

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Log Cabin Property, LP,	:	
individually and on behalf of	:	
all those similarly situated,	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Liquor Control Board,	:	No. 292 M.D. 2020
Respondent	:	

BEFORE: HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
JUDGE COVEY

FILED: August 21, 2025

Before this Court is the Pennsylvania Liquor Control Board's (PLCB) Application for Summary Relief (Application) seeking dismissal of the Petition for Review in the Nature of a Class Action Complaint (Complaint) filed against it by Log Cabin Property, LP, individually and on behalf of all those similarly situated (collectively, Log Cabin). The PLCB presents two issues for this Court's review: (1) whether Log Cabin is entitled to mandamus damages; and (2) whether Log Cabin's claims for mandamus damages are time-barred.<sup>1</sup> After review, this Court denies the Application.

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<sup>1</sup> This Court analyzes the PLCB's issues in reverse order of the PLCB's presentation thereof for ease of discussion.

## Background

Before June 8, 2016, pursuant to former Section 305(a) of the Liquor Code, PLCB customers, like Log Cabin, that wished to purchase classes, varieties, or brands of liquor or wines not then available in the PLCB Fine Wine and Good Spirits stores (PLCB Store) could place special orders (SO) for such products with PLCB-licensed importers or vendors.<sup>2</sup> However, the licensed importers or vendors were required to deliver the SOs to the PLCB Stores, where the customers had to pick them up. The PLCB charged the customers a handling fee for each bottle purchased by SO in that manner.

On June 8, 2016, by enacting Section 3 of Act 39,<sup>3</sup> the General Assembly amended Section 305(a) of the Liquor Code to provide that SOs may be delivered from a licensed importer or vendor directly to a customer. *See* 47 P.S. § 3-305(a).<sup>4</sup> Section 3 of Act 39 also stated that the PLCB may not assess a handling fee on SOs, and that “[t]he [PLCB] shall, by January 1, 2017, implement a procedure for processing [SOs] which do not come to rest at a [PLCB Store.]” *Id.* Further, on July 13, 2016, the General Assembly passed an omnibus amendment to implement

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<sup>2</sup> Act of April 12, 1951, P.L. 90, *as amended, former* 47 P.S. § 3-305(a). Former Section 305(a) of the Liquor Code declared, in pertinent part: “If a person desires to purchase a class, variety or brand of liquor or alcohol not currently available from the [PLCB], he or she may place a[n SO] for such item.” *Id.*

<sup>3</sup> Act of June 8, 2016, P.L. 273.

<sup>4</sup> Section 305(a) of the Liquor Code states, in relevant part:

A licensed importer or a licensed vendor may place [SOs] on behalf of customers and may deliver the orders to customers. The orders do not need to come to rest at a [PLCB S]tore, but delivery may not occur until payment for the order has been forwarded to the [PLCB] and the [PLCB] has authorized the delivery of the order. *A handling fee may not be assessed by the [PLCB] on an order delivered directly to a customer.*

47 P.S. § 3-305(a) (emphasis added).

the Commonwealth’s 2016-2017 budget (Section 20 of Act 85 of 2016),<sup>5</sup> which added Section 1799.2-E to The Fiscal Code,<sup>6</sup> and therein provided that “the [PLCB] may implement a procedure for processing [SOs] . . . by June 1, 2017.” 72 P.S. § 1799.2-E. The PLCB initially took the position that implementing an SO processing procedure was discretionary and that the June 1, 2017 date was merely advisory. As a result, the PLCB did not implement a direct shipment SO processing procedure, licensed importers and vendors still had to deliver SOs to PLCB Stores for retail and non-retail customer pick-up, and the PLCB continued to charge those customers SO handling fees.<sup>7</sup>

On April 15, 2020, PLCB-licensed importers and distributors, MFW Wine Co., LLC (MFW) and A6 Wine Company (A6), initiated litigation against the PLCB in this Court’s original jurisdiction seeking to enforce their statutory right to directly ship SOs to customers without being subject to PLCB-imposed handling fees.<sup>8</sup> On April 22, 2020, MFW and A6 amended their petition for review to add

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<sup>5</sup> Act of July 13, 2016, P.L. 664.

<sup>6</sup> Act of April 9, 1929, P.L. 343, *as amended*, added by Section 20 of the Act of July 13, 2016, P.L. 664, 72 P.S. § 1799.2-E (PLCB Procedure).

<sup>7</sup> In PLCB Advisory Opinion No. 17-301, issued August 2, 2017, the PLCB informed a single licensed importer that, as of that time, the PLCB had opted not to implement an SO direct shipment procedure and, until such time as it implemented such procedure, all SOs had to be delivered to a PLCB Store for customer pick-up. *See* Appl. Ex. 1, August 23, 2024 affidavit of PLCB Director of Policy and Communications Elizabeth Brassell (Brassell 8/23/2024 Aff.) ¶ 23; *see also* Log Cabin’s Ans. to Appl. Ex. 1 (PLCB Advisory Opinion No. 17-301).

<sup>8</sup> Notably, in response to Pennsylvania Governor Tom Wolf’s March 6, 2020 Proclamation of Disaster Emergency to reduce the spread of COVID-19 during the COVID-19 pandemic, on March 16, 2020, the PLCB announced the indefinite closure of the PLCB Stores and licensee service centers effective March 17, 2020. Log Cabin claims that because the PLCB had not by that time implemented an SO direct delivery system and customers had no way of ordering or obtaining SO products during the pandemic, MFW and A6 commenced the litigation to compel the PLCB to comply with Section 305(a) of the Liquor Code. *See MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 231 A.3d 50, 58 (Pa. Cmwlth. 2020) (*MFW I*) (Brobson, J., single judge op.), *aff’d per curiam*, 247 A.3d 1008 (Pa. 2021) (*MFW II*).

retail customer GECC2 LLC d/b/a Bloomsday Café (Bloomsday Café) as a petitioner to that litigation (collectively, *MFW* Petitioners).

On May 1, 2020, this Court ruled in *MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 231 A.3d 50, 58 (Pa. Cmwlth. 2020) (*MFW I*) (Brobson, J., single judge op.), *aff'd per curiam*, 247 A.3d 1008 (Pa. 2021) (*MFW II*), that Section 305(a) of the Liquor Code<sup>9</sup> required the PLCB to implement the SO direct shipment procedure and to stop collecting handling fees therefor. The *MFW I* Court ordered the PLCB to implement a new process or an interim alternative in “a reasonable amount of time[.]” *Id.* at 58. The *MFW I* Court further directed the *MFW* Petitioners to submit their mandamus damage claims pursuant to Section 8303 of the Judicial Code, 42 Pa.C.S. § 8303 (Section 8303).<sup>10, 11</sup>

On May 6, 2020, Log Cabin initiated the instant litigation by filing the Complaint in this Court’s original jurisdiction, therein alleging that due to the PLCB’s inaction since June 1, 2017,<sup>12</sup> it and other similarly situated customers had

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<sup>9</sup> Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. § 3-305(a).

<sup>10</sup> Section 8303 declares: “A person who is adjudged in an action in the nature of mandamus to have failed or refused without lawful justification to perform a duty required by law shall be liable in damages to the person aggrieved by such failure or refusal.” 42 Pa.C.S. § 8303.

<sup>11</sup> On May 27, 2020, the PLCB appealed to the Pennsylvania Supreme Court (Pa. No. 30 MAP 2020) which, on March 25, 2021, affirmed (*per curiam*) the *MFW I* Court’s May 1, 2020 Order without an opinion.

<sup>12</sup> Notwithstanding its June 1, 2017 deadline, the PLCB had not yet implemented a direct shipment SO process by the time the *MFW* Petitioners filed an emergency motion for peremptory judgment in mandamus, and special injunctive and declaratory relief on April 16, 2020, and requested an expedited hearing, which this Court held on April 28, 2020. *See MFW I*, 231 A.3d at 53. Because this Court in *MFW I* acknowledged “that implementing a new process for the direct shipment of [SOs] . . . [wa]s neither as simple as Petitioners suggest[ed] nor as complicated (or expensive) as [the] PLCB would have the Court believe[.]” *id.* at 57-58, rather than setting a deadline, this Court offered the PLCB “a reasonable amount of time” to implement a new process or an interim alternative. *Id.* at 58. However, despite that the Pennsylvania Supreme Court affirmed *MFW I* in March 2021, the PLCB had not implemented the new SO process as of May 27, 2022, when this Court issued the *MFW III* decision. *See MFW III*, 276 A.3d at 1241.

been unlawfully compelled to continue to pick up their SOs at the PLCB Stores and pay the PLCB handling fees. Therein, Log Cabin asserted that, pursuant to Section 8303 and *MFW I*, PLCB customers were entitled to recover their pick-up expenses and PLCB handling fees, plus costs, prejudgment interest, and attorneys' fees.<sup>13, 14</sup>

On May 28, 2021, the PLCB filed preliminary objections to the Complaint and a supporting brief, arguing that Log Cabin failed to state a viable cause of action because: (1) the PLCB is entitled to sovereign immunity and cannot be held liable for damages under Section 8303; (2) the PLCB is not a "person" within the meaning of Section 8303 and, thus, is not liable for mandamus damages thereunder; and (3) mandamus damages are only available under Section 8303 to those that bring and successfully obtain mandamus relief, which Log Cabin has not. On June 28, 2021, Log Cabin filed its response to the preliminary objections and its opposing brief, therein arguing: (1) sovereign immunity does not apply; (2) the

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<sup>13</sup> On May 6, 2020, Log Cabin filed an application to consolidate its case with the *MFW* litigation to promote judicial economy. By June 4, 2020 Order, this Court denied the request without prejudice. On September 16, 2024, Log Cabin filed a renewed application to consolidate this case with *MFW* to eliminate the PLCB's argument that only the *MFW* Petitioners are potentially entitled to damages. That same day, the *MFW* Petitioners filed an application to consolidate the *MFW* case with this one, claiming that consolidation would streamline remaining discovery, proceedings on class certification, any dispositive motions, litigation of the claims remaining to be adjudicated, and other matters that may arise. On October 3, 2024, the PLCB opposed the consolidation requests in both cases, arguing that such requests are premature and that consolidation would not have the effect Log Cabin and the *MFW* Petitioners desired. By February 14, 2025 Orders entered in each case, this Court denied the consolidation requests.

<sup>14</sup> On May 7, 2020, the *MFW* Petitioners filed an Application for Relief Seeking to Amend their Amended Petition for Review (Amendment Application), together with a draft Second Amended Petition for Review in the Nature of a Class Action Complaint in Mandamus, requesting that this Court permit Bloomsday Café to plead allegations in support of a class action and claim mandamus damages on a class-wide basis. On May 26, 2020, the PLCB opposed the Amendment Application. Thereafter, the parties filed numerous dispositive motions and applications and the PLCB twice appealed to the Pennsylvania Supreme Court. On August 21, 2025, this Court granted the Amendment Application in *MFW*.

PLCB is a *person* under Section 8303; and (3) Log Cabin need not have been a party to the *MFW* litigation to recover mandamus damages. On August 6, 2021, the PLCB filed a reply brief.

On November 17, 2021, the parties presented oral argument to this Court on the preliminary objections.<sup>15</sup> On May 27, 2022, this Court overruled the PLCB's preliminary objections, declaring: (1) because the PLCB violated a clear statutory mandate, sovereign immunity did not bar Log Cabin's claim; (2) the PLCB is a *person* subject to Section 8303 in this context; and (3) because the Court in *MFW I* had declared, and the Pennsylvania Supreme Court affirmed, that the PLCB had deprived and continued (at that time) to deprive customers of their statutory right to direct SO shipment, it did not appear with certainty that Log Cabin could not claim damages from the PLCB. *See Log Cabin v. Pa. Liquor Control Bd.*, 276 A.3d 862 (Pa. Cmwlth. 2023) (*Log Cabin I*), *aff'd sub nom. MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 318 A.3d 100 (Pa. 2024) (*Log Cabin II/MFW IV*). Accordingly, this Court ordered the PLCB to answer the Complaint.

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<sup>15</sup> Because the arguments were interrelated, this Court heard oral argument on the preliminary objections seriatim with argument on the *MFW* Petitioners' May 25, 2021 Application for Relief Seeking Damages, Costs, Interest, and Attorneys' Fees (Damages Application). This Court limited argument on the Damages Application to: (1) whether the PLCB was a "person" under Section 8303; and (2) whether the *MFW I* Petitioners could recover mandamus damages from the PLCB. On May 27, 2022, this Court granted the Damages Application, and authorized the PLCB to undertake discovery and/or request a hearing limited to the *MFW* Petitioners' damages and interest and *MFW*'s and A6's attorneys' fees. *See MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 276 A.3d 1225 (Pa. Cmwlth. 2022) (*MFW III*), *aff'd*, 318 A.3d 100 (Pa. 2024) (*MFW IV/Log Cabin II*). On August 13, 2025, *MFW* and A6 filed a Supplemental Application for Relief Seeking Attorneys' Fees (Supplemental Application), in which they represented that they and the PLCB have resolved the damages, costs, and interest portions of *MFW*'s and A6's Damages Application, and agreed that this Court should decide the attorney's fees portion. *MFW* and A6 also represented therein that this Court could decide the Supplemental Application without prejudice to Bloomsday Café's interest in the Amendment Application. The PLCB has not yet filed a response to the Supplemental Application.

On June 22, 2022, the PLCB appealed from this Court’s May 27, 2022 Order to the Pennsylvania Supreme Court. On July 2, 2024, the Supreme Court affirmed this Court’s May 27, 2022 Order.<sup>16</sup> *See Log Cabin II*. On August 23, 2024, the PLCB filed an Answer and New Matter to the Complaint. In its New Matter, the PLCB raised, *inter alia*, that Log Cabin cannot seek mandamus damages under Section 8303 and that its claims are barred by the statute of limitations. That same day, the PLCB filed the Application and a supporting brief. On September 23, 2024, Log Cabin filed an answer to the PLCB’s New Matter. On October 7, 2024, Log Cabin filed an answer and brief in opposition to the Application. On November 12, 2024, the PLCB filed a reply brief in support of the Application.<sup>17</sup>

### Discussion

Initially, Pennsylvania Rule of Appellate Procedure (Appellate Rule) 1532(b) governing summary relief applications specifies that, “[a]t any time after the filing of a petition for review in an appellate or original jurisdiction matter, th[is] C]ourt may on application enter judgment if the right of the applicant thereto is clear.” Pa.R.A.P. 1532(b).

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<sup>16</sup> The Supreme Court affirmed this Court’s conclusions that the plain meaning of the term *person* in Section 8303 included the PLCB and sovereign immunity does not bar the mandamus damages the *MFW* Petitioners seek. *See MFW IV*. The Supreme Court did not address whether Log Cabin could recover damages under Section 8303 pursuant to *MFW I*. *See id.*

<sup>17</sup> In response to an argument Log Cabin made in its answer and opposing brief, on February 4, 2025, the PLCB filed an Application for Post-Submission Communication, seeking this Court’s permission to supplement its argument with this Court’s recent decision in *County of Fulton v. Secretary of the Commonwealth*, 330 A.3d 481 (Pa. Cmwlth. 2024) (*en banc*). On February 18, 2025, Log Cabin filed an answer to the Application for Post-Submission Communication, stating it had no objection to this Court’s consideration thereof in deciding the Application. On February 28, 2025, this Court granted the PLCB’s Application for Post-Submission Communication. On March 18, 2025, this Court stayed proceedings related to this Application pending this Court’s action on the *MFW* Petitioners’ Amendment Application.

The standard for granting summary relief turns upon whether the applicant’s **right to relief is clear**. Summary relief on a petition for review is similar to the relief provided by a grant of summary judgment. [See Appellate Rule 1532,] Pa.R.A.P. 1532, Official Note. Summary judgment is appropriate where, after the close of pleadings, “there is **no genuine issue of any material fact** as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report.” [Pennsylvania Rule of Civil Procedure (Civil Rule) 1035.2(a),] Pa.R.C[iv].P. 1035.2(a). The record is to be viewed in the light most favorable to the nonmoving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.

*Scarnati v. Wolf*, 173 A.3d 1110, 1118 (Pa. 2017) (emphasis added; footnote omitted).

#### 1. Genuine Issues of Material Fact

“A factual issue is considered ‘material’ . . . ‘if its resolution could affect the outcome of the case under the governing law.’” *Dusman v. Bd. of Dirs. of Chambersburg Area Sch. Dist.*, 113 A.3d 362, 372 (Pa. Cmwlth. 2015) (quoting *Strine v. Commonwealth*, 894 A.2d 733, 738 (Pa. 2006)). Here, neither party avers that there are any genuine issues of material fact related to issues the PLCB raised in the Application.

#### 2. Clear Right to Relief

The PLCB argues that it has a clear right to summary relief because: (a) Log Cabin was not among the successful *MFW* Petitioners that this Court concluded in *MFW I* were entitled to mandamus damages; and (b) Log Cabin’s mandamus damages claim was barred at the outset by a six-month limitations period.



a. Mandamus Damages

The PLCB asserts that because mandamus damages under Section 8303 are part and parcel of the *MFW* litigation, and since Log Cabin has not brought a mandamus action,<sup>18</sup> let alone prevailed in one, it cannot recover mandamus damages. The PLCB further contends that the law of the case and coordinate jurisdiction rules do not bar the Court's consideration of the PLCB's arguments here, where this Court's analysis of the PLCB's preliminary objections in *Log Cabin I* was limited to Log Cabin's Complaint and the record now before the Court reflects significantly changed circumstances, to wit: (1) the PLCB has now fully and successfully implemented a direct delivery procedure for SOs; (2) the Pennsylvania Supreme Court's July 2, 2024 decision affirming *Log Cabin I* emphasized the importance of the history of mandamus damages in Pennsylvania law in interpreting the relationship of mandamus damages to sovereign immunity; and (3) the expanded evidentiary record related to this Application. Moreover, the PLCB maintains that this Court's recent ruling in *County of Fulton v. Secretary of the Commonwealth*, 330 A.3d 481 (Pa. Cmwlth. 2024) (*en banc*), in which this Court explained that, where a preliminary objection in the nature of a demurrer is overruled on the ground that the movant failed to demonstrate with certainty that the law will not permit recovery, the law of the case doctrine does not foreclose a subsequent application for summary relief addressing the same issue. *See id.* at 510-13. The *County of*

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<sup>18</sup> The PLCB contends that Log Cabin did not assert a mandamus action in its Complaint. However, Log Cabin clearly alleged in the Complaint that the PLCB had a mandatory legal duty to implement a direct delivery SO process but did not do so, *see MFW I*, and Log Cabin and the class have been aggrieved as a result. *See Log Cabin I*. Log Cabin added in *Log Cabin I* that even if the PLCB was technically correct that its Complaint was lacking, the PLCB's argument could be rendered moot either by Log Cabin amending its Complaint or joining the *MFW* litigation as a joint retail licensee class representative with Bloomsday Café.

*Fulton* Court held that overruling a preliminary objection “does not mean that [a party] would never be able to demonstrate that a given legal question should be resolved in [its] favor.” *Id.* at 512. The PLCB claims that law of the case similarly presents no bar here.

Log Cabin retorts that the PLCB previously exhaustively argued that mandamus damages under Section 8303 are available only to petitioners who successfully obtain mandamus relief and, despite this Court’s rejection of that argument, *see Log Cabin I*, the PLCB claims it can raise it again because the procedural posture of the case is different. Citing to *Ivy Hill Congregation of Jehovah’s Witnesses v. Department of Human Services*, 310 A.3d 742 (Pa. 2024), Log Cabin asserts that the law of the case and its related coordinate jurisdiction rule require that this Court again reject the PLCB’s argument that Log Cabin is not entitled to mandamus damages. Log Cabin acknowledges that the PLCB can avoid the law of the case by showing a change in the law or facts, or that this Court’s initial ruling was erroneous and would create a manifest injustice if followed, but asserts that the PLCB has not and cannot do so solely on the basis that it has since implemented an SO direct delivery system. Log Cabin further claims that this Court’s *County of Fulton* decision does not provide any basis for avoiding the rules to reach an issue this Court has already decided against the PLCB.

This Court has explained:

**Mandamus is an extraordinary writ, reserved for those instances where an agency has failed or refused to perform a ministerial act or a mandatory duty. . . . To prevail, the petitioner seeking mandamus relief must establish the following: (1) a clear right to relief; (2) a corresponding duty in the respondent; and (3) the lack of any other adequate and appropriate remedy.**

*MFW I*, 231 A.3d at 56 (emphasis added; citations omitted). “The purpose of mandamus is not to establish legal rights, but to enforce rights which are already established.” *Puricelli v. Dep’t of Transp. (Off. of Chief Counsel)*, 288 A.3d 581, 585 (Pa. Cmwlth. 2023). Mandamus “is a device that is available in our system to compel a tribunal or administrative agency to act when that tribunal or agency has been ‘sitting on its hands.’” *Morgalo v. Gorniak*, 134 A.3d 1139, 1145 (Pa. Cmwlth. 2016) (quoting *Chanceford Aviation Props., L.L.P. v. Chanceford Twp. Bd. of Supervisors*, 923 A.2d 1099, 1107-08 (Pa. 2007)). Thus, “an action in mandamus will lie to compel a state . . . agency to perform a . . . mandatory statutory duty.” *Finn v. Rendell*, 990 A.2d 100, 105 (Pa. Cmwlth. 2010).

Here, the General Assembly imposed the PLCB’s legal duty in Section 305(a) of the Liquor Code:

The [PLCB] shall in its discretion determine where and what classes, varieties and brands of liquor and alcohol it shall make available to the public and where such liquor and alcohol will be sold. . . . If a person desires to purchase a class, variety[,] or brand of liquor or alcohol not currently available from the [PLCB], he or she may place a[n SO] for such item. . . .

In computing the retail price of such [SOs] for liquor or alcohol, the [PLCB] shall not include the cost of freight or shipping before applying a mark-up that is equal to [10%] of the cost of the product and taxes[,] but shall add the freight or shipping charges to the price after the mark-up and taxes have been applied. In addition to the [10%] mark-up, **the [PLCB] shall impose handling fees on [SOs] which come to rest at a [PLCB S]tore**, in the same manner that it imposes them on the other alcohol that it sells.

A licensed importer or a licensed vendor may place [SOs] on behalf of customers and may deliver the orders to customers. The orders do not need to come to rest at a

**[PLCB S]tore . . . . A handling fee may not be assessed by the [PLCB] on an [SO] delivered directly to a customer. . . . The [PLCB] shall, by J[une] 1, 2017,<sup>[19]</sup> implement a procedure for processing [SOs] which do not come to rest at a [PLCB S]tore.**

47 P.S. § 3-305(a) (emphasis added). The *MFW I* Court held that the PLCB failed to perform its mandatory statutory duty under Section 305(a) of the Liquor Code without lawful justification, Petitioners had a clear right to relief, and Petitioners had no other adequate remedy. *See MFW I*. Accordingly, the *MFW I* Court directed the *MFW* Petitioners to submit their mandamus damage claims under Section 8303.<sup>20</sup>

Section 8303 declares: “A person who is adjudged in an action in the nature of mandamus to have failed or refused without lawful justification to perform a duty required by law shall be liable in damages to the person aggrieved by such failure or refusal.” 42 Pa.C.S. § 8303. The Pennsylvania Supreme Court has explained:

The damage provision of the Mandamus Act [of 1893<sup>21</sup>] provides a remedy to private persons for those unlawful acts or omissions of public officials which cannot fully be remedied merely by undoing the unlawful act or by

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<sup>19</sup> In Section 20 of Act 85 of 2016, the General Assembly extended the PLCB’s SO process implementation deadline from January 1, 2017 to June 1, 2017.

<sup>20</sup> This Court ruled that the PLCB’s incorrect interpretation of Section 305(a) of the Liquor Code and amendments thereto did not relieve the PLCB of liability to pay mandamus damages. *See MFW III*, 276 A.3d at 1236 (Mandamus “[d]amages are generally appropriate when a defendant fails to perform a ministerial duty, even when such failure results from an erroneous legal interpretation.” *Maurice A. Nernberg & Assocs. v. Coyne*, 920 A.2d 967, 970 (Pa. Cmwlth. 2007); *see also Stoner v. Twp. of Lower Merion*, 587 A.2d 879 (Pa. Cmwlth. 1991)).

<sup>21</sup> Act of June 8, 1893, P.L. 345, *as amended, formerly* 12 P.S. §§ 1911-2002, repealed by the Act of April 28, 1978, P.L. 202. “The Mandamus Act of 1893, . . . 12 P.S. § 1919[,] provide[d] that when judgment [wa]s entered for the plaintiff ‘he shall recover his damages and costs[.][.]’” *Allegheny Cnty. Police Pension Fund v. Casey*, 362 A.2d 1136, 1138 (Pa. Cmwlth. 1976), *aff’d*, 382 A.2d 461 (Pa. 1978).

Although the Mandamus Act of 1893 predates Section 8303, the general intention of mandamus damages remains the same and, thus, this interpretation similarly applies herein.

performing the omitted act. If undoing the illegality is insufficient to correct the wrong, the damages provision authorizes further relief. Damages, in this context, both insure that an action in mandamus can make the plaintiff whole and prevent the unjust enrichment of the official wrongdoer.

*Allegheny Cnty. Police Pension Fund v. Casey*, 382 A.2d 461, 464 (Pa. 1978). Accordingly, this Court must decide whether SO customers like Log Cabin who were not named *MFW* Petitioners when this Court granted the writ of mandamus on May 1, 2020 in *MFW I* can seek mandamus damages under Section 8303 as *persons aggrieved* by the PLCB’s failure to perform its statutory duty.

The *Log Cabin I* Court specifically observed that the PLCB caused harm to hundreds of PLCB customers, including Log Cabin and other similarly situated PLCB licensees. *See Log Cabin I*. Accordingly, the *Log Cabin I* Court ruled that “[b]ecause the PLCB is clearly liable to licensed vendors, importers, and licensees for provable mandamus damages under Section 8303 . . . , and neither that provision nor any caselaw expressly precludes Log Cabin’s claim, it does not appear with certainty that Log Cabin cannot recover damages from the PLCB.” *Log Cabin I*, 276 A.3d at 877.

In *Ivy Hill*, the Pennsylvania Supreme Court explained:

[U]nder the coordinate jurisdiction rule, “judges of coordinate jurisdiction sitting in the same case should not overrule each others’ decisions.” *Commonwealth v. Starr*, . . . 664 A.2d 1326, 1331 ([Pa.] 1995). Beyond promoting the goal of judicial economy, the coordinate jurisdiction rule, which we have explained falls within the more general “law of the case” doctrine, serves[:] “(1) to protect the settled expectations of the parties; (2) to insure uniformity of decisions; (3) to maintain consistency during the course of a single case; (4) to effectuate the proper and streamlined administration of justice; and (5) to bring litigation to an end.” *Id.*

*Ivy Hill*, 310 A.3d at 754 (emphasis omitted).

The *Ivy Hill* Court added that

[d]eparture from the coordinate jurisdiction rule “is allowed only in exceptional circumstances[,] such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed.” [*Starr*, 664 A.2d] at 1332.

*Ivy Hill*, 310 A.3d at 754. The *Ivy Hill* Court specifically ruled that a mere change in a case’s procedural posture - therein, as here, an earlier panel ruled on preliminary objections and a later panel ruled on summary relief - does not justify departure from the coordinate jurisdiction rule. *See id.* at 758 (“While a ruling issued at a different stage of the proceedings may give rise to one of the limited exceptions to the coordinate jurisdiction rule - for example, a change in the facts - it is the demonstration of the exceptional circumstance, not the distinct procedural posture, which renders the coordinate jurisdiction rule inapplicable.”).

More recently, however, in *County of Fulton*, this Court held that simply because a preliminary objection panel previously declined to sustain the respondent’s demurrer because this Court could not at that time state with certainty that the law will not permit the petitioner’s recovery, “does not mean that [the petitioner] would never be able to demonstrate that a given legal question should be resolved in [its] favor.” *Id.* at 512. Distinguishing *Ivy Hill*, the *County of Fulton* Court expressly ruled that a summary relief panel does not violate the coordinate

jurisdiction rule if it later concludes that the respondent at that time had fully developed arguments demonstrating that it was entitled to relief.<sup>22</sup> *See id.*

Relying on *County of Fulton*, the PLCB claims that the “law of the case presents no bar here. [*Log Cabin I*], 276 A.3d [at] 877 . . . (‘Certainly, to the extent this is a matter of first impression, whether Log Cabin can claim damages from the PLCB in this case is not clear and free from doubt.’).” PLCB Appl. for Post-Comm’n Submission at 2. Log Cabin responds that the *County of Fulton* Court’s ruling “was far narrower and does not help the PLCB.” Log Cabin Ans. to PLCB Appl. for Post-Comm’n Submission at 3. Specifically, Log Cabin distinguishes *County of Fulton* from the instant case on the basis that, therein, the petitioner had not engaged in the pertinent statute’s text and structure relative to the demurrer, but later did so in response to the summary relief application. Log Cabin concludes:

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<sup>22</sup> The *County of Fulton* Court reasoned:

*Ivy Hill* is distinguishable because the preliminary objections opinion in that case purported to definitively resolve the nonjoinder and standing questions. *See Ivy Hill* . . . . Issues like standing and nonjoinder of an indispensable party are of an inherently different vintage from the issue of a demurrer. If a party is determined at the preliminary objection stage to have standing, that party has a reasonable expectation that their efforts to continue litigating the case will not be in vain. A contrary ruling on that issue presents the very evil the coordinate jurisdiction rule is meant to prevent; specifically, protecting parties’ settled expectations and ensuring consistency over the litigation. Here, in contrast, there should have been no such settled expectation, given the way the [preliminary objection] panel explicitly used language like “not certain” and “not clear,” and noting that the [respondent], at that stage, not having engaged with the text of [the applicable statute], “in itself” preventing the sustaining of the demurrer. [*Cnty. of Fulton v. Sec’y of the Commonwealth*], 276 A.3d 846[, 861-62] [(Pa. Cmwlth. 2022)].

*Cnty. of Fulton*, 330 A.3d at 512-13 (emphasis omitted).

That cannot be said of the PLCB's preliminary objections here, which devoted 10 paragraphs of the preliminary objections and 5 pages of the supporting brief to the PLCB's statutory construction arguments. *See* PLCB's Preliminary Objections ¶¶ 4, 27-35; PLCB's Br[.] in Support of Preliminary Objection at 11-16. The PLCB then repeated those same statutory arguments in its Application for Summary Relief. *See* PLCB's Br[.] in Support of Summary Relief at 17-35.

Log Cabin Ans. to PLCB Appl. for Post-Comm'n Submission at 3.

While this Court agrees with Log Cabin that the PLCB has previously raised and fully briefed its argument relative to its preliminary objection that Log Cabin cannot recover mandamus damages because it was not a party to the *MFW* litigation and this Court overruled that objection, this Court did not conduct a detailed review of the merits of that issue because the demurrer merely required this Court to determine “whether, on the facts [Log Cabin] averred [in the Complaint], the law indicate[d] with certainty that no recovery is possible.” *Page v. Rogers*, 324 A.3d 661, 671 (Pa. Cmwlth. 2024) (quoting *Vasquez v. Berks Cnty.*, 279 A.3d 59, 75 (Pa. Cmwlth. 2022)). In *Log Cabin I*, as in *County of Fulton*, this Court declined to sustain the demurrer in the PLCB's favor at that time because Log Cabin's ability to claim mandamus damages was not clear and free from doubt, particularly where the issue was one of first impression and there was a possibility that Log Cabin could join the *MFW* litigation.

The Pennsylvania Supreme Court described that “th[e] coordinate jurisdiction rule falls squarely within the ambit of a generalized expression of the ‘law of the case’ doctrine” such that “a court involved in the later phases of a litigated matter should not reopen questions **decided** by another judge of that same court or by a higher court in the earlier phases of the matter.” *Starr*, 664 A.2d at 1331 (emphasis added); *see also Cnty. of Fulton*. Here, in overruling the PLCB's



demurrer, the *Log Cabin I* Court had not *decided* whether Log Cabin was entitled to mandamus damages, only that Log Cabin stated a claim upon which relief *may* be granted and that litigation should proceed. Where there was no *decision* on the merits regarding whether Log Cabin could seek mandamus damages, the parties could not have a settled expectation thereon. *See Cnty. of Fulton*. Accordingly, this Court holds that the coordinate jurisdiction rule and law of the case do not prohibit this Court from now deciding the issue of whether Log Cabin is entitled to seek mandamus damages from the PLCB under Section 8303.

Whether Log Cabin is entitled to seek mandamus damages in the instant circumstances presents a pure question of statutory interpretation. The Pennsylvania Supreme Court has explained:

In all matters involving statutory interpretation, [our Supreme Court] appl[ies] the Statutory Construction Act [of 1972 (SCA)], 1 Pa.C.S. §§ 1501[-1991], which directs [courts] to ascertain and effectuate the intent of the General Assembly. [See Section 1921(a) of the SCA,] Pa.C.S. § 1921(a). . . . A statute’s plain language generally provides the best indication of legislative intent. *See, e.g., McGrory v. Dep’t of Transp.*, . . . 915 A.2d 1155, 1158 ([Pa.] 2007); *Commonwealth v. Gilmour Mfg. Co.*, . . . 822 A.2d 676, 679 ([Pa.] 2003); *P[a.] Fin. Responsibility Assigned Claims Plan v. English*, . . . 664 A.2d 84, 87 ([Pa.] 1995) (“Where the words of a statute are clear and free from ambiguity the legislative intent is to be gleaned from those very words.”).

*Commonwealth v. Kingston*, 143 A.3d 917, 922 (Pa. 2016). “Thus, statutory construction begins with examination of the text itself.” *Honey v. Lycoming Cnty. Offs. of Voter Servs.*, 312 A.3d 942, 948 (Pa. Cmwlth. 2024), *appeal granted*, 327 A.3d 611 (Pa. 2024) (quoting *Malt Beverages Distribs. Ass’n v. Pa. Liquor Control Bd.*, 918 A.2d 171, 175 (Pa. Cmwlth. 2007)).

Although *person aggrieved* is not defined in Section 8303, Section 1991 of the Judicial Code defines *person* to “[i]nclude[] a corporation, partnership, limited liability company, business trust, other association, . . . estate, trust, foundation[,] or natural person.”<sup>23</sup> 1 Pa.C.S. § 1991; *see also* *MFW Wine Co., LLC v. Pa. Liquor Control Bd.*, 276 A.3d 1225 (Pa. Cmwlth. 2022) (*MFW III*), *aff’d*, 318 A.3d 100 (Pa. 2024) (*MFW IV/Log Cabin II*). Accordingly, the term *person* in the *person aggrieved* portion of Section 8303 could clearly include all affected SO customers.

Neither Section 8303 nor Section 1991 of the Judicial Code define the term *aggrieved*. However, Black’s Law Dictionary (12th ed. 2024) defines the word *aggrieved* as “having legal rights that are adversely affected; having been harmed by an infringement of legal rights.” *Id.* at 82. In addition, this Court has explained, in the context of standing:

A party is aggrieved when he or she **has a “substantial, direct, and immediate” interest in the subject matter** of the appeal. *William Penn Parking Garage, Inc. v. City of Pittsburgh*, . . . 346 A.2d 269, 282-84 ([Pa.] 1975). Specifically, “the requirement of a ‘substantial’ interest simply means that the individual’s interest must have substance - there must be **some discernible adverse effect to some interest other than the abstract interest of all citizens in having [the respondent] comply with the law.**” *Id.* at 282. “The requirement that an interest be ‘direct’ simply means that the person claiming to be aggrieved **must show causation of the harm to his interest by the matter of which he complains.**” *Id.* (footnote omitted). Finally, “[t]he remaining requirements of the traditional formulation of the standing test are that the interest be **‘immediate’ and ‘not a remote**

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<sup>23</sup> When the General Assembly defines the words in a statute, this Court “must accept the statutory definitions.” *Lower Swatara Twp. v. Pa. Lab. Rels. Bd.*, 208 A.3d 521, 530 (Pa. Cmwlth. 2019).

**consequence** of the judgment.’ [T]hese two requirements reflect a single concern. Here[,] that concern is with the nature of the causal connection between the action complained of and the injury to the person challenging it.” *Id.* at 283.

*In re Gen. Election 2014*, 111 A.3d 785, 792 (Pa. Cmwlth. 2015) (bold and underline emphasis added). The PLCB customers who placed SOs (or for whom licensed importers or vendors placed SOs) after June 1, 2017, that came to rest at PLCB Stores and were subject to PLCB handling fees before the PLCB implemented a direct shipment SO process have a **substantial interest**, i.e., “some discernible adverse effect to some interest other than the abstract interest of all citizens in having [the PLCB] comply with the law.” *In re Gen. Election 2014*, 111 A.3d at 792 (quoting *William Penn Parking Garage*, 346 A.2d at 282). They also have a **direct interest** to the extent that they had pick-up expenses and paid the PLCB handling fees before the PLCB eventually implemented the SO process. Finally, they have an interest that is **immediate** and not remote, because they had pick-up expenses and paid PLCB handling fees as a direct result of the PLCB’s failure to implement the direct shipment SO process mandated by Section 305(a) of the Liquor Code. Accordingly, SO customers, like Log Cabin and the putative class members, who incurred pick-up expenses and paid the PLCB handling fees before the PLCB eventually implemented the direct shipment SO process in accordance with Section 305(a) of the Liquor Code are *aggrieved*.<sup>24</sup>

This Court is mindful that mandamus is an *extraordinary* remedy limited to circumstances when a state agency fails or refuses without lawful

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<sup>24</sup> In *MFW I*, this Court declared: “Petitioners were, and still are, unquestionably aggrieved by [the] PLCB’s erroneous interpretation of Section 305(a) of the Liquor Code and Section 1799.2-E of the Fiscal Code. Petitioners, therefore, have standing to maintain this action. *See William Penn Parking Garage*[.]” *MFW I*, 231 A.3d at 58 n.14.

justification to carry out a statutory duty and the damages can “both insure that an action in mandamus can make [a party] whole and prevent the unjust enrichment of the official wrongdoer.” *Allegheny Cnty. Police Pension Fund*, 382 A.2d at 464; *see also MFW IV*; *Langan v. Pittston Sch. Dist.*, 6 A.2d 772 (Pa. 1939) (due to the extraordinary nature of mandamus proceedings, and the fact that damages may not be ascertainable until after a writ is issued, mandamus damages may be awarded when not specifically requested in a complaint). However, given Section 8303’s remedial purpose and its focus that damages are *designed to address the direct consequences of the agency’s failure to carry out a statutory duty*, rather than the actions or inactions of the parties aggrieved, mandamus damages are warranted herein. Such conclusion is consistent with the Pennsylvania Supreme Court’s statement in *MFW IV/Log Cabin II*:

Mandamus provides a narrow and limited legal remedy. At its core is the principle that, in a democratic system of self-governance, there must be accountability of public officials and entities who refuse to fulfill their duties as provide [sic] by law, by either act or omission. Mandamus damages under Section 8303, narrowly directed to address the direct result of a failure to perform a public duty, reinforce the accountability principle inherent in the mandamus power[.]

*Id.* at 132. “By failing to [implement the] statutorily prescribed procedure, the [PLCB] has, by default, permitted what it could have prevented by acting in conformity with the requirements of the statute.” *Clepper Farms, Inc. v. Trimmer*, 443 A.2d 1385, 1386 (Pa. Cmwlth. 1982) (emphasis added).

Although Pennsylvania courts have generally considered mandamus damages in the context of requests by the named, successful mandamus petitioners, this Court in *Log Cabin I* concluded: “That, alone, is not a sufficient basis for this

Court to conclude that a request by Log Cabin or other PLCB licensees [for mandamus damages] . . . are not valid.” *Id.* at 876. As the PLCB points out, Section 24 of the Act of June 14, 1836, P.L. 621 (Act No. 174), (Mandamus Act of 1836), “provided that when a writ of mandamus issued, **the successful litigant ‘shall recover** his damages and costs[.]” Act No. 174 § 24 (emphasis added); *see also* PLCB Appl. ¶ 53. In addition, Section 16 of the Mandamus Act of 1893, specified that “[i]f a verdict is found for **the plaintiff** and judgment is entered thereon, . . . **he shall recover** his damages and costs.” Act of June 8, 1893, P.L. 345, § 16 (emphasis added), *repealed by* the Act of April 28, 1978, P.L. 202; *see also* PLCB Appl. ¶ 54. Despite that courts, including the *MFW III* Court, have deemed Section 8303 similar to the Mandamus Acts of 1836 and 1893, Section 8303’s predecessor iterations clearly limited damages to the *successful* mandamus petitioner while the current version of Section 8303 does not.

To the extent the General Assembly may have intended Section 8303 as a substantial reenactment of the Mandamus Acts of 1836 and 1893,

“[a] change in the language of a statute ordinarily indicates a change in legislative intent.” *Meier v. Maleski*, 670 A.2d 755, 759 (Pa. Cmwlth. 1996). [This Court has] held that “the legislature’s deletion of statutory language renders the language inoperative and indicates that the legislature has admitted a different intent.” *Id.* . . . If [this Court] were to accept [the PLCB’s] argument and interpret Section [8303] as [the PLCB] urges . . . , [this Court] would be essentially rewriting [Section 8303] and reinstating the exact language that the General Assembly specifically removed before enactment. This is beyond [this Court’s] authority to do.

*Clearwater Constr., Inc. v. Northampton Cnty. Gen. Purpose Auth.*, 166 A.3d 513, 520-21 (Pa. Cmwlth. 2017). Further, pursuant to Section 1928(c) of the SCA, Section 8303 is to “be liberally construed to effect [its] object[]” of making an

injured party whole and preventing an official wrongdoer's unjust enrichment, "and to promote justice." 1 Pa.C.S. § 1928(c); *see also Allegheny Cnty. Police Pension Fund*. Therefore, this Court holds that Section 8303 does not expressly categorically limit mandamus damages to the *MFW* Petitioners, nor does it preclude Log Cabin from seeking the same under these unique circumstances, particularly when the PLCB knowingly persisted in a course of conduct that harmed entities beyond the *MFW* Petitioners.<sup>25</sup>

Moreover, by statutorily mandating the PLCB to implement a direct shipment SO procedure, the General Assembly clearly intended to allow ***all SO customers*** - including retail licensees like Log Cabin - to take direct delivery of SOs without being subject to the PLCB's handling fees and pick-up expenses. The General Assembly intended that its directive would save SO customers time and

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<sup>25</sup> The PLCB's argument that the qualifier *the* which precedes *person aggrieved* in Section 8303 limits damage claims to the named petitioners in a mandamus action lacks merit. Section 8303's inclusion of the article *the* preceding *person aggrieved* does not in this case limit the mandamus damage claimants to those named in *MFW*. First, Section 1902 of "[t]he [SCA] indicate[s] that singular and plural may be treated interchangeably." *Herold v. Univ. of Pittsburgh - of the Commonwealth Sys. of Higher Educ.*, 329 A.3d 1159, 1178 (Pa. 2025); *see also* 1 Pa.C.S. § 1902 ("The singular shall include the plural, and the plural, the singular."). Second, while this Court acknowledges the Pennsylvania Supreme Court's reference in *Patricca v. Zoning Board of Adjustment of the City of Pittsburgh*, 590 A.2d 744 (Pa. 1991), that courts must ascribe meaning when the General Assembly modifies a noun with the definite article *the*, rather than the indefinite articles *a* or *any*, the *Patricca* Court's clarification that "the references in the ordinance to 'the residents of the neighborhood' are definite references to **all** persons who reside in the neighborhood[.]" *id.* at 751 (emphasis added), supports Log Cabin's interpretation that Section 8303's inclusion of the article *the* preceding *person aggrieved*, allows this Court to construe Section 8303 to mean *all persons aggrieved*. In addition, taking the PLCB's argument to its conclusion, while the General Assembly could have but did not use the phrase *any persons aggrieved*, the General Assembly also could have but did not use the phrase *the successful mandamus petitioners*.

money.<sup>26</sup> *See Woodford v. Ins. Dep’t*, 243 A.3d 60, 75 (Pa. 2020) (Section 305(a) of the Liquor Code “is aimed at describing the fees that may (and may not) be charged by [the PLCB], and is at least partly intended to protect consumers from improper fees.”). The *MFW I* Court held that the PLCB failed to perform its mandatory statutory duty under Section 305(a) of the Liquor Code without lawful justification. *See MFW I*. Further, the *Log Cabin I* Court observed: “This case presents a relatively unique situation in which the PLCB’s conduct has harmed and will continue to harm hundreds of PLCB licensed entities.” *Id.* at 876. “[T]he PLCB [wa]s clearly liable to licensed vendors, importers, and licensees for provable mandamus damages under Section 8303 . . . , and neither that provision nor any caselaw expressly preclude[d an unnamed petitioner’s] claim[.]” *Id.* at 877.

This case clearly illustrates that the scope of *persons aggrieved* in Section 8303 may extend beyond the named petitioners where, as in this case, this Court considered the additional petitioners when issuing the writ of mandamus, and provided that the added petitioners can establish their interest in the relief sought and the damages incurred. Accordingly, this Court holds that, in this specific case, all affected SO customers, like Log Cabin, who incurred pick-up expenses and paid the PLCB handling fees before the PLCB eventually implemented the direct shipment SO process in accordance with Section 305(a) of the Liquor Code may seek damages under Section 8303 pursuant to this Court’s May 1, 2020 *MFW I* Order.

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<sup>26</sup> Notably, because the PLCB was required to collect handling fees on SOs that entered PLCB Stores, *see* 47 P.S. § 3-305(a) (“[T]he [PLCB] shall impose handling fees on [SOs] which come to rest at a [PLCB S]tore[.]”), by not implementing the direct delivery SO process, the PLCB continued to benefit from the income those fees generated.

b. Statute of Limitations

The PLCB also asserts that the six-month limitations period set forth in Section 5522(b)(1) of the Judicial Code (Section 5522(b)(1)) applies to Log Cabin's mandamus action, such that Log Cabin had six months from when it was first injured by the PLCB's failure to implement a direct SO delivery process or it was forever barred from doing so. The PLCB observed that Log Cabin has been a PLCB licensee since March 2017 and, based on the PLCB's records, Log Cabin placed an SO at least as early as July 23, 2018. *See* PLCB Br. at 15-16; *see also* August 23, 2024 affidavit of PLCB Director of Policy and Communications Elizabeth Brassell (Brassell 8/23/2025 Aff.) ¶¶ 21, 23. The PLCB argues that since the PLCB's failure to implement a direct delivery SO option caused Log Cabin actual injury and its mandamus claim fully accrued at least as of July 23, 2018, Log Cabin's mandamus action commenced on May 6, 2020, was time-barred.<sup>27</sup> Log Cabin responds that Section 5522(b)(1), which expressly applies only to officers of government units, does not bar Log Cabin's ability to recover mandamus damages under Section 8303.

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<sup>27</sup> The PLCB takes the position that

[a]nyone who paid a [handling] fee on [SO] products that it would otherwise have ordered through direct delivery after June 2, 2017[,] could have brought a mandamus action against the PLCB to force it to comply with [] Section 305(a) of the Liquor Code. That includes Log Cabin (a PLCB licensee since March 2017), which purchased [SO] products and paid the associated [] handling fees to the PLCB at least as early as July 23, 2018, and after the date upon which it contends a mandamus action could have been maintained against the PLCB.

PLCB Br. at 15-16 (footnote omitted). The PLCB appears to argue that because it managed to avoid its statutory duty long enough for a six-month statute of limitations to pass from June 1, 2017, it cannot now be liable to SO customers. That cannot be what the General Assembly intended by either Section 305(a) of the Liquor Code or Section 5522(b)(1). *See* Section 1922(a) of the SCA, 1 Pa.C.S. § 1922(1) (This Court presumes that "the General Assembly does not intend a result that is absurd . . . or unreasonable.").



Log Cabin adds that, because mandamus relief is rooted in equity, no statute of limitations applies.

Civil Rule 1091 specifies that mandamus actions “shall be in accordance with the rules relating to [] civil action[s].”<sup>28</sup> Pa.R.Civ.P. 1091. Chapter 55, subchapter B of the Judicial Code provides the statutes of limitations for civil actions. *See* 42 Pa.C.S. §§ 5521-5539. Section 5501(a) of the Judicial Code declares: “An action . . . must be commenced within the time specified in or pursuant to [Chapter 55 of the Judicial Code, Limitation of Time (Chapter 55),] unless, in the case of a civil action or proceeding, a different time is provided by this title or another statute . . . .” 42 Pa.C.S. § 5501(a). Indeed, “[g]enerally, once the prescribed statutory period has expired, the complaining party is barred from bringing suit.” *Morgalo*, 134 A.3d at 1150 n.14 (quoting *Gleason v. Borough of Moosic*, 15 A.3d 479, 484 (Pa. 2011)).

Section 5522(b)(1) provides that “except an action subject to another limitation specified in this subchapter[,]” “[a]n action against **any officer of any government unit** for anything done in the execution of his office,” **must be commenced within six months.** 42 Pa.C.S. § 5522(b)(1) (emphasis added). Section 5522(b)(1)’s plain language, which governs this Court’s interpretation, *see Kingston*, clearly reflects that the six-month limitations period applies to mandamus actions against *officers of* government units - *not* government units.

Section 102 of the Judicial Code defines *government unit* as “any government agency[.]” 42 Pa.C.S. § 102. *Government agency* is defined therein as “[a]ny Commonwealth agency or any political subdivision or municipal or other local authority, or any officer or agency of any such political subdivision or local

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<sup>28</sup> Unless otherwise provided, Civil Rules apply to matters brought within this Court’s original jurisdiction. *See* Appellate Rule 106, Pa.R.A.P. 106.

authority.” *Id.* Moreover, under Civil Rule 1094(a) (relating to mandamus defendants) “a mandamus action brought against a municipality . . . requires that the proper officers and officials of the municipality be made party defendants.” *Bensalem v. Moore*, 620 A.2d 76, 79-80 (Pa. Cmwlth. 1993); *see also* Pa.R.Civ.P. 1094(a). Civil Rule 1094(c), on the other hand, specifies that for mandamus actions seeking to compel independent administrative boards of the Commonwealth or boards or bodies of political subdivisions to perform public duties, it is sufficient to name only the board or body. *See* Pa.R.Civ.P. 1094(c).

Generally, when an *officer of a government unit* is the named defendant in a mandamus action, this Court has ruled that Section 5522(b)(1)’s six-month limitations period applies. *See Brown v. Behr* (Pa. Cmwlth. No. 1170 C.D. 2019, filed Mar. 11, 2024);<sup>29</sup> *Schneller v. Prothonotary of Montgomery Cnty.* (Pa. Cmwlth. No. 1316 C.D. 2016, filed Sept. 12, 2017); *see also Capinski v. Upper Pottsgrove Twp.*, 164 A.3d 601 (Pa. Cmwlth. 2017); *Twp. of Bensalem; Fleming v. Rockwell*, 500 A.2d 517, 519 (Pa. Cmwlth. 1985). When the *government unit itself* is the named defendant in a mandamus action, this Court has ruled that Section 5522(b)(1) does not apply. *See Lehigh Asphalt Paving & Constr. Co. v. Bd. of Supervisors of E. Penn Twp.*, 830 A.2d 1063 (Pa. Cmwlth. 2003) (Section 5522(b)(1) does not apply to a mandamus action brought against a governing body); *see also Paz v. Dep’t of Corr.*, 580 A.2d 452, 456 (Pa. Cmwlth. 1990) (Section 5522(b)(1) does not apply when “no officers of any government units [are] named in th[e] action”).<sup>30</sup>

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<sup>29</sup> Unreported decisions of this Court issued after January 15, 2008, may be cited as persuasive authority pursuant to Section 414(a) of this Court’s Internal Operating Procedures. 210 Pa. Code § 69.414(a). Unless otherwise specified, the unreported cases herein are cited for their persuasive value.

<sup>30</sup> This Court acknowledges that, in *Zellie v. Department of Corrections* (Pa. Cmwlth. No. 97 M.D. 2011, filed Mar. 1, 2012), an inmate’s purported mandamus action against a

Here, in Section 305(a) of the Liquor Code, the General Assembly expressly mandated that “[t]he [PLCB] shall, by January 1, 2017, **implement a procedure** for processing [SOs] which do not come to rest at a [PLCB Store,]” and for which the PLCB would not be entitled to handling fees. 47 P.S. § 3-305(a) (emphasis added). In Section 20 of Act 85 of 2016, the General Assembly extended the PLCB’s SO process implementation deadline from January 1, 2017 to June 1, 2017. In *MFW I*, this Court ordered:

- a. [The] **PLCB is DIRECTED** to comply with Section 305(a) of the Liquor Code by allowing licensed vendors and licensed importers to ship [SOs] directly to customers;
- b. [The] **PLCB is DIRECTED** to comply with Section 305(a) of the Liquor Code by implementing a procedure for processing direct shipment [SOs] - *i.e.*, those that “do not come to rest at a [PLCB S]tore.” 47 P.S. § 3-305(a).

*MFW I*, 231 A.3d at 59 (emphasis added). In *Log Cabin I*, this Court declared that “**the PLCB is clearly liable** to licensed vendors, importers, and licensees for provable mandamus damages under Section 8303 of the Judicial Code[.]” *Id.* at 877 (emphasis added). Thus, both the General Assembly and this Court (whose decisions the Pennsylvania Supreme Court has affirmed) have ruled that *the PLCB* is the responsible party in this and the *MFW* litigation. Where the PLCB, as an

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Commonwealth agency to stop deductions from his inmate account, this Court expressed that, “[a]lthough Section 5522(b)(1) refers to actions against an ‘officer of any government unit’ rather than actions against the government unit itself, this provision still applies” to actions seeking a Commonwealth agency’s performance of a statutory mandate, *Zellie*, slip op. at 7 n.4, because, “to hold otherwise would result in actions in mandamus naming the [s]ecretary of [an agency] or other officials as defendants and those naming only the [agency] as defendant to be subject to different statute of limitations periods.” *Id.* at 8 n.4. However, *Zellie* does not control here. In 2016, the *Morgalo* Court expressly overruled prior precedent that applied a six-month limitations period to inmate account deduction actions. In addition, this Court has not since relied on *Zellie* to rule that mandamus actions against government bodies are subject to a six-month limitations period under Section 5522(b)(1). Finally, *Lehigh Asphalt* and *Paz* remain good law.

independent administrative board is the responsible party,<sup>31</sup> pursuant to Civil Rule 1094(c), Log Cabin properly filed its Complaint against the PLCB because it - not an individual official thereof - still had not implemented the direct delivery SO procedure and continued collecting handling fees from SO customers like Log Cabin.<sup>32, 33</sup> Accordingly, Section 5522(b)(1)'s six-month limitations period does not apply.<sup>34</sup>

“[A]ctions in mandamus are treated as actions in equity[.]” *Mansfield Hosp. Ltd. P’ship v. Bd. of Assessment Appeals of Tioga Cnty.*, 680 A.2d 916, 918 (Pa. Cmwlth. 1996); *see also Germantown Bus. Ass’n v. City of Phila.*, 534 A.2d 553, 555 (Pa. Cmwlth. 1987) (“[A]lthough mandamus is an action at law, it is guided

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<sup>31</sup> As Log Cabin points out, the PLCB has not cited to any case in which Section 5522(b)(1)'s six-month limitations period has been applied in a mandamus action to force an independent administrative board of the Commonwealth to comply with a statutory mandate.

<sup>32</sup> According to the affidavit of the PLCB Director of Policy and Communication Elizabeth Brassell, attached as Exhibit A to the Application, the PLCB made direct SO delivery available to licensees via the Licensee Online Ordering Portal (LOOP) in June 2022, and to retail customers and licensees not registered to use LOOP in July 2023. *See* Brassell Aff. ¶¶ 28, 32.

<sup>33</sup> Section 5522(b)(1) also limits lawsuits brought against a government officer “for anything **done** in the execution of his office.” 42 Pa.C.S. § 5522(b)(1) (emphasis added). Log Cabin filed the Complaint against the PLCB, not for anything the PLCB has *done* but, rather, based on what it *failed to do*. In *Curley v. Smeal*, 41 A.3d 916 (Pa. Cmwlth. 2012) (*Curley I*), *aff’d but criticized*, 82 A.3d 418 (Pa. 2013) (*Curley II*), this Court applied Section 5522(b)(1)'s six-month limitations period to an inmate's account deduction claim to conclude that the inmate's claim was a time-barred mandamus action. On appeal, the Pennsylvania Supreme Court, in a per curiam opinion, affirmed *Curley I* on the basis that the inmate's claim was time-barred, but refused to embrace this Court's application of the six-month limitations period in a mandamus context (rather, it applied a two-year statute of limitations). In Chief Justice Castille's concurring statement (joined by Justice Eakin), he expressed his difficulty in seeing how a mandamus action that alleges a failure to act “would lend itself to a period of limitations analysis; since . . . there is no action to trigger a specific limitations period.” *Curley II*, 82 A.3d at 419; *see also Morgalo*. Although Chief Justice Castille's observation was a minority ruling applicable only to those particular facts, his point is well taken here.

<sup>34</sup> Moreover, as discussed fully below, no other limitations period expressly applies to Log Cabin's action, including Section 5527(b) of the Judicial Code, which provides a six-year statute of limitations when no other limitations period expressly applies. *See* 42 Pa.C.S. § 5527(b).

by equitable principles.”). The Pennsylvania Supreme Court has declared: “[T]he statute of limitations is not controlling in equity[.]” *Kay v. Kay*, 334 A.2d 585, 587 (Pa. 1975). Further, this Court has explained:

**“Laches is a proper defense to an action in mandamus. Our Supreme Court has stated that although mandamus is classified as a legal remedy, it is a remedial process and is “generally regarded as not embraced within statutes of limitation applicable to ordinary actions, but as subject to the equitable doctrine of laches.”** *Commonwealth ex rel. Oliver v. Wilkes-Barre*, . . . 73 A.2d 420, 421 ([Pa.] 1950). In *Wilkes-Barre*, . . . the [Pennsylvania Supreme] Court held that the claimant’s mandamus action was barred by laches.”

*Erway v. Wallace*, 415 A.2d 116, 117 (Pa. Cmwlth. 1980) (emphasis added); *see also Lake v. Hankin Grp.*, 79 A.3d 748, 756 (Pa. Cmwlth. 2013) (“[C]laims for equitable relief are not subject to statutes of limitations.”). Thus, statutes of limitations applied to equity matters merely “provide guidance in determining the reasonableness of any delay” relative to laches.<sup>35</sup> *Kay*, 334 A.2d at 587; *see also United Nat’l Ins. Co. v. J.H. France Refractories Co.*, 668 A.2d 120, 124 (Pa. 1995) (quoting *Silver v. Korr*, 139 A.2d 552, 555 (Pa. 1958) (“[I]t is a general rule that laches follows the statute of limitations.”). Accordingly, laches, rather than a statute of limitations, is a defense in equity matters.<sup>36</sup> “Unlike the application of the statute

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<sup>35</sup> Section 5501(a) of the Judicial Code requires that an action be commenced “within the time specified in or pursuant to [Chapter 55] unless . . . a different time is provided by this title or another statute . . . .” Section 5501(c) of the Judicial Code adds that “[n]othing in [Chapter 55] shall modify the principles of . . . laches . . . heretofore applicable in equitable matters.” 42 Pa.C.S. § 5501(c). Thus, the Pennsylvania Supreme Court has concluded that “equity courts may not rely solely on statutes of limitation in determining if a claim is timely.” *United Nat’l Ins. Co. v. J.H. France Refractories Co.*, 668 A.2d 120, 125 (Pa. 1995).

<sup>36</sup> Despite that equity normally lacks jurisdiction to award damages for illegal acts, once equity jurisdiction attaches, the court has jurisdiction to award equitable relief and damages. *See Wortex Mills v. Textile Workers U. of Am.*, 109 A.2d 815 (Pa. 1954); *see also Cedarbrook Realty*,

of limitations, exercise of the doctrine of laches does not depend on a mechanical passage of time.” *Fulton v. Fulton*, 106 A.3d 127, 131 (Pa. Super. 2014). Therefore, “this Court has allowed suits in equity to proceed despite significant delays in bringing the action.” *United Nat. Ins. Co.*, 668 A.2d at 124.

Here, in its New Matter, the PLCB pled the doctrine of laches as a defense to Log Cabin’s claims. “Whether laches applies is a question of law. . . . However, applicability of the doctrine of laches is a factual determination made on a case-by-case basis.” *Mandler v. Commonwealth*, 247 A.3d 104, 116 (Pa. Cmwlth.) (quoting *Wheels Mech. Contracting & Supplier, Inc. v. W. Jefferson Hills Sch. Dist.*, 156 A.3d 356, 362 (Pa. Cmwlth. 2017)), *aff’d*, 263 A.3d 551 (Pa. 2021). Thus, while this Court concludes laches, as opposed to a statute of limitations, applies herein, this Court may not decide the PLCB’s entitlement to laches in the context of this Application. *See Stilp v. Hafer*, 718 A.2d 290, 293 (Pa. 1998) (citation omitted) (“Whether laches is established requires a factual determination based upon the circumstances of each case. As such, it is generally an inappropriate basis for summary judgment unless the relevant facts are not in dispute.”).

### Conclusion

Based on the foregoing, because the PLCB does not have a clear right to relief, *see Scarnati*, this Court denies the PLCB’s Application.



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ANNE E. COVEY, Judge

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*Inc. v. Nahill*, 399 A.2d 374 (Pa. 1979); *Lowrey v. E. Pikeland Twp.*, 562 A.2d 1010 (Pa. Cmwlth. 1989).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Log Cabin Property, LP,	:	
individually and on behalf of	:	
all those similarly situated,	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Liquor Control Board,	:	No. 292 M.D. 2020
Respondent	:	

ORDER

AND NOW, this 21<sup>st</sup> day of August, 2025, the Pennsylvania Liquor Control Board's Application for Summary Relief is DENIED.



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ANNE E. COVEY, Judge