

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

LYNN COLE, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

HIGHMARK, INC,

Defendant.

Case No. 21-442

ELECTRONICALLY FILED ON

**COMPLAINT –
COLLECTIVE AND CLASS
ACTION**

PRELIMINARY STATEMENT

1. This is a putative class and collective action brought by individual and representative Plaintiff Lynn Cole (“Plaintiff”), on behalf of herself, the proposed Pennsylvania Class, and all others similarly situated, to recover overtime pay from her employer Highmark, Inc. (“Highmark” or “Defendant”).

2. Plaintiff brings this action (1) as an opt-in collective action on behalf of herself and all similarly situated individuals for violations of the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) and the Pennsylvania Minimum Wage Act, 43 P.S. § 333.101, *et seq.* (hereinafter, “PMWA”)

3. Plaintiff’s claim is asserted as a collective action under the FLSA, 29 U.S.C. § 216(b) and as a class action under Rule 23 of the Federal Rules of Civil Procedure.

4. The putative “FLSA Collective” is made up of all persons who are or have been employed by Defendant as a Utilization Management Nurse, Utilization Review Nurse, Care Coordinator, Nurse Reviewer, Care Management Nurse, or other similar positions during the applicable statutory period, and whose primary job was to perform utilization review work, which

consists of applying pre-determined criteria and guidelines to authorization requests submitted by healthcare providers for insurance coverage and payment purposes.

5. The Pennsylvania Class is made up of all persons who Defendant employed as Utilization Management Nurse, Utilization Review Nurse, Care Coordinator, Nurse Reviewer, Care Management Nurse in the state of Pennsylvania at any time within 3 years and whose primary job was to perform utilization review work, which consists of applying pre-determined criteria and guidelines to authorization requests submitted by healthcare providers for insurance coverage and payment purposes.

6. Defendant classified members of the FLSA collective and the Pennsylvania Class as exempt from the overtime provisions under federal and Pennsylvania state law.

7. Plaintiff and those similarly situated routinely worked more than forty (40) hours in a workweek but were not paid an overtime premium for their overtime hours.

JURISDICTION AND VENUE

8. This Court has original jurisdiction pursuant to 28 U.S.C. § 1331 to hear this Complaint and to adjudicate these claims because this action is brought under the FLSA.

9. Venue is proper in the United States District Court for the Western District Pennsylvania pursuant to 28 U.S.C. § 1391 because Defendant operates in this district, Plaintiff worked for Defendant in this district, and a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

10. Plaintiff Lynn Cole is an adult resident of Luzerne County, Pennsylvania. Plaintiff was employed by Defendant as a Care Management Nurse from approximately June 2017 to the September 24, 2019.

11. Defendant is a foreign limited liability company with its principal place of business located at 120 5th Ave. 5th Ave. Pl., Pittsburgh, Pennsylvania, 15222, United States.

12. Defendant operates office locations in multiple states around the country, including a location in Pittsburgh, Pennsylvania.

13. Defendant is among the ten largest health insurers in the United States and is the fourth-largest Blue Cross and Blue Shield-affiliated company. Through its diversified businesses and affiliates, Defendant operates health insurance plans in Pennsylvania, Delaware and West Virginia that serve 5.2 million members through dental insurance, vision care and other related health businesses.

14. Highmark Inc. operates in interstate commerce by, among other things, offering and selling a wide array of health, pharmacy, Medicaid services, behavioral health programs, and medical management products and services to customers and consumers in multiple states across the country.

15. Upon information and belief, Defendant's gross annual sales made or business done has been in excess of \$500,000.00 at all relevant times.

16. At all relevant times, Defendant is, and has been, an "employer" engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203(d).

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

17. At all times relevant herein, Defendant operated a willful scheme to deprive Plaintiff and others similarly situated of overtime compensation. Plaintiff, the FLSA Collective, and Pennsylvania Class, work or worked as Utilization Management Nurses, Utilization Review Nurses, Care Coordinators, Nurse Reviewers, Care Management Nurse, or similar job titles, whose

primary job duties consisted of performing utilization reviews for Defendant. Plaintiff, the FLSA Collective, and Pennsylvania Class's primary job duty is non-exempt work consisting of reviewing medical authorization requests submitted by healthcare providers against pre-determined guidelines and criteria for coverage and payment purposes.

18. Plaintiff, the FLSA Collective, and Pennsylvania Class are or were paid a salary with no overtime pay.

19. Plaintiff and the FLSA Collective, and Pennsylvania Class, are or were classified as exempt from federal overtime and state laws.

20. Defendant suffered and permitted Plaintiff, the FLSA Collective, and Pennsylvania Class to work more than forty (40) hours per week without overtime pay.

21. For example, in the workweek beginning April 22, 2018, Plaintiff estimates that she worked approximately 45-46 hours and did not receive overtime pay for these overtime hours.

22. Defendant has been aware, or should have been aware, that Plaintiff, the FLSA Collective, and Pennsylvania Class performed non-exempt work that required payment of overtime compensation. Defendant also required Plaintiff, the FLSA Collective, and Pennsylvania Class, to work long hours, including overtime hours, to complete all of their job responsibilities and meet Defendant's productivity standards.

23. Defendant knew that Plaintiff, the FLSA Collective, and Pennsylvania Class worked unpaid overtime hours because Plaintiff and others complained about their long hours and the workload. Specifically, when Plaintiff questioned her supervisor about not being compensated for working overtime. In response, Plaintiff's supervisor informed her that because she was working in a salaried position, it was part of the job and that she needed to work as much as was required to get the work done.

24. Although it had a legal obligation to do so, Defendant did not make, keep, or preserve adequate or accurate records of the hours worked by Plaintiff, the FLSA Collective, or the Pennsylvania Class.

FLSA COLLECTIVE ACTION ALLEGATIONS

25. Plaintiff restates and incorporates by reference the above paragraphs as if fully set forth herein.

26. Plaintiff files this action on behalf of herself and all other similarly situated individuals. The putative FLSA Collective is defined as follows:

All persons who worked as Utilization Management Nurses, Utilization Review Nurses, Medical Management Nurses, Nurse Reviewers, Care Management Nurse, or similar job titles, primarily responsible for performing utilization reviews for Defendant nationwide at any time since three years prior to the filing of this Complaint.

27. Plaintiff has consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiff's signed consent form is attached hereto as Exhibit A.

28. As this case proceeds, it is likely that other individuals will file consent forms and join as "opt-in" plaintiffs.

29. During the applicable statutory period, Plaintiff and the putative FLSA Collective routinely worked in excess of forty (40) hours in a workweek without receiving overtime compensation for their overtime hours worked.

30. Defendant willfully engaged in a pattern of violating the FLSA, 29 U.S.C. § 201 *et seq.*, as described in this Complaint in ways including, but not limited to, requiring Plaintiff and others similarly situated to work excessive hours and failing to pay them overtime compensation.

31. Defendant is liable under the FLSA for failing to properly compensate Plaintiff and the putative FLSA Collective. Accordingly, notice should be sent to the putative FLSA Collective.

There are numerous similarly-situated current and former employees of Defendant who have suffered from Defendant's practice of denying overtime pay, and who would benefit from the issuance of court-supervised notice of this lawsuit and the opportunity to join. Those similarly-situated employees are known to Defendant, and are readily identifiable through its records.

CLASS ACTION ALLEGATIONS UNDER PENNSYLVANIA WAGE LAWS

32. Plaintiff Cole (as the class representative) brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and as a class action on behalf of all similarly situated individuals. The Pennsylvania Class is defined as follows:

All persons who worked as Utilization Management Nurses, Utilization Review Nurses, Medical Management Nurses, Nurse Reviewers, Care Management Nurse, or in similar job titles, primarily responsible for performing utilization reviews for Defendant in Pennsylvania at any time since three years prior to the filing of this Complaint.

33. Plaintiff's claims are typical of the claims of the proposed class members.

34. The potential members of the class are sufficiently numerous so that joinder of all class members is impractical and inefficient. The identities of the members of the putative Pennsylvania Class may be ascertained from Defendant's files and records.

35. There are questions of law and fact common to the class that predominate over any questions exclusive to the individual class members, including but not limited to, whether Defendant misclassified Plaintiff Cole and the putative Pennsylvania Class and unlawfully failed to pay them overtime compensation, whether Defendant failed to keep accurate records for all hours worked, whether Defendant's conduct was willful, and the proper measure of damages sustained by Plaintiff Cole and the putative Pennsylvania Class members.

36. Plaintiff Cole will fairly and adequately protect the interests of the putative Pennsylvania Class because her interests are not inconsistent with or antagonistic to the interests

to the members of the putative Pennsylvania Class. She has retained counsel qualified and experienced in litigating class actions and other complex litigation matters.

37. A class action is superior to other available methods for the fair and efficient adjudication of this case and will serve to promote judicial economy to the benefit of this Court, as well as the involved parties.

CAUSES OF ACTION

COUNT I – VIOLATION OF THE FAIR LABOR STANDARDS ACT

FAILURE TO PAY OVERTIME

(On Behalf of Plaintiff and the FLSA Collective)

38. Plaintiff restates and incorporates by reference the above paragraphs as if fully set forth herein.

39. The FLSA, 29 U.S.C. § 207, requires employers to pay non-exempt employees one and one-half times the regular rate of pay for all hours worked over forty (40) hours per workweek.

40. Defendant suffered and permitted Plaintiff and the putative FLSA Collective to routinely work more than forty (40) hours in a workweek without overtime compensation.

41. Defendant's actions, policies, and practices described above violate the FLSA's overtime requirement by regularly and repeatedly failing to compensate Plaintiff and the putative FLSA Collective the required overtime compensation.

42. As the direct and proximate result of Defendant's unlawful conduct, Plaintiff and the putative FLSA Collective have suffered and will continue to suffer a loss of income and other damages. Plaintiff and the putative FLSA Collective are entitled to liquidated damages and attorney's fees and costs incurred in connection with this claim.

43. By failing to accurately record, report, and/or preserve records of hours worked by Plaintiff and the putative FLSA Collective, Defendant has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

44. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Defendant knew or showed reckless disregard for the fact that its compensation practices were in violation of these laws.

COUNT II—VIOLATION OF THE PMWA

FAILURE TO PAY OVERTIME

(On Behalf of Plaintiff and Pennsylvania Class)

45. Plaintiff hereby fully incorporates in this Count all allegations contained within Plaintiff's Complaint.

46. At all times relevant to this action, Plaintiff Cole and the putative Pennsylvania Rule 23 Class were employees of Defendant within the meaning of PMWA and entitled to its protections.

47. Defendant is an employer covered by the PMWA. See 43 P.S. § 333.103(g).

48. Pursuant to the Pennsylvania Minimum Wage Act, § 333.104(c), each employer shall pay an overtime wage of at least one and one half (1.5) times the regular hourly rate for each hour over forty (40) that an employee works during one (1) workweek.

49. Defendant violated the PMWA by failing to compensate Plaintiff Cole and the putative Pennsylvania Class for her hours worked in excess of forty (40) in a workweek, and with respect to such hours, failing to compensate Plaintiff Cole and the Pennsylvania Class based upon the overtime premium rate of one and one-half times their regular rate of pay.

50. Defendant willfully and intentionally failed to compensate Plaintiff and the putative Pennsylvania Class for the overtime hours they worked.

51. Under the PMWA, Plaintiff and the Pennsylvania Class are entitled to additional wages from Defendant for all overtime hours worked at a rate of one and one-half (1.5) times their regular hourly wage rates.

52. Plaintiff Cole and the putative Pennsylvania Class also seek recovery of all attorneys' fees, costs, liquidated damages, pre-judgment interest, and expenses in this action that are available under the PMWA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the putative FLSA Collective, prays for judgment against Defendant as follows:

- A. Designation of this action as a collective action on behalf of Plaintiff and those similarly situated, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly-situated apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms;
- B. A finding that Plaintiff and the putative FLSA Collective are non-exempt employees entitled to protection under the FLSA;
- C. A finding that Defendant violated the overtime provisions of the FLSA;
- D. Judgment against Defendant in the amount of Plaintiff's and the putative FLSA Collective's unpaid back wages at the applicable overtime rates;
- E. An award of all damages, liquidated damages, pre-judgment interest and post-judgment interest;
- F. An award of attorneys' fees and costs incurred in prosecuting this action;
- G. Leave to add additional plaintiffs and/or additional state law claims by motion, the filing of written consent forms, or any other method approved by the Court; and

H. For such other and further relief, in the law or equity, as this Court may deem appropriate and just.

WHEREFORE, Plaintiff, individually and on behalf of the Pennsylvania Class, prays for additional relief as follows:

- A. That the Court determine that this action may be maintained as a class action under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure.
- B. That Plaintiff be designated as the representative of the Rule 23 Pennsylvania Class, and Plaintiff's Counsel be designated as Class Counsel.
- C. Unpaid overtime wages, and other due wages, and injunctive relief, pursuant to Pennsylvania law;
- D. Appropriate equitable relief to remedy Defendant's violations of state law;
- E. Appropriate statutory penalties;
- F. An award of damages and restitution to be paid by Defendant according to proof;
- G. Attorneys' fees and costs of suit, including expert fees pursuant to Pennsylvania Minimum Wage Act, § 333.104(c);
- H. That Defendant be further enjoined to cease and desist from the unlawful activities in violation of the state laws cited above;
- I. Pre-judgment and post-judgment interest, as provided by law; and
- J. Such other equitable relief as the Court may deem just and proper.

DATED: April 6, 2021

JOHNSTON LYKOS, LLC

/s/Colleen Ramage Johnston

Colleen Ramage Johnston

PA I.D. No. 64413

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**Attorneys for Plaintiff and Others
Similarly Situated**

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Lynn Cole, individually and on behalf of all others
similarly situated,

(b) County of Residence of First Listed Plaintiff Luzerne County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Colleen R. Johnston, Johnston Lykos, LLC, 525 William Penn
Place, 28th Floor, Pittsburgh, PA 15219; (412) 325-7700

DEFENDANTS

HIGHMARK, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201, et seq.

Brief description of cause:
Failure to pay wages and overtime compensation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

04/06/2021

SIGNATURE OF ATTORNEY OF RECORD

s/Colleen Ramage Johnston

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44A REVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (Erie Johnstown Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.

PART B (You are to check ONE of the following)

1. This case is related to Number _____ . Short Caption _____
2. This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit
EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

I. CIVIL CATEGORY (Select the applicable category).

1. Antitrust and Securities Act Cases
2. Labor-Management Relations
3. Habeas corpus
4. Civil Rights
5. Patent, Copyright, and Trademark
6. Eminent Domain
7. All other federal question cases
8. All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. Insurance indemnity, contract and other diversity cases.
10. Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: 4/6/2021

s/Colleen R. Johnston

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.