

**[J-15A,B&C-2005]]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

**CAPPY, C.J., CASTILLE, NIGRO, NEWMAN, SAYLOR, EAKIN, BAER, JJ.**

IN RE: DE FACTO CONDEMNATION : No. 172 MAP 2004  
AND TAKING OF LANDS OF WBF :  
ASSOCIATES, L.P. BY LEHIGH- :  
NORTHAMPTON AIRPORT AUTHORITY : Appeal from the Order of the  
: Commonwealth Court, entered on March  
C. THOMAS FULLER, INTERVENOR : 26, 2004 at No. 1615 CD 2003, that  
: affirmed in part and reversed in part the  
: Order of the Court of Common Pleas of  
APPEAL OF: LEHIGH-NORTHAMPTON : Lehigh County, entered on June 27, 2003  
AIRPORT AUTHORITY : at No. 96-C-2334.  
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IN RE: DE FACTO CONDEMNATION : No. 173 MAP 2004  
AND TAKING OF LANDS OF WBF :  
ASSOCIATES, L.P. BY LEHIGH- :  
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APPEAL OF: WBF ASSOCIATES, L.P. : Lehigh County, entered on June 27, 2003  
: at No. 96-C-2334.  
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IN RE: DE FACTO CONDEMNATION : No. 174 MAP 2004  
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: 26, 2004 at No. 1615 CD 2003, that  
APPEAL OF: C. THOMAS FULLER, : affirmed in part and reversed in part the  
INTERVENOR : Order of the Court of Common Pleas of  
: Lehigh County, entered on June 27, 2003  
: at No. 96-C-2334.  
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: ARGUED: March 8, 2005

## CONCURRING AND DISSENTING OPINION

**MR. JUSTICE EAKIN**

**DECIDED: August 22, 2006**

I join the majority's opinion on issues I and III. I dissent from the award of mortgage interest, and join with the reasoning of Justice Saylor on that point.

Under § 502(e) of the Eminent Domain Code, "a judgment awarding compensation to the condemnee for the taking of property shall include reimbursement of reasonable appraisal, attorney and engineering fees and other costs and expenses actually incurred." 26 P.S. § 1-609. Mortgage interest is not "other costs and expenses actually incurred" because interest on the mortgage would have accrued regardless of the condemnation.

Mortgage interest is based on a debt secured by the property—taking of the property affects only that security, not the debt itself nor its terms and conditions. See Briegel v. Briegel, 160 A. 581, 583 (Pa. 1931) (upon condemnation, liens, encumbrances, or mortgages are divested from land and attach to funds realized from land). Mortgage expenses are not created by or connected to the condemnation of that property; in fact, the initial proceeds of a mortgage may or may not relate to the encumbered property itself—proceeds may be used for any purpose at all, not just the acquisition or improvement of the property encumbered. The obligation to repay the mortgage is required only because of the terms of the mortgage itself, not by reason of the condemnation. See id. While the ability to repay mortgage interest may be affected by the taking, that does not convert mortgage interest itself into part of the "costs and expenses" caused by the condemnation.