entitled to subrogation from a claim in which the employee was injured and asserted motor vehicle negligence- and Dram Shop Act-based claims?

Alpini v. Workers' Comp. Appeal Bd. (Tinicum Twp.), 270 A.3d 1099 (Pa. 2022) (per curiam). This issue requires us to engage in statutory interpretation and, therefore, presents a question of law. *Thomas Jefferson Univ. Hosps., Inc. v. Pa. Dep't of Labor & Indus.*, 162 A.3d 384, 389 (Pa. 2017). Accordingly, "our standard of review is *de novo*, and our scope of review plenary." *Id.*

IV. PARTIES' ARGUMENTS

Claimant[9] argues that the Commonwealth Court's decision should be overturned because it: (1) conflicts with this Court's decision in *Bushta*; (2) is contrary to the Commonwealth Court's decision in *Stermel*; (3) is contrary to Sections 1720 and 1722 of the MVFRL; and (4) is inconsistent with the Statutory Construction Act of 1972 (Statutory Construction Act).[10] Claimant maintains that, "[w]hen read together, and applying

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[9] The Pennsylvania Association for Justice (PAJ), formerly the Pennsylvania Trial Lawyers Association, filed an *amicus* brief, wherein it advances arguments similar to those offered by Claimant. More specifically, PAJ contends: (1) Section 1720 of the MVFRL is clear and unambiguous and establishes that "there is no right to subrogation in any action arising out of the maintenance or use of a motor vehicle as to [HLA] benefits;" (2) under statutory construction principles, this Court may not disregard the plain meaning of Section 1720, which "applies to all actions arising out of the operation or maintenance of a motor vehicle and . . . extends to the broad category of tort recoveries;" (3) the Commonwealth Court's decision is inconsistent with *Oliver* and *Bushta*, wherein "this Court held that the payment of [HLA] benefits did not give rise to a right of subrogation from a police officer's tort recovery resulting from injuries sustained in a motor vehicle collision;" and (4) this Court should not interpret subrogation rights any more broadly because to do so will result in a potential injustice to injured workers. (PAJ's Br. at 8-10.)

[10] 1 Pa. C.S. §§ 1501-1991.

appropriate statutory construction, [*Bushta*, *Stermel,*] and the relevant statutes preclude subrogation against all claims that arise from the operation of a motor vehicle, including those arising under the Dram Shop Act." (Claimant's Br. at 12.) More specifically, Claimant contends that "[t]his Court must interpret the MVFRL, the Dram Shop Act, [the WCA,] and [the HLA] pursuant to the Statutory Construction Act and in light of prior decisions interpreting those statutes." (*Id.* at 19.) Claimant suggests that the Commonwealth Court failed to perform any statutory construction analysis or consider Section 1722's mandate that it applies to all "actions arising out of the maintenance or use of a motor vehicle." (*Id.* at 20-21.) Claimant also points out that Section 1722 "does not differentiate between actions based exclusively upon the MVFRL and those in which the action asserts claims under the MVFRL and another statute, such as the Dram Shop Act," and that Section 319 of the WCA, which permits subrogation, must be read in *pari materia* to Section 1720, which bars subrogation under certain circumstances. (*Id.* at 21.) Claimant further suggests that, given that Section 1722 of the MVFRL prohibits a claimant from recovering "the amount of [HLA] benefits he received as damages in a third-party action 'arising out of the maintenance or use of a motor vehicle,'" "this Court must presume that the [General Assembly] was aware of and considered the existing provisions of the [WCA] and [HLA] when it amended the subrogation-related provisions of the MVFRL," including Section 1720. (*Id.* at 21-22.) Thus, according to Claimant, Section 1720 bars subrogation for HLA benefits against Dram Shop Act claims because such claims "arise out of the maintenance or use of a motor vehicle."[11]

[11] Claimant attempts to draw an analogy between the phrase "use of a motor vehicle" as used in Section 1720 of the MVFRL and the phrase "operation of a vehicle" as used in Section 8542(b)(1) of what is commonly referred to as the Political Subdivision Tort Claims Act (Tort Claims Act) and interpreted by this Court in *Balentine v. Chester Water Authority*, 191 A.3d 799 (Pa. 2018) (holding that, for purposes of vehicle-liability exception to governmental immunity set forth in Tort Claims Act, "operation of a vehicle" involves a (continued…)

Claimant maintains that "[t]he purpose of [the General Assembly's amendment to] Sections 1720 and 1722 of the MVFRL [through the enactment of Act 44] was to transfer the costs associated with work-related automobile accidents back to the automobile insurers without extending that allocation to [HLA] benefits, which remain with the employer." (*Id.* at 23.) Claimant suggests that "[t]he practical impact of [that] amendment[] [was] to prevent a claimant from receiving a double[ ]recovery through a third-party action while also precluding an employer from asserting subrogation rights for damages that a claimant cannot recover in the first instance." (*Id.* at 23-24.) He further suggests that, in *Oliver*, "[t]his Court . . . affirmed that subrogation is prohibited in [HLA] claims arising from the maintenance or use of a motor vehicle, as in this and other claims under the MVFRL and Dram Shop Act." (*Id.* at 24.) Essentially, in Claimant's view, "[b]ased upon the MVFRL and *Oliver*, an employer may not assert subrogation rights for damages that a claimant cannot recover in the first instance, including matters where claims may arise under two or more statutes, one of which is the MVFRL." (*Id.* at 25 (footnote omitted).)

Claimant further argues that "[t]he fact that an injured worker asserts a violation under the Dram Shop Act does not eliminate the liability that arises from the negligent operation of the vehicle" and that "[n]o statute suggests such a result." (*Id.* at 26.) Claimant further suggests that the facts presented here are "indistinguishable" from *Bushta* and *Stermel*:

> [Claimant] was in his patrol vehicle when he was struck by another vehicle driven by an intoxicated driver. The [HLA] requires payment of the claimant's full salary and medical benefits. And, [Claimant] received only [HLA] benefits, as he was required to turn over all workers' compensation payments. [Claimant] then settled his lawsuit against [Driver] and [Tavern

"continuum of activity"). Given that this case involves an interpretation of the MVFRL, not the Tort Claims Act, we do not find our prior decision in *Balentine* instructive or persuasive.

> Owners]. Because a motor vehicle accident caused [Claimant's] injuries and therefore his lawsuit involved the "use of a motor vehicle," the MVFRL is implicated.

(*Id.* at 30.) Lastly, Claimant contends that the "Commonwealth Court's [decision] places judges, parties, juries[,] and counsel in the unenviable position of having to consider subrogable amounts in cases in which an injured [HLA-]benefit recipient asserts vehicle-related claims as well as Dram Shop [Act] or other non-MVFRL-based claims"—*i.e.*, factfinders will have to render separate verdicts separating the amounts subject to subrogation from the amounts not subject to subrogation; factfinders will have to consider evidence of "medical bills and wage losses in the context of what, if any, amounts are subrogable;" and workers' compensation judges will potentially be required to "apportion damages, or liability, between the Dram Shop [Act] actors and the person who uses the vehicle negligently." (*Id.* at 31-32.)

In response, Employer[12] argues that this Court should affirm the Commonwealth Court's decision as a means to "limit[] the MVFRL to its intended application[and] hold[]

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[12] The Susquehanna Municipal Trust (SMT), a non-profit self-insurance program for Pennsylvania municipal entities, filed an *amicus* brief, wherein it advances arguments substantially similar to those offered by Employer. More specifically, SMT contends that this Court must reject Claimant's argument that "Section 1720 of the MVFRL precludes subrogation in any type of tort recovery, even a tort recovery not premised in the MVFRL, so long as the operation of a motor vehicle is involved" and affirm the Commonwealth Court's decision, because Claimant's argument ignores several key facts: (1) the purpose of Sections 1720 and 1722 of the MVFRL is to shift a substantial share of the burden/liability for injuries away from motor vehicle insurance carriers as a means to reduce insurance premiums; (2) the definitions of "insurer" and "insurance carrier" as set forth in the MVFRL, and applicable to Sections 1720 and 1722, are not intended to apply to any type of insurance policy other than a motor vehicle insurance policy—stated another way, Tavern Owners are not an "insurer" or "insurance carrier" as defined by the MVFRL, and, therefore, the MVFRL does not apply to the claims that Claimant asserted against Tavern Owners; (3) *Stermel* is readily distinguishable because, in *Stermel*, unlike the present matter, "there was no delineation between benefits paid by the insurer of the negligent driver and the recovery paid by the tavern owner who served alcohol when the [c]laimant was visibly intoxicated;" and (4) Tavern Owners' liability [arose] out of their (continued…)

that *Bushta* and *Stermel* are only applicable to a recovery under the MVFRL." (Employer's Br. at 14.) In support, Employer contends that "the MVFRL[, and its anti-subrogation provision, were] not intended to apply to recoveries under other statutory schemes or common law causes of action," such as the Dram Shop Act. (*Id.*) Employer points out that the MVFRL only refers to insurance policies covering motor vehicles and that there is a "clear distinction[] in the type of benefits recoverable under" the MVFRL and other statutes, such as the Dram Shop Act. (*Id.* at 21.) Employer further contends that, "[b]ecause there is no section of the Dram Shop Act that precludes seeking or recovering benefits that encompass [HLA] benefits, there is no sensible argument that [Employer's] right of subrogation pertaining to those benefits should be precluded." (*Id.* at 23.) Employer suggests that, contrary to Claimant's overstated position, the facts of this case demonstrate that there is simply no difficulty with separating the amounts subject to subrogation from the amounts not subject to subrogation:

> After a period of pre-trial litigation, the parties entered into three settlements and executed a [Settlement Agreement] that laid out the specific payments from each defendant for the liability alleged in the [c]omplaint. [Driver and his insurance company] paid $25,000.00. [Lou Turks] paid $375,000.00 and [Jimmy D's] paid $925,000.00 for their liability under the [Dram Shop Act]. Claimant recovered a total of $1,325,000.00.

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negligence in continuing to serve alcohol to Driver while he was visibly intoxicated[,] not out of the operation of a motor vehicle. (SMT's Br. at 4, 20 (emphasis omitted).)

The City also filed an *amicus* brief, wherein it joins the arguments advanced by Employer relative to Claimant's attempt to "expand and over-extend a reading of the MVFRL's purported prohibition against subrogation for benefits paid under the HLA to recoveries obtained outside of the type of recoveries provided for in the MVFRL." (City's Br. at 13.) The City writes separately to address its concerns that the Court's decision in this matter could have "a much more far-reaching effect than is potentially contemplated," given the potential financial impact on municipal employers and their insurance companies. (*Id.*) In essence, the City seeks to have this Court limit its holding in *Bushta* to recovery solely under the MVFRL.

> Claimant's net recovery, after attorney's fees, was $871,814.00. There is nothing confusing about these recoveries.

(*Id.* at 24 (citations omitted).) Employer further suggests that Claimant's position that the MVFRL's anti-subrogation provisions should apply to Dram Shop Act claims does not serve: (1) the "cost-containment goals of the MVFRL;" (2) "the threefold rationale behind subrogation"—*i.e.*, holding a negligent party responsible for the damages that he/she caused, protecting an employer from being compelled to make workers' compensation payments for damages caused by a negligent party, and preventing double recovery by an injured claimant; or (3) any other rational end. (*Id.* at 24-25.) Rather, such a position "could serve one purpose and one purpose alone: [I]t would permit police officers and firefighters to recover damages for lost wages and medical costs from both [their] employer and a negligent third party[, which] is not the goal of any of the [relevant] statutory provision[s] . . . and runs afoul of equitable principles, fairness, [and] justice in the legal system." (*Id.* at 25.)

Employer further argues that, even if the MVFRL applies, the Commonwealth Court's affirmation of the Board's decision and the WCJ's award was proper because *Bushta* and *Stermel* are distinguishable. In that regard, Employer maintains that, "[r]egardless of whether there was a[n HLA] insurance policy or where there is no [HLA] coverage at all, benefits paid under the WCA are subject to the employer/insurer's right of subrogation under the MVFRL." (*Id.*) Employer suggests that the benefits that an injured police officer receives following a work-related injury consist of workers' compensation benefits plus the full-salary enhancement provided by the HLA, that this Court has never proclaimed that no workers' compensation benefits are paid while a police officer is also receiving HLA benefits, and that, if benefits are paid under the WCA, the MVFRL and the applicable case law permit subrogation. Employer further suggests that "extension of *Bushta* [beyond self-insured employers] to workers' compensation

insurers and the public employers that carry workers' compensation insurance would be disastrous and far-reaching"—*i.e.*, it would cause "irreparable financial harm [to] befall municipal employers." (*Id.* at 32-33.) In support, Employer explains:

> The self-insured public employers that can absorb liability for payment of both workers' compensation and [HLA] benefits are those larger public employers, such as [PSP] in *Bushta*, the City of Pittsburgh in *Oliver*, and the City . . . in *Stermel*. All other public employers, funded by tax dollars and state funding, purchase workers' compensation insurance. These public employers rarely carry an insurance policy to cover their obligations under the [HLA]. These municipalities rely on payments from their workers' compensation insurers to bridge the gap when a police officer or firefighter sustains an injury that meets the standard for payment under both the WCA [and] the [HLA]. Specifically, these public employers rely on workers' compensation insurers to pay the [temporary total disability (TTD)] rate to the employee, who signs it over to the municipality or the municipality takes a credit for the TTD payment. Also, municipalities rely on the workers' compensation insurer to re-price and pay medical benefits under the WCA. The alternative would be devastating to the vast majority of municipalities with police and fire departments, or other public employers with [HLA]-eligible employees: [T]he employer would be required to pay 100% of the employee's salary with no contribution from a workers' compensation carrier paying the TTD rate and for medical treatment for the work injury, with no repricing structure or contribution from other insurance sources.

(*Id.* (footnotes omitted).) For these reasons, Employer contends, *Bushta*, *Stermel*, and *Oliver* are distinguishable and a "workers' compensation carrier's payments should all be considered workers' compensation benefits for purposes of subrogation." (*Id.* at 34.)

V. DISCUSSION

We are guided in our analysis by the Statutory Construction Act, which provides that the object of all statutory interpretation "is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S. § 1921(a). Generally, the plain language of the statute "provides the best indication of legislative intent." *Miller v. Cnty. of Centre*, 173 A.3d 1162, 1168 (Pa. 2017) (citing 1 Pa. C.S. § 1921(b)). If the statutory language is clear and unambiguous in setting forth the intent of the General Assembly, then "we cannot

disregard the letter of the statute under the pretext of pursuing its spirit." *Fletcher v. Pa. Prop. & Cas. Ins. Guar. Ass'n*, 985 A.2d 678, 684 (Pa. 2009) (citing 1 Pa. C.S. § 1921(b)). In this vein, "we should not insert words into [a statute] that are plainly not there." *Frazier v. Workers' Comp. Appeal Bd. (Bayada Nurses, Inc.)*, 52 A.3d 241, 245 (Pa. 2012). When the statutory language is ambiguous, however, we may ascertain the General Assembly's intent by considering the factors set forth in Section 1921(c) of the Statutory Construction Act, 1 Pa. C.S. § 1921(c), and other rules of statutory construction. *See Pa. Sch. Bds. Ass'n, Inc. v. Pub. Sch. Emps. Ret. Bd.*, 863 A.2d 432, 436 (Pa. 2004) (observing that "other interpretive rules of statutory construction are to be utilized only where the statute at issue is ambiguous"). Additionally, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage," though "technical words and phrases and such others as have acquired a peculiar and appropriate meaning or are defined in [the Statutory Construction Act] shall be construed according to such peculiar and appropriate meaning or definition." 1 Pa. C.S. § 1903(a). "We also presume that 'the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable,' and that 'the General Assembly intends the entire statute to be effective and certain.'" *Berner v. Montour Twp. Zoning Hearing Bd.*, 217 A.3d 238, 245 (Pa. 2019) (quoting 1 Pa. C.S. § 1922(1)-(2)).

We begin by reiterating the statute that we are called upon to interpret. Section 1720 of the MVFRL provides:

> In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits, benefits available under section 1711 (relating to required benefits), 1712 (relating to availability of benefits) or 1715 (relating to availability of adequate limits) or benefits paid or payable by a program, group contract or other arrangement whether primary or excess under section 1719 (relating to coordination of benefits).

75 Pa. C.S. § 1720. It is undisputed that Employer paid HLA benefits to Claimant, and that Claimant signed over his workers' compensation wage loss benefits to Employer. It is also undisputed that Section 1720 precludes an employer from subrogating its payment of HLA benefits against a claimant's third-party recovery in an "action[] arising out of the maintenance or use of a motor vehicle." *See Oliver*, 11 A.3d at 966. Section 1720 will, therefore, preclude Employer from subrogating its payment of HLA benefits against Claimant's third-party settlement of his Dram Shop Act claims with Tavern Owners if the action that Claimant filed against Tavern Owners "arose out of the maintenance or use of a motor vehicle."

Neither the Commonwealth Court nor the Board performed any meaningful statutory construction analysis to determine what the General Assembly meant by the phrase "actions arising out of the maintenance or use of a motor vehicle" as used in Section 1720 of the MVFRL. Nevertheless, both tribunals somehow concluded that Employer was entitled to subrogate against Claimant's third-party settlement of his Dram Shop Act claims with Tavern Owners because the restrictions set forth in Section 1720 "do not apply to recovery under a different cause of action not *arising under* the MVFRL." *Alpini*, slip op. at 10 (emphasis added); (*see also* Board's Decision, 01/15/2020, at 3 ("[Employer] has the right of subrogation of Claimant's [HLA] benefits from the settlement of his third[-]party action against [Tavern Owners], as this settlement *was based on the Dram Shop Act and not the MVFRL*." (emphasis added) (quoting Board's Decision, 11/29/2016, at 5-6)).) In so doing, the Commonwealth Court and the Board seemingly ignored that the phrase "arising under" is much narrower than the phrase "arising out of." Put more simply, the Commonwealth Court and the Board conflated the two phrases. We observe, however, that had the General Assembly intended Section 1720 to preclude subrogation only for those actions "arising under" the MVFRL, the General Assembly

could have used the phrase "arising under" in Section 1720 as it has done in other statutes. *See, e.g.*, Section 503(a) of the Loan Interest and Protection Law, Act of January 30, 1974, P.L. 13, 41 P.S. § 503(a) ("If a borrower or debtor, including but not limited to a residential mortgage debtor, prevails in *an action arising under this act*, he shall recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred on his behalf in connection with the prosecution of such action, together with a reasonable amount for attorney's fee." (emphasis added)); Section 8371 of the Judicial Code, 42 Pa. C.S. § 8371 ("In an *action arising under an insurance policy*, if the court finds that the insurer has acted in bad faith toward the insured, the court may take . . . [certain] actions[.]" (emphasis added)). The General Assembly, instead, chose to employ the phrase "actions arising out of the maintenance or use of a motor vehicle" in Section 1720. We must, therefore, do what both the Commonwealth Court and the Board failed to do: apply principles of statutory construction to determine what it means for an "action" to "aris[e] out of the maintenance or use of a motor vehicle."

We start by interpreting the word "action." Section 1991 of the Statutory Construction Act defines "action" as "[a]ny suit or proceeding in any court of this Commonwealth." 1 Pa. C.S. § 1991. This Court, in *Bayview Loan Servicing, LLC v. Lindsay*, 185 A.3d 307 (Pa. 2018), arguably in an effort to expound upon that default definition, provided that "the term 'action' is a term of art with a precise and settled meaning, namely a judicial proceeding, *i.e.*, a civil action in which the plaintiff seeks some form of relief (for example, legal damages, recoupment, set-off, equity or declaratory relief), filed in a court of competent jurisdiction in accordance with the Pennsylvania Rules of Civil Procedure." *Bayview Loan Servicing*, 185 A.3d at 313 (citing 2 Standard Pennsylvania Practice 2d § 6:1; Black's Law Dictionary (10th ed. 2014) (defining "action"

as a "civil or criminal judicial proceeding")). Turning to the phrase "arising out of," the MVFRL does not define that phrase, and Section 1991 of the Statutory Construction Act does not provide a default definition therefor. Black's Law Dictionary, however, defines "arise" as, *inter alia*, "[t]o originate; to stem (from)" and "[t]o result (from)." *Arise*, Black's Law Dictionary 133 (11th ed. 2019). Black's Law Dictionary also provides an example of what could be included under each definition: "[t]o originate; to stem (from)"—*e.g.*, "a federal claim arising under the [United States] Constitution"—and "[t]o result (from)"—*e.g.*, "litigation routinely arises from such accidents." *Id.* Accordingly, when we consider the definitions of "action" and "arise" together, we must interpret the plain language of Section 1720 of the MVFRL to clearly and unambiguously provide that an "action arises out of the maintenance or use of a motor vehicle" if the claimant's lawsuit/judicial proceeding originates, stems, or results from the maintenance or use of a motor vehicle.

Applying that clear and unambiguous interpretation of Section 1720 of the MVFRL to the facts of this case, we must conclude that the "action" through which Claimant asserted his Dram Shop Act claims against Tavern Owners "arose out of the maintenance or use of a motor vehicle." Claimant and his wife filed a single lawsuit/judicial proceeding against both Tavern Owners and Driver, wherein they set forth a cause of action against Driver for negligence and separate causes of action against Tavern Owners for violations of the Dram Shop Act. It is that lawsuit/judicial proceeding as a whole, and not the individual causes of action that Claimant and his wife asserted against Tavern Owners for violations of the Dram Shop Act, that constitute the "action" for purposes of Section 1720. Additionally, that action originated, stemmed, and/or resulted from the motor vehicle collision involving Driver's vehicle and Claimant's patrol car—*i.e.*, from Driver striking Claimant's patrol car with his vehicle. For these reasons, we hold that Section 1720 clearly and unambiguously precludes Employer from subrogating its

payment of HLA benefits against Claimant's third-party settlement of his Dram Shop Act claims with Tavern Owners because the action that Claimant and his wife filed against Tavern Owners "arose out of the maintenance or use of a motor vehicle."

Because we have determined that Section 1720 of the MVFRL is clear and unambiguous, we need not consider, as Employer would like us to do, any other factors to determine the General Assembly's intent, including the purposes/goals of the MVFRL, the rationale behind an employer's right to subrogation under the WCA, and/or the consequences of our above-stated interpretation of Section 1720. Moreover, we note that our holding today is entirely consistent with and represents a logical extension of both *Bushta* and *Stermel*. Employer would, nevertheless, like us to draw a distinction between this case and *Bushta* on the basis that, in this case, unlike in *Bushta*, workers' compensation benefits were actually paid to Claimant and Claimant remitted those payments to Employer as required by the HLA. In other words, Employer would like us to treat an insured public employer differently from a self-insured public employer simply because the insured public employer's insurance company issues a check to its employee for workers' compensation wage loss benefits. In order for us to entertain such a distinction, however, Employer would have to establish that Claimant not only received a check for workers' compensation wage loss benefits but also that Claimant cashed or deposited that check, thereby retaining the benefit of both workers' compensation wage loss benefits and HLA benefits—*i.e.*, a double recovery.[13] Employer cannot demonstrate

[13] To illustrate this point further, an employee that receives HLA benefits does not also receive workers' compensation wage loss benefits regardless of whether the public employer is insured or self-insured. While an employee may be entitled to seek both HLA benefits and workers' compensation wage loss benefits, entitlement to and receipt of workers' compensation wage loss benefits are separate and distinct concepts. This is because, as explained more fully above, compensation for work injuries sustained by an employee is governed by two separate statutes: the WCA and the HLA. Thus, a public employer that is required to comply with the HLA and pay an injured employee his/her full (continued…)

this fact because Claimant signed over his workers' compensation wage loss benefits check to Employer. For these reasons, while we acknowledge that there are factual differences between insured public employers and self-insured public employers, we decline to limit our holding in *Bushta* to situations that solely involve self-insured employers. Accordingly, we reverse the order of the Commonwealth Court.[14]

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salary is not absolved of its obligations under the WCA. In other words, even when the HLA applies, a public employer must still comply with the requirements of the WCA. Just because a public employer may issue a notice of compensation payable accepting liability for an employee's work-related injury under the WCA and the public employer's insurance company may thereafter issue a check or checks to the injured employee for workers' compensation wage loss benefits does not mean that the employee is actually paid both HLA benefits and workers' compensation wage loss benefits. In fact, the employee cannot, as a matter of law, receive both HLA benefits and workers' compensation wage loss benefits. *See City of Erie v. Workers' Comp. Appeal Bd. (Annunziata)*, 838 A.2d 598, 604 (Pa. 2003). The HLA, therefore, requires an employee that is receiving HLA benefits to turn over "any workmen's compensation[] received or collected" to the public employer. Section 1(a) of the HLA. Thus, even though the check from the public employer's insurance company may be issued to and received by the injured employee, the underlying workers' compensation wage loss benefits are ultimately paid to and received by the public employer and not the injured employee. Stated another way, the employee may receive a workers' compensation check/payment, but that employee does not receive any workers' compensation wage loss benefits, the public employer does.

Taking this rationale even further, we have said that one of the three underlying purposes behind an employer's right to subrogation under Section 319 of the WCA is "to prevent [an] employee from receiving a 'double recovery' for the same injury." *Brubacher Excavating, Inc. v. Workers' Comp. Appeal Bd. (Bridges)*, 835 A.2d 1273, 1277 (Pa. 2003). There can be no double recovery, however, if the injured employee does not receive the workers' compensation wage loss benefits—*i.e.*, the employee does not benefit from the payment of workers' compensation wage loss benefits. Here, it is undisputed that Claimant turned over his workers' compensation wage loss benefits to Employer as required by the HLA. Permitting Employer to subrogate against Claimant's third-party settlement under these circumstances would, therefore, not serve Section 319's purpose to prevent double recovery.

[14] We note that, as a result of our holding today, had Claimant's third-party action against Driver and Tavern Owners gone to trial, Claimant would not have been permitted to present any evidence relative to the lost wages that he suffered in connection with the subject motor vehicle accident because he would have been precluded by Section 1722 of the MVFRL from recovering those lost wages in the third-party action given that those wages were paid to Claimant by Employer in the form of HLA benefits. As Claimant's (continued…)

Justices Donohue, Dougherty and Mundy join the opinion.

Justice Dougherty files a concurring opinion in which Justice Donohue joins.

Justice Wecht files a dissenting opinion in which Chief Justice Todd joins.

The Late Chief Justice Baer did not participate in the decision of this matter.

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third-party recovery from Tavern Owners was the product of a settlement between the parties, we have no way of determining based upon the record before us whether such settlement included the HLA benefits that Claimant received from Employer in violation of Section 1722.

[J-47-2022] [MO:Brobson, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CHRISTOPHER ALPINI,	:	No. 2 MAP 2022
	:	
Appellant	:	Appeal from the Order of the Commonwealth Court dated July 19, 2021 at No. 92 CD 2020 Affirming the Order of the Workers' Compensation Appeal Board dated January 15, 2020 at No. A18-0913.
v.	:	
	:	
	:	
	:	
WORKERS' COMPENSATION APPEAL BOARD (TINICUM TOWNSHIP),	:	ARGUED: September 14, 2022
	:	
Appellees	:	

CONCURRING OPINION

JUSTICE DOUGHERTY **DECIDED: May 16, 2023**

I fully join the majority opinion's statutory construction analysis of 75 Pa.C.S. §1720, as well as its holding this case falls within the provision's scope. *See* Majority Opinion at 20-25. I further join the majority's conclusion this Court's opinion in *Pennsylvania State Police v. Workers' Compensation Appeal Board (Bushta)*, 184 A.3d 958 (Pa. 2018), is applicable here. I write separately only to elaborate on why Section 319 of the Workers' Compensation Act (WCA) does not permit Tinicum Township (Township) to subrogate against claimant Christopher Alpini's third-party tort recovery.

Pursuant to *Bushta*, "for purposes of the MVFRL, Heart and Lung [(HLA)] benefits subsume WCA benefits, and thus subrogation of such benefits is barred." *Id.* at 968. I agree with the majority that our decision in *Bushta* was not bound by the specific facts of that case — where the employer was self-insured and its third-party administrator paid

the wage loss benefits directly to the employer.[1] I reiterate, however, that *Bushta*'s holding is limited — it holds only that "Heart and Lung benefits subsume WCA benefits" for purposes of the MVFRL's anti-subrogation provisions (Sections 1720 and 1722). *See id.*

We have this specific rule in this context because Sections 1720[2] and 1722[3] of the MVFRL provide an extra statutory overlay that affects an employer's subrogation rights.

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[1] I also agree with the majority's reasoning that the facts of this case are not materially distinguishable from the facts in *Bushta*: although the Claimant here was issued checks from the Township's third-party insurer for WCA benefits, like the claimant in *Bushta*, he did not keep those benefits (as he signed the checks over to the Township) and did not receive a double recovery. I differ from the majority on this point only in a semantic sense. While the majority holds "the employee cannot, as a matter of law, **receive** both HLA benefits and workers' compensation wage loss benefits[,]" Majority Opinion at 26 n.13 (emphasis added), I believe it would be more accurate to say the employee cannot "**retain**" both benefits. The HLA requires claimants to turn over "any workmen's compensation[] **received** or collected[.]" 53 P.S. §637 (emphasis added); *see also City of Erie v. WCAB (Annunziata)*, 838 A.2d 598, 605 (Pa. 2003) ("it does not necessarily follow from our affirmance of the right of a claimant to **seek and receive** workers' compensation benefits for concurrent employment that a claimant can **retain** those benefits") (emphasis in original). It therefore must be possible for HLA recipients to also "receive" workers' compensation benefits. But the majority's point is well-taken that those claimants may not **retain,** or keep, the WCA benefits.

[2] Section 1720 provides:

> In actions arising out of the maintenance or use of a motor vehicle, there shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits, benefits available under section 1711 (relating to required benefits), 1712 (relating to availability of benefits) or 1715 (relating to availability of adequate limits) or benefits paid or payable by a program, group contract or other arrangement whether primary or excess under section 1719 (relating to coordination of benefits).

75 Pa.C.S. §1720.

[3] Section 1722 provides:

> In any action for damages against a tortfeasor, or in any uninsured or underinsured motorist proceeding, arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive benefits under the

(continued…)

Cf. id. (distinguishing *Wisniewski v. WCAB (City of Pittsburgh)*, 621 A.2d 1111 (Pa. Cmwlth. 1993), and *Bureau of Workers' Comp. v. WCAB (Excalibur Ins. Mgmt. Serv.)*, 32 A.3d 291 (Pa. Cmwlth. 2011), on the basis that they did not "involve[ ] the MVFRL"); *Stermel v. WCAB (City of Phila.)*, 103 A.3d 876, 884-85 (Pa. Cmwlth. 2014) (same). Sections 1720 and 1722 work in tandem: Section 1720 prevents employers from subrogating for HLA benefits paid, and Section 1722 prevents claimants from recovering the amounts they are already being paid under the HLA (namely, lost wages and medical expenses). *See* 75 Pa.C.S. §§1720, 1722; *see also* 53 P.S. §637(a) (requiring HLA recipients be paid their "full rate of salary" and "[a]ll medical and hospital bills, incurred in connection with" their work injury). This scheme prevents HLA claimants from receiving a double recovery, as they are statutorily barred by Section 1722 from recovering lost wages and medical expenses through a third-party tort action. *See Bushta*, 184 A.3d at 968 ("Claimant was precluded from recovering his lost wages and medical benefits from the tortfeasors under the MVFRL because Claimant's wages and medical benefits were fully covered by the [HLA]."); *Stermel*, 103 A.3d at 885 ("because the tort recovery cannot, as a matter of law, include a loss of wages covered by Heart and Lung benefits, Claimant did not receive a double recovery of lost wages or medical bills").[4] And just because there

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> coverages set forth in this subchapter, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in section 1719 (relating to coordination of benefits) shall be precluded from recovering the amount of benefits paid or payable under this subchapter, or workers' compensation, or any program, group contract or other arrangement for payment of benefits as defined in section 1719.

75 Pa.C.S. §1722.

[4] I agree with the majority's reasoning that "[a]s Claimant's third-party recovery from Tavern Owners was the product of a settlement between the parties, we have no way of determining based upon the record before us whether such settlement included the HLA benefits that Claimant received from Employer in violation of Section 1722." Majority Opinion at 26-27 n.14; *see also Stermel*, 103 A.3d at 885 ("Simply, Section 1722 . . . did (continued…)

may be a concurrent right to lost wages and medical expenses pursuant to the WCA does not mean a claimant receiving HLA benefits can avoid Section 1722's bar against recovering for lost wages and medical expenses; Section 1722 includes no such exception.

However, the Township argues its right to subrogation is absolute and established by Section 319 of the WCA, which provides, in relevant part:

> Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated **to the right of the employe**, . . . against such third party to the extent of the compensation payable under this article by the employer; reasonable attorney's fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employe[.] . . . The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement.

77 P.S. §671 (emphasis added, footnote omitted). Under Section 319, the employer is subrogated only "to the right of the employe." *Id.* But if, as explained above, the employee has no right to recover lost wages and medical expenses pursuant to Section 1722's statutory bar, there is nothing from which the employer can subrogate. *See Stermel*, 103 A.3d at 885 ("Claimant continued to be 'precluded' from recovering the amount of benefits paid under the [HLA] from the responsible tortfeasors. 75 Pa.C.S. § 1722. There can be

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not allow Claimant to recover loss of wages from the tortfeasor defendants because they were covered by the [HLA]. The record does not disclose the elements of the $100,000 Claimant received from the tortfeasor. As a matter of law, however, it was net of his [HLA] benefits."). I further note that because no party admitted liability in the settlement agreement, and the amount paid was not apportioned by percentage of liability, we have no way of knowing how much of Claimant's recovery is even attributable to the Tavern Owners' actions. *See* General Release at 1-2.

no subrogation out of an award that does not include these benefits."); *see also Bushta*, 184 A.3d at 968 (adopting the foregoing reasoning from *Stermel*).[5]

I emphasize that this is where my reasoning seems to diverge from that expressed by Justice Wecht in his dissenting opinion. I agree with the dissent that Section 319 of the WCA would typically allow for subrogation regardless of whether the third-party tort action arises out of the maintenance or use of a motor vehicle. But this Court's reasoning in *Bushta* necessitates finding that: (1) because Claimant was receiving HLA benefits, he was precluded from recovering lost wages and medical benefits pursuant to MVFRL Section 1722; (2) which means his third-party tort recovery could not include those benefits; so (3) the Township (which, per WCA Section 319, would otherwise be able to subrogate to recover to the extent WCA benefits were payable) has **no source from which it can subrogate** for the lost wages and medical benefits payable under the WCA.

The *Bushta* Court plainly held:

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[5] The Township cites *Thompson v. WCAB (USF&G Co.)*, 781 A.2d 1146 (Pa. 2001), for the proposition that subrogation is "automatic" and subrogation rights are "absolute." Township's Brief at 15-16. The Township is correct we reaffirmed in *Thompson* an employer's right to subrogation is "generally absolute." 781 A.2d at 1153. However, we did not hold in *Thompson* that an employer had a right to subrogate for workers' compensation benefits paid from a tort recovery that did not include lost wages and medical expenses. In fact, the *Thompson* Court remanded to the Commonwealth Court to determine if the employee's settlement included lost wages and medical expenses, rather than only including amounts for pain and suffering and his wife's loss of consortium (as expressly designated by the terms of the settlement agreement). *See id.* at 1154-55 (relying on *Darr Construction Co. v. WCAB (Walker)*, 715 A.2d 1075, 1080 (Pa. 1998), for the assertion the "doctrine of subrogation implies [the] need for some identity or equatability of funds"). No such remand is necessary in this case because under Section 1722, the settlement agreement cannot include lost wages or medical expenses. Moreover, contrary to *amicus* City of Philadelphia's argument, our holding today does not "contradict the prior holdings discussing the interplay between WCA and HLA benefits." Brief for *Amicus* City of Philadelphia at 19. We are not overruling any prior case law about when compensation is "payable" for purposes of the WCA or when there are concurrent rights to WCA and HLA benefits — we are simply interpreting the anti-subrogation provisions of the MVFRL.

> [The employer] ignores the fact that, like *Stermel*, the instant case is distinguishable from *Wisniewski* and *Excalibur Insurance* because it involves the MVFRL. Indeed, here, as in *Stermel*, **Claimant was precluded from recovering his lost wages and medical benefits from the tortfeasors under the MVFRL because Claimant's wages and medical benefits were fully covered by the Heart and Lung Act**. We agree with the *Stermel* court that, **for purposes of the MVFRL, Heart and Lung benefits subsume WCA benefits, and thus subrogation of such benefits is barred**.

Bushta, 184 A.3d at 968 (emphasis added).[6] In cases implicated by Section 1722, a person receiving HLA benefits "shall be precluded from recovering the amount of benefits paid or payable" under the HLA, 75 Pa.C.S. §1722, *i.e.*, they are "precluded from recovering [their] lost wages and medical benefits from the tortfeasors under the MVFRL because [their] wages and medical benefits were fully covered by the Heart and Lung Act[,]" *Bushta*, 184 A.3d at 968. And nothing in the text of Section 1722 or Act 44 would allow a claimant receiving HLA benefits to recover lost wages and medical expenses (which are fully covered by the HLA) from the third-party tortfeasor simply because they

[6] The dissent argues this reasoning was "little more than a restatement of the facts of *Bushta*, which differ from the instant case" because here, Claimant received workers' compensation checks from the insurer. Dissenting Opinion at 12. But in fact, this portion of *Bushta* addressed the employer's argument that the holdings in *Excalibur* and *Wisniewski* — where self-insured employers are required to pay both WCA and HLA benefits, two-thirds of the payments made represent WCA benefits — applied to its case. As explained above, we found that principle did not apply because neither of those cases involved the MVFRL. If that principle did apply, then *Bushta* surely would have involved the "meaningful transfer of [WCA] funds" the dissent references, as two-thirds of the benefits actually paid by the employer would have been considered WCA benefits. *Id.* at 10. But we rejected the employer's argument, not because the claimant in *Bushta* did not receive a check specifically covering WCA benefits, but because after Act 44, claimants were still barred from recovering HLA benefits under Section 1722, meaning they were barred from recovering all of their lost wages and medical benefits. *See Bushta*, 184 A.3d at 968. To read this portion of *Bushta* otherwise would result in circularity; it would be illogical for the Court to have rejected the employer's argument that two-thirds of the amount actually paid constituted WCA benefits by reasoning the injured employee was not separately paid WCA benefits.

also receive WCA benefits.[7] For these reasons, employers are barred from subrogating in this context regardless of whether they are self-insured or insured by a third-party insurer.

Justice Donohue joins this opinion.

[7] According to the dissent, after Act 44, injured employees receiving both types of benefits may recover the amount of lost wages and medical expenses covered by their WCA benefits, notwithstanding the fact Section 1722 affirmatively prohibits them from recovering the amount of lost wages and medical expenses covered by their HLA benefits (that is, **all** of their lost wages and medical expenses). *See* Dissenting Opinion at 10. But as a practical matter, when injured employees sue third-party tortfeasors, they seek damages for lost wages and medical expenses generally. They do not seek "lost wages and medical expenses as covered by the WCA" or "lost wages and medical expenses as covered by the HLA." Imagine a scenario where the MVFRL is not implicated and there are no limits on subrogation: an injured employee would not be able to recover 166.67% of his lost wages from a third-party tortfeasor just because he has a concurrent entitlement to WCA and HLA benefits, even if the employer paying the benefits is insured for workers' compensation. Tying the MVFRL back in, if a claimant receives HLA benefits, he "shall be precluded from recovering the amount of benefits paid or payable" under the HLA. 75 Pa.C.S. §1722. The amount of benefits paid or payable is full lost wages and medical expenses. While Act 44 eliminated the Section 1722 prohibition on recovering WCA benefits, it did not affirmatively grant injured employees the ability to recover lost wages and medical expenses if they are otherwise barred by Section 1722's prohibition on recovering HLA benefits.

[J-47-2022] [MO: Brobson, J.]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CHRISTOPHER ALPINI,	:	No. 2 MAP 2022
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court dated July 19,
	:	2021 at No. 92 CD 2020 Affirming
v.	:	the Order of the Workers'
	:	Compensation Appeal Board dated
	:	January 15, 2020 at No. A18-0913.
WORKERS' COMPENSATION APPEAL	:	
BOARD (TINICUM TOWNSHIP),	:	ARGUED: September 14, 2022
	:	
Appellees	:	

DISSENTING OPINION

JUSTICE WECHT **DECIDED: May 16, 2023**

Tinicum Township is entitled to subrogation against Christopher Alpini's third-party tort recovery up to the amount of any benefits paid to him under the Workers' Compensation Act.[1] Hence, I respectfully dissent.

The question of whether or not the phrase "actions arising out of the maintenance or use of a motor vehicle," as used in Section 1720 of the Motor Vehicle Financial Responsibility Law,[2] encompasses dram shop liability[3] of tavern owners, is not the most important issue implicated by this appeal. The more significant inquiry is whether and to

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[1] Act of June 2, 1915, P.L. 736, *as amended*, 77 P.S. §§ 1-1041.4, 2501-2710 (hereinafter, "WCA").

[2] 75 Pa.C.S. § 1720 (hereinafter, "MVFRL").

[3] *See* 47 P.S. § 4-493(1).

what extent a public employer paying benefits under the Heart and Lung Act[4] may be entitled to subrogation where the employee's injury involves an automobile. The relevant statutes and cases[5] provide the answer: Public employers are prohibited from subrogation only if they are self-insured for workers' compensation.

I.

The WCA provides for disabled employees to receive only two thirds of their wages,[6] but the HLA provides that certain public safety employees, such as township police officers like Alpini, receive their full salaries while disabled due to a work injury.[7] But employers paying disabled employees their full salaries under the HLA are still subject to the WCA. The HLA mandates that "any workmen's compensation, received or collected by any such employe for such period, shall be turned over to . . . [the] township, and paid into the treasury thereof."[8]

This provision of the HLA gives rise to a key distinction. Where a public employer pays for workers' compensation insurance, but also pays Heart and Lung benefits to an employee, the workers' compensation insurer sends payments to the employee, who then

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[4] Act of June 28, 1935, P.L. 477, *as amended*, 53 P.S. §§ 637-38 (hereinafter, "HLA").

[5] *See Pennsylvania State Police v. W.C.A.B. (Bushta)*, 184 A.3d 958 (Pa. 2018); *Stermel v. W.C.A.B. (City of Philadelphia)*, 103 A.3d 876 (Pa. Cmwlth. 2014).

[6] *See* 77 P.S. § 511(1) (providing that workers' compensation benefits for totally disabled employees are "sixty-six and two-thirds per centum of the wages of the injured employe . . . payable for the duration of total disability").

[7] *See* 53 P.S. § 637(a), (a)(10) (stating that "any policeman . . . of any . . . township . . . who is injured in the performance of his duties" shall be paid by the township "his full rate of salary . . . until the disability arising therefrom has ceased").

[8] 53 P.S. § 637(a).

transfers them to the employer pursuant to the HLA.[9] That is what occurred in this case, since Tinicum Township had a workers' compensation insurer.[10] By contrast, where a public employer is self-insured for workers' compensation, it does not follow this procedure. "Self-insured public employers that pay Heart and Lung benefits do not also make workers' compensation payments because they would simply be returned."[11] For a self-insured public employer, payment of "workers' compensation benefits" in conjunction with Heart and Lung benefits would be a legal fiction, a mere movement of money from one pocket to another.[12]

We next must understand the right to subrogation and its interaction with the MVFRL. It is this interaction that causes much of this case's complexity. Section 319 of the WCA provides:

> Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employe, his personal representative, his estate or his dependents, against such third party to the extent of the compensation payable under [the WCA] by the employer.[13]

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[9] Because the workers' compensation payments amount to two thirds of the employee's compensation, the net effect is that, after reimbursement, the insured public employer ultimately is responsible for paying the employee only one third of his salary under the HLA.

[10] *See* WCJ Opinion, 8/7/2018, at 4, ¶ 9 (noting that Alpini "is being paid full salary benefits by the Township under the Heart and Lung Act," and although he received checks from the Township's workers' compensation insurer, Amerihealth Casualty, he "'signs over' his workers' compensation checks to the Township and does not keep that money").

[11] *Stermel*, 103 A.3d at 877-78 (citing *Wisniewski v. W.C.A.B. (City of Pittsburgh)*, 621 A.2d 1111, 1113 (Pa. Cmwlth. 1993)).

[12] Significantly, the employers in both *Bushta* and *Stermel* were self-insured for workers' compensation. *See Bushta*, 184 A.3d at 962; *Stermel*, 103 A.3d at 880.

[13] 77 P.S. § 671.

Thus, the general rule is that, when an employee is injured by a third party and the employer is paying workers' compensation benefits in connection with that injury, the employer may subrogate against the employee's third-party recovery in order to recoup the amount of the benefits that it has paid. Although the HLA does not contain an express subrogation provision, it likewise has been interpreted as permitting subrogation as a matter of common law.[14]

Under Section 1720 of the MVFRL, however, subrogation was prohibited for many years with respect to "actions arising out of the maintenance or use of a motor vehicle."[15] Concomitantly, under Section 1722, the injured employee was barred from recovering the amount of any workers' compensation benefits as damages in a motor-vehicle-related action against a third party.[16] Because of these provisions of the MVFRL, employers were solely responsible for covering their employees' lost wages through workers' compensation benefits and/or Heart and Lung benefits. Employees injured in work-

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[14] *See City of Philadelphia v. Zampogna*, 177 A.3d 1027, 1030 (Pa. Cmwlth. 2017) ("The Heart and Lung Act does not contain a [provision similar to Section 319 of the WCA], but it has long been understood that the common law authorizes public employers to subrogate their Heart and Lung payments from the employee's third party tort recovery.") (citing *Topelski v. Universal South Side Autos, Inc.*, 180 A.2d 414, 420 (Pa. 1962)).

[15] 75 Pa.C.S. § 1720. With respect to workers' compensation benefits, Section 1720's anti-subrogation mandate is express. *Id.* (providing that, in actions arising from the maintenance or use of a motor vehicle, there "shall be no right of subrogation or reimbursement from a claimant's tort recovery with respect to workers' compensation benefits"). Heart and Lung benefits, although not mentioned in Section 1720, were treated the same way by our courts, *i.e.*, no subrogation was permitted where the employee's third-party recovery came from an action arising out of the maintenance or use of a motor vehicle. *See Fulmer v. Pennsylvania State Police*, 647 A.2d 616 (Pa. Cmwlth. 1994).

[16] 75 Pa.C.S. § 1722 ("In any action for damages against a tortfeasor . . . arising out of the maintenance or use of a motor vehicle, a person who is eligible to receive benefits under the coverages set forth in this subchapter, or workers' compensation . . . shall be precluded from recovering the amount of benefits paid or payable under this subchapter, or workers' compensation[.]").

related vehicle collisions could not recover the amount of those benefits from the third-party tortfeasor, and the employer had no entitlement to subrogation to recoup the benefits that it paid. In other words, much of the financial burden of injuries from work-related car crashes fell upon employers and workers' compensation insurers, not upon tortfeasor-drivers and their automobile insurers.

Then, in 1993, the General Assembly passed what is known as "Act 44."[17] Without amending the text of Sections 1720 and 1722 of the MVFRL, for reasons unknown, Section 25(b) of Act 44 included the following language: "The provisions of 75 Pa.C.S. §§ 1720 and 1722 are repealed insofar as they relate to workers' compensation payments or other benefits under the Workers' Compensation Act."[18] The text of Sections 1720 and 1722 remains in its pre-Act 44 form, facially prohibiting subrogation. Confusion reigned. Post-Act 44, it seemed clear enough that, at least as it concerned workers' compensation benefits, "actions arising out of the maintenance or use of a motor vehicle" now are effectively the same as all other actions against third parties, *i.e.*, subrogation is permitted under the general rule of Section 319 of the WCA. But what of Heart and Lung benefits?

This Court answered that question in 2011, in *Oliver v. City of Pittsburgh*.[19] There, we held that, because the plain language of Act 44, § 25(b) referred only to workers' compensation benefits, and not to Heart and Lung benefits, the repeal necessarily applied only to the former.[20] Heart and Lung benefits thus remain within the anti-subrogation provision of the MVFRL, Section 1720. The upshot of these developments is that, in work-related car crash cases, we are now in a curious state in which employers are

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17 Act of July 2, 1993, P.L. 190, No. 44.

18 Act 44, § 25(b).

19 11 A.3d 960 (Pa. 2011).

20 *See id.* at 966.

entitled to subrogate against their employees' third-party recoveries for workers' compensation benefits, but *not* for Heart and Lung benefits. Employees, in turn, are permitted to plead the amount of their workers' compensation benefits as damages in their third-party lawsuits pursuant to Section 1722, but *cannot* recover the amount of their Heart and Lung benefits, per Act 44 and *Oliver.*[21]

The facts of this appeal provide an illustration. Alpini, a Tinicum Township ("the Township") police officer, was injured in a motor vehicle collision while on duty. The Township, through its insurer AmeriHealth Casualty, paid Alpini workers' compensation benefits, but also paid him his full salary under the HLA. Alpini then signed his workers' compensation checks over to the Township, as required by the HLA. Alpini recovered damages in a tort action against the driver who injured him and the taverns that served alcohol to the driver. The Township, on behalf of its insurer, then sought to subrogate against Alpini's third-party recovery (specifically the portion attributable to the tavern owners) in the amount of the lien reported by AmeriHealth's Lead Claims Adjuster, Heather Stover.[22] Ms. Stover averred that, in connection with Alpini's "work injury claim," AmeriHealth asserted a total lien of $364,024.60, consisting of $186,063.41 in wage loss benefits and $177,961.19 in medical benefits.[23]

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[21] We are bound to presume that the statutes, as written, reflect the deliberate intent of the General Assembly. It seems likely nonetheless that, in weaving this web of interactions between the WCA and the MVFRL, the General Assembly simply overlooked the HLA. The result is that courts have been compelled to strain to place these statutes into a workable paradigm. Although this Court in *Oliver* was correct to rely upon the plain language of Act 44, there does not seem to be any compelling reason to distinguish between workers' compensation benefits and Heart and Lung benefits when it comes to subrogation. Yet, here we are, at least until the General Assembly chooses to revise its handiwork.

[22] *See* Certified Record Item 32, Affidavit of Heather Stover.

[23] *Id.*

Was this amount subrogable? As I understand the statutes discussed above, the answer depends upon the type of benefits that the lien represents. If the lien reflects amounts paid to Alpini under the WCA, then the Township is entitled to subrogate against Alpini's third-party recovery *regardless* of whether that recovery is attributable to an action "arising out of the maintenance or use of a motor vehicle" for purposes of Section 1720 of the MVFRL. This is so because Act 44 excised workers' compensation benefits from the anti-subrogation provision of the MVFRL, placing the lien comfortably within the general rule of Section 319 of the WCA, which permits subrogation. On the other hand, if the lien represents Heart and Lung benefits, then the Township may subrogate against Alpini's recovery only if his action against the third-party tortfeasors *did not* arise from "the maintenance or use of a motor vehicle" under Section 1720 of the MVFRL. This is because, per Act 44 and *Oliver*, Heart and Lung benefits remain within the MVFRL's anti-subrogation mandate. And naturally, Alpini was permitted to plead and recover the amount of his lost wages that were covered by workers' compensation under the post-Act 44 version of Section 1722 of the MVFRL, but he could not recover any amount attributable to Heart and Lung benefits if his action arose out of the maintenance or use of a motor vehicle. Simple, right?

Both the Majority and Justice Dougherty assume that we are in the "solely Heart and Lung benefits" scenario, and they thus focus exclusively on the meaning of the phrase "arising out of the maintenance or use of a motor vehicle" for purposes of the MVFRL. Both seem to conclude that this framing is necessitated by our decision in *Bushta*, specifically that opinion's statement that, "for purposes of the MVFRL, Heart and Lung benefits subsume WCA benefits, and thus subrogation of such benefits is barred."[24] But

[24] *Bushta*, 184 A.3d at 968.

this was not the entirety of *Bushta*'s reasoning. A closer look at *Bushta* and its predecessor, the Commonwealth Court's decision in *Stermel*, is revealing.

In *Stermel*, as in the instant case, a police officer was injured in a motor vehicle collision and was entitled to benefits under the HLA. The officer's employer, the City of Philadelphia, was self-insured for workers' compensation.[25] Thus, although the employer issued a Notice of Compensation Payable ("NCP") under the WCA, it did not make workers' compensation payments to the officer because, as noted above, "[s]elf-insured public employers that pay Heart and Lung benefits do not also make workers' compensation payments because they would simply be returned."[26] The employer's NCP specifically stated that it was paying the officer Heart and Lung benefits "in lieu of" workers' compensation.[27] Stressing this "in lieu of" language, the Commonwealth Court concluded that the "NCP, which was issued unilaterally by [the employer] does not transform Heart and Lung benefits into workers' compensation; they are separate."[28] And because it thus construed the entirety of the benefits as Heart and Lung benefits, the court concluded that the employer could not subrogate against the officer's third-party tort recovery pursuant to Section 1720 of the MVFRL, Act 44, and *Oliver*.[29]

Bushta similarly involved a police officer who was injured in a motor vehicle collision while on duty and who was entitled to Heart and Lung benefits. There—as in *Stermel*, but *unlike the instant case*—the employer was self-insured for workers'

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25 *Stermel*, 103 A.3d at 880.

26 *Id.* at 878.

27 *Id.* at 881.

28 *Id.* at 883.

29 *Id.* at 885-86.

compensation.[30] Accordingly, although the employer, the Pennsylvania State Police, issued an NCP indicating the amount to which the officer *would be* entitled under the WCA, it did not actually pay that amount, by reason of its self-insured status. Instead, the employer specified in the NCP that the officer received his full salary under the HLA.[31] The employer argued to this Court that, because workers' compensation benefits were payable, if not actually paid, it should accordingly be entitled to subrogation for the amount of those benefits, notwithstanding that it was actually paying the officer Heart and Lung benefits instead of workers' compensation benefits.

This Court highlighted *Stermel*'s acknowledgment that *self-insured* public employers do not make "workers' compensation payments" in conjunction with Heart and Lung benefits because such payments would simply be returned.[32] We accordingly found "no basis upon which to conclude that a mere acknowledgment in an NCP of a work injury, and the specification of the amount of benefits to which an injured employee would be entitled under the WCA, transforms an injured employee's Heart and Lung benefits into WCA benefits under the MVFRL."[33] We further stressed that the HLA requires an employee to turn over to the employer all workers' compensation benefits "received or collected."[34] "It follows," we reasoned, "that, in cases where the employee does not actually *receive or collect* workers' compensation benefits . . . there is no basis for subrogation."[35]

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30 *Bushta*, 184 A.3d at 962.

31 *Id.* (noting that the NCP contained a notation stating: "Paid Salary continuation. Heart & Lung Benefits by the employer.")

32 *Bushta*, 184 A.3d at 969 (quoting *Stermel*, 103 A.3d at 877-78).

33 *Id.*

34 53 P.S. § 637(a).

35 *Bushta*, 184 A.3d at 966 (emphasis in original).

Thus, although this Court did say that we "agree with the *Stermel* court that, for purposes of the MVFRL, Heart and Lung benefits subsume WCA benefits,"[36] this broad statement must be viewed within the context of the facts of the case, where workers' compensation benefits were not actually paid by a self-insured employer. The same was true in *Stermel*. Here, the critical distinction is that the Township was *not* self-insured for workers' compensation. The Township's insurer sent workers' compensation payments to Alpini, who "received or collected"[37] them, and then turned them over to the Township as required by the HLA. The payment of workers' compensation benefits was not merely a legal fiction as it was in *Stermel* and *Bushta*. Instead, it was a meaningful transfer of funds, by which the Township's insurer incurred a loss.

For this reason, we should not mechanically cite *Bushta* for the notion that "Heart and Lung benefits subsume WCA benefits" and therefore deem the insurer's lien to represent Heart and Lung benefits only, with whatever consequences that bears for the right to subrogation. To do so is to defy the governing statutes. Set aside all else and consider this fact: in this case, workers' compensation benefits were paid by the Township's workers' compensation insurer. Subrogation of the amount of those benefits is permitted under Section 319 of the WCA. And under Act 44, this is true regardless of whether Alpini's third-party tort action arose "out of the maintenance or use of a motor vehicle" for purposes of Section 1720 of the MVFRL. A conclusion that subrogation is impermissible with respect to the workers' compensation benefits is functionally the same as an outright refusal to apply Section 319 of the WCA.

The Majority contends that the workers' compensation benefits paid in this case were legally immaterial. It asserts that "an employee that receives HLA benefits does not

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36 *Id.* at 968.

37 53 P.S. § 637(a); *see Bushta*, 184 A.3d at 966.

also receive workers' compensation benefits regardless of whether the public employer is insured or self-insured."[38] It characterizes the workers' compensation benefits as effectively a legal fiction. But this would come as quite a surprise to the employer's workers' compensation insurer, who makes tangible payments under the WCA and for whom those benefits are very real. According to the Majority, because the HLA requires the injured employee to turn over any workers' compensation payments to the employer, the employee does not ultimately receive the benefits, so this situation is no different than where the employer is self-insured. It is true that, from the employee's perspective, the amount received is the same regardless of whether the payments are denominated as "solely Heart and Lung benefits" or "two-thirds workers' compensation and one-third Heart and Lung benefits." But from the insurer's perspective, the distinction is critical because it is the entity that incurs the loss. The employee is paid by the employer. The employer is paid by the workers' compensation insurer (in a roundabout way). But the workers' compensation insurer is left without anyone to make it whole, despite the fact that Act 44 was intended to allow it to recover its loss, shifting the financial responsibility for the employee's injury onto the third-party tortfeasor. The Majority's approach subverts this purpose of Act 44, imposing the financial burden upon the workers' compensation insurer rather than upon the tortfeasor.

In his concurrence, Justice Dougherty places greater focus upon the amounts that the employee is permitted to recover in the action against the third-party tortfeasor, and he emphasizes *Bushta*'s statement that, as in *Stermel*, the claimant there "was precluded from recovering his lost wages and medical benefits from the tortfeasors under the MVFRL because [his] wages and medical benefits were fully covered by the Heart and

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[38] Maj. Op. at 25 n.13.

Lung Act."[39] But this is little more than a restatement of the facts of *Bushta*, which differ from the instant case in the critical respect that I have highlighted. Indeed, the claimant in *Bushta* was receiving Heart and Lung benefits, *not workers' compensation benefits*, and he therefore was precluded from recovering the amount of those benefits in his tort action because, under Act 44 and *Oliver*, Heart and Lung benefits remain within the anti-subrogation and anti-recovery provisions of the MVFRL, Sections 1720 and 1722. Here, by contrast, there were workers' compensation benefits paid because the Township is not self-insured. And after Act 44, such benefits no longer fall within those provisions of the MVFRL. Thus, Alpini was *not* subject to the same third-party recovery preclusion as the claimant in *Bushta*.

None of this is to say that the situation created by Act 44 is ideal. Far from it. As I discuss below, this is a situation that warrants legislative correction. The difference in the statutory treatment of workers' compensation and Heart and Lung benefits leads to all manner of confusion. Although the framework that I have illustrated above allows for the employee to be made whole no matter the circumstance—whether through workers' compensation or Heart and Lung benefits, and whether the employer is insured or self-insured—in practice it remains difficult for the injured employee to ascertain the amounts that he is entitled to plead as damages in the third-party lawsuit. Attempting to apply Act 44 in good faith, the employee certainly would plead the amount of his workers' compensation benefits pursuant to the post-Act 44 version of Section 1722 of the MVFRL. Act 44 plainly indicates that he may do so. But he presumably would then have to determine whether his action arose out of the maintenance or use of a motor vehicle, whatever that means, in order to determine whether he may plead as damages any

[39] Conc. Op. at 6 (Dougherty, J.) (emphasis omitted) (quoting *Bushta*, 184 A.3d at 968).

additional amounts received solely as Heart and Lung benefits. This is a needlessly complicated exercise.

But the approach advocated by the Majority and Justice Dougherty provides no greater clarity on this point. Under that framework, the employee still must make a threshold determination of whether his action arose out of the maintenance or use of a motor vehicle in order to determine whether he may recover the amount of his Heart and Lung benefits in his lawsuit against the third party. But additionally, under the Majority's and Justice Dougherty's view, the employee who merely follows the instruction of Act 44 and pleads the amount of his workers' compensation benefits as damages actually violates Section 1722 of the MVFRL, because his workers' compensation benefits were not really workers' compensation benefits at all; they were "subsumed" within his Heart and Lung benefits. And if the employee pleads and recovers amounts that were covered by workers' compensation anyway, as Alpini did in this case,[40] then he receives a double recovery—both the employer and the tortfeasor compensate the employee for the same loss. Perhaps we may not be bothered by a circumstance in which the employee reaps such a windfall, but it surely is a concern for the workers' compensation insurer, who through Act 44 was meant to be able to recover such amounts through subrogation.

Returning to that right of subrogation, the regime created by Act 44, *Stermel*, and *Bushta* is further flawed because it has the unfortunate effect of disfavoring those public employers that are self-insured. Employers with workers' compensation insurance are entitled to subrogation, but, under *Bushta* and *Stermel*, self-insured public employers are

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[40] It is undisputed that Alpini pleaded lost wages and medical expenses as damages in his actions against both the driver and the tavern owners, without specifying whether his losses were covered by workers' compensation and/or Heart and Lung benefits. *See* Certified Record Item 35, Alpini's Civil Complaint.

not. Notably, both the Commonwealth Court and the Workers' Compensation Appeal Board ("Board") in *Stermel* recognized this inequity:

> The Board reasoned that if [the employer] had not been self-insured, its workers' compensation carrier would have made payments and Claimant, in turn, would have been required to "turn over" these payments to Employer [pursuant to the HLA]. Stated otherwise, [the employer] would have been reimbursed for two-thirds of the Heart and Lung benefits it paid, and its workers' compensation insurer would be eligible for subrogation against the tortfeasor responsible for [the employee's] injury. The Board concluded that a self-insured public employer's right of subrogation should not be less than that of the insured public employer.[41]

The Commonwealth Court noted that the Board, in permitting subrogation for a self-insured employer, had been "focused on fairness, reasoning that it is unfair and unreasonable to treat a self-insured public employer differently than an insured public employer."[42] The court, however, found that the "Board erred in focusing on the impact on [the employer]."[43] The Commonwealth Court found itself bound by the statutes, not by abstract considerations of fairness. The court opined that the "Board failed to honor the established law that Section 25(b) of Act 44 applies only to workers' compensation benefits."[44] The Commonwealth Court reasoned: "Only the legislature may undertake further refinements and eliminate the distinction between the self-insured public employer and the public employer who purchases an employer's liability policy of insurance."[45, 46]

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41 *Stermel*, 103 A.3d at 882 (citation omitted).

42 *Id.* at 885.

43 *Id.*

44 *Id.*

45 *Id.* at 886.

46 Importantly, this passage of *Stermel* makes clear that the Commonwealth Court recognized that there *is* a distinction between insured and self-insured employers in this context. Thus, when this Court in *Bushta* stated that we "agree with the *Stermel* court (continued…)

In principle, I agree with the concern that the Board expressed in *Stermel*. There is a distinction between insured and self-insured public employers, and it is neither a fair one nor a sensible one. But I agree as well with the Commonwealth Court's reasoning: this problem requires a legislative solution. From Act 44 onwards, the intersection of the WCA, the HLA, and the MVFRL has been a quagmire. And although our courts have expended great efforts in interpreting these statutes and in striving to give effect to the intent of the General Assembly, the outcome has been less than ideal. As I suggested above,[47] the language and history of Act 44, § 25(b) reveal that, put simply, the HLA has fallen through the cracks. This case yet again demonstrates the unfortunate and byzantine consequences of the General Assembly's failure to address Heart and Lung benefits in the MVFRL. It stands alongside its predecessors, *Bushta* and *Stermel*, as a testament to the need for legislative clarification in this area. This is a problem that only the General Assembly can fix.

The Majority fails to recognize that there is a legally significant distinction between insured and self-insured public employers in the first place. It instead views this case as "entirely consistent with" and a "logical extension of" *Bushta* and *Stermel*, without acknowledging the importance of this factual distinction.[48] The Majority's answer to the complex questions raised by this appeal is to declare that, per *Bushta*, workers' compensation benefits simply disappear in the presence of Heart and Lung benefits. I differ with this approach. Under Act 44, Alpini was permitted to plead the amount of his workers' compensation benefits as damages in his tort action. The Township, in turn,

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that, for purposes of the MVFRL, Heart and Lung benefits subsume WCA benefits," we did not fully and accurately characterize *Stermel*. *Bushta*, 184 A.3d at 968.

47 *See supra* n.21.

48 Maj. Op. at 25.

was entitled to subrogation such that its insurer could recover the amount of the workers' compensation payments that it made to Alpini. On that basis, I must respectfully dissent.

II.

Unfortunately, the wrinkles in this case do not end there. On my review of the record, it is less than clear whether AmeriHealth's lien was composed entirely of amounts reflecting workers' compensation benefits, or whether some portion thereof constitutes Heart and Lung benefits. As noted above, Ms. Stover's affidavit, which established the amount of the lien, refers ambiguously to the payments made on Alpini's "work injury claim."[49] The Township presently asserts that the lien consisted only of workers' compensation benefits because "AmeriHealth only insured [the Township's] workers' compensation liability," its policy "did not include the excess benefits paid" under the HLA, and "[t]here is no cognizable argument that AmeriHealth paid something other than workers' compensation benefits."[50] This assertion is questionable.

The parties conducted a deposition of the Township's Manager, David Schreiber, on June 26, 2017.[51] Mr. Schreiber's testimony reveals that the Township was insured for Heart and Lung benefits in addition to workers' compensation benefits, for at least some period of time. And he believed that the Township's HLA insurer was the same as its workers' compensation insurer, *i.e.*, AmeriHealth. Mr. Schreiber testified as follows:

> [Alpini's Counsel]: I understand your previous testimony that there is a separate premium paid for insurance or payment of Heart and Lung benefits to injured police officers?
>
> [Schreiber]: I believe so. I can't be a hundred percent certain of that.

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49 *See supra* n.22; Certified Record Item 32, Affidavit of Heather Stover.

50 Township's Br. at 31.

51 Certified Record Item 30, Deposition of David Schreiber.

[Township's Counsel]: For the record, and I can verify this, but townships nowadays, there's a certain period where initially their Heart and Lung will be covered by insurance, by the same insured covering them for workers' compensation. I think the period is two years.

[Schreiber]: Two years. You're absolutely correct.

[Township's Counsel]: I'll have to check on that. I think the same is done, obviously, for Tinicum [Township].

[Schreiber]: That period has expired, and we have been paying Mr. Alpini his Heart and Lung directly.

[Alpini's Counsel]: So, what expired was the period of two years?

[Schreiber]: Yes. There's a specific Heart and Lung coverage in addition to the workers' comp[ensation] coverage.

[Alpini's Counsel]: To make sure I understand this, you're saying for the first two years after a police officer's injury, there is separate premiums [*sic*] paid for insurance that would pay for benefits under the Heart and Lung Act?

[Township's Counsel]: That's correct. That's my understanding. Before I stipulate to that, I'll check with the insurance and the broker to make sure. But I believe the municipality is insured on that for a period of two years, after which the municipality will assume the Heart and Lung payment.

[Schreiber]: I believe you're correct.

[Township's Counsel]: Okay.

[Alpini's Counsel]: During that initial two-year period post-injury, and going past that period, there is a separate premium paid for workers' compensation benefits for the police officer?

[Schreiber]: That's correct.

[Alpini's Counsel]: Is that, as far as you know, and Mr. Frantum [(Township's Counsel)] can correct us if we're wrong, that's what happened in Officer Alpini's case?

[Schreiber]: Well, what happened in Officer Alpini's case is he was collecting Heart and Lung benefits since shortly after his injury.

[Alpini's Counsel]: But as far as you know, at least, the first two years of the Heart and Lung benefits were paid by an insurance company, which you paid premiums for to pay those benefits?

[Schreiber]: I believe so.

[Alpini's Counsel]: Do you know what carrier that was?

[Alpini's Counsel]: Do you know, Mr. Frantum?

[Township's Counsel]: Yeah, again, but let me verify before I stipulate. I believe it was also it [*sic*] was AmeriHealth, and I believe it's a

> reimbursement plan, and maybe Mr. Schreiber can correct me if I'm wrong, where the Township will initially pay out and will be reimbursed with a hundred percent salary that's paid out. Am I correct about that?
>
> [Schreiber]: I can't swear to that.
>
> [Township's Counsel]: After the deposition I'll verify those facts, and perhaps we can stipulate with Mr. Girton [(Alpini's Counsel)].
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> * * *
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> [Alpini's Counsel]: And to the best of your understanding, Mr. Schreiber, it would be the same insurance company that the Township would pay separate premiums for the Heart and Lung Act and for the workman's [*sic*] compensation?
>
> [Schreiber]: I believe so.
>
> [Alpini's Counsel]: And after two years goes by, the Township assumes the responsibility for paying the entire amount of the Heart and Lung benefits?
>
> [Schreiber]: We have.
>
> [Alpini's Counsel]: And that's what happened in Officer Alpini's case?
>
> [Schreiber]: Correct.[52]

Although Mr. Schreiber did not recollect every detail of the Township's insurance policies, his testimony indicates that the Township was insured for Heart and Lung benefits for a period of two years following Alpini's injury, and that the Township used the same insurer—AmeriHealth—for both workers' compensation benefits and Heart and Lung benefits. Particularly in view of the ambiguity of Ms. Stover's affidavit, it is unclear whether the lien asserted by AmeriHealth reflected only amounts that it paid to Alpini as workers' compensation benefits, or whether it represented workers' compensation benefits plus two years' worth of Heart and Lung benefits.

Because workers' compensation benefits and Heart and Lung benefits are treated differently for purposes of subrogation, further fact-finding is required on this point. Thus, although I would be inclined to affirm the order of the Commonwealth Court on the alternative basis that the Township was entitled to subrogate against Alpini's third-party

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[52] *Id.* at 9-13.

recovery up to the amount of the workers' compensation benefits paid, I would (due to the opacity of certain critical facts) vacate the order below and remand this matter for further factual development of the details of the asserted lien.

Chief Justice Todd joins this dissenting opinion.