[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.