

00-88-CD
CHARLES MATTHEWS -vs- KEITH W. PETERS et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

(25) CHARLES MATTHES,
Plaintiff,

vs.

(105) KEITH W. PETERS,
(111) ECKLUND CARRIERS,
(104) WADE SCOTT BURKETT,
(116) S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00 88 . CO

Issue No.:

**PLAINTIFF'S COMPLAINT IN
CIVIL ACTION**

Code:

Filed on behalf of the
Plaintiff, CHARLES MATTHES

Counsel of Record for this
Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH &
LAZZARA, P.C.
Suite 1400 - Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED

JAN 24 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

V.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT;
S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: G.D.

Issue No.

PLAINTIFF'S COMPLAINT

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

VIRGINIA M. EVANKO, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 1683

TELEPHONE: (814) 765-2641 Ext. 32

COMPLAINT IN CIVIL ACTION

The Plaintiff, Charles Matthes, complains of the Defendants, Wade Scott Burkett and S & S Trucking, and for cause of action, says:

1. Plaintiff, Charles Matthes, resides at 2979 North 800 W, City of Winamac, State of Indiana, 46996.
2. Defendant, Keith W. Peters, resides at 193 N. Kossurth Street, City of Berlin, State of Wisconsin, 54923.
3. Defendant, Ecklund Carriers, is a corporation, trading and doing business in the commonwealth of Pennsylvania on a regular basis, with a principal place of business at P. O. Box 387, Neenah, State of Wisconsin, 54957.
4. Defendant, Wade Scott Burkett, resides at Rd 1, Box 145A, Alexandria, County of Huntingdon, Commonwealth of Pennsylvania, 16611.
5. Defendant, S&S Trucking, is a Pennsylvania Corporation, licensed to do business at Rd 1, Box 145A, Alexandria, County of Huntingdon, Commonwealth of Pennsylvania, 16611.
6. At all times mentioned herein, Defendant, S&S Trucking, was acting through its agents, servants and/or employees, Defendant, Wade Scott Burkett.
7. At all times mentioned herein, Defendant, Wade Scott Burkett, was an agent, servant and/or employee of Defendant, S&S Trucking.
8. At all times mentioned herein, Defendant, Ecklund Carriers, was acting through its agents, servants and/or employees, Defendant, Keith W. Peters.
9. At all times mentioned herein, Defendant, Keith W. Peters, was an agent, servant and/or employee of Defendant, Ecklund Carriers.
10. State Road 153 is a public thoroughfare located in the Municipality of Pine township, County of Clearfield, Commonwealth of Pennsylvania, and running

generally in a North/South direction.

11. That on or about August 10, 1998, at or about 11:35 a.m., Plaintiff, Charles Matthes, was riding as a front seat passenger in a 1989 Ford Mustang, which he owned and which was being operated by Gregory James in a northerly direction along State Road 153.

12. At or about the same time, Defendant, Keith W. Peters, was operating a 1995 Freightliner Semi Tractor trailer which was owned by Defendant, Ecklund Carriers, in a northerly direction along State Road 153 behind the automobile in which Plaintiff was a passenger.

13. As the automobile in which Plaintiff, Charles Matthes, was a passenger stopped to make a left-turn from State Road 153, and Defendant, Keith W. Peters, was stopped behind the Plaintiff in the tractor trailer owned by Defendant, Ecklund Carriers, Defendant, Wade Scott Burkett, operated a 1979 S Model dump truck in a northerly direction along State Road 153 in such a negligent and careless manner so as to collide with Defendant, Keith W. Peters' vehicle, causing a chain reaction, with the result that the Plaintiff, Charles Matthes, suffered severe and serious injuries and damages as are hereinafter set forth.

14. At the time of said accident, Plaintiff, Charles Matthes, was not a resident of the Commonwealth of Pennsylvania, named as an insured under any policy of automobile insurance within the Commonwealth of Pennsylvania, or a member of or a relative in a household with an automobile insured in the Commonwealth of Pennsylvania, and as such is a full tort claimant.

COUNT 1

CHARLES MATTHES v. KEITH W. PETERS

15. The averments contained in Paragraphs one through fourteen are incorporated herein by reference as though fully set forth at length.

16. The losses, injuries and damages to the Plaintiff hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, Keith W. Peters, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;
- b. In continuing to operate the vehicle in a direction towards the Plaintiff's vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Plaintiff's's vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him; and,
- h. In failing to give adequate warning to the following Defendant, Wade Scott Burkett, of the stopped position of his vehicle.

17. Solely as a result of the negligence of the Defendant as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;
- c. Limitation of motion in the hand, neck and back;

- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;
- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- i. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury.

18. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000) plus costs.

COUNT II

CHARLES MATTHES v. ECKLUND CARRIERS

19. Plaintiff incorporates Paragraphs one through eighteen of the Complaint as though they were set forth fully herein at length.

20. At all times mentioned herein, Defendant, Ecklund Carrier, was acting through its employee, agent and/or servant Defendant, Keith W. Peters, who was operating a 1995 Freightliner Semi tractor trailer owned by Defendant, Ecklund Carries, with the knowledge, consent and permission of Defendant, Ecklund Carriers.

21. The injuries and damages set forth within this Complaint were caused solely by and were the direct and proximate result of the negligence of the Defendant, Ecklund Carriers, by and through its employee, agent and/or servant, Defendant , Keith W. Peters, in the following respects:

- a. In negligently entrusting its vehicle to Defendant, Keith W. Peters, when Defendant knew, or in the exercise of reasonable care should have known, that it was not prudent to do so under the circumstances;
- b. In negligently entrusting its vehicle to Defendant, Keith W. Peters, with knowledge that he was a poor driver and unfit to operate said vehicle;
- c. In negligently refraining from preventing the operation of its vehicle by Defendant, Keith W. Peters, with the result that the vehicle struck the Plaintiff's vehicle, injuring Plaintiff, Charles Matthes, while a passenger in that vehicle; and,
- d. In failing to exercise reasonable control over the manner in which the Defendant, Keith W. Peters, was operating the vehicle.

22. The losses, injuries and damages to the Plaintiff, Charles Matthes, hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, Ecklund Carriers, by and through its employee, agent and/or servant, Defendant, Keith W. Peters, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;
- b. In continuing to operate the vehicle in a direction towards the Plaintiff's vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Plaintiff's's vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him; and,
- h. In failing to give adequate warning to the following Defendant, Wade Scott Burkett, of the stopped position of his vehicle.

23. Solely, as a result of the negligence of the Defendant, Ecklund Carriers, by and through its employee, agent and/or Servant, Keith W. Peters, as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;

- c. Limitation of motion in the hand, neck and back;
- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;
- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- i. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury, resulting in a brain injury.

24. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000), plus costs.

COUNT III

CHARLES MATTHES v. WADE SCOTT BURKETT

25. The averments contained in Paragraphs one through twenty-four are

incorporated herein by reference as though fully set forth at length.

26. The losses, injuries and damages to the Plaintiff, Charles Matthes, hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, Wade Scott Burkett, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;
- b. In continuing to operate the vehicle in a direction towards Defendant, Keith W. Peters' vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Defendant, Keith W. Peters' vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him.

27. Solely, as a result of the negligence of the Defendant, Wade Scott Burkett, as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated

intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;

- c. Limitation of motion in the hand, neck and back;
- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;
- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- i. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury.

28. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000), plus costs.

COUNT IV

CHARLES MATTHES v. S&S TRUCKING

29. Plaintiff incorporates Paragraphs one through twenty-eight of the Complaint as though they were set forth fully herein at length.

30. At all times mentioned herein, Defendant, S&S Trucking, was acting through its employee, agent/or servant Defendant, Wade Scott Burkett, who was operating 1979 International S-model dump truck owned by Defendant, S & S Trucking, with the knowledge, consent and permission o Defendant, S&S Trucking.

31. The injuries and damages set forth within this Complaint were caused solely by and were the direct and proximate result of the negligence of the Defendant, S&S Trucking, by and through its employee, agent and/or servant, Defendant, Wade Scott Burkett, in some or all of the following respects:

- a. In negligently entrusting its vehicle to Defendant, Wade Scott Burkett, when Defendant knew, or in the exercise of reasonable care should have known, that it was not prudent to do so under the circumstances;
- b. In negligently entrusting its vehicle to Defendant, Wade Scott Burkett, with knowledge that he was a poor driver and unfit to operate said vehicle;
- c. I negligently refraining from preventing the operation of its vehicle by Defendant, Wade Scott Burkett, with the result that the vehicle struck the Plaintiff's vehicle, injuring Plaintiff, Charles Matthes, while a passenger in that vehicle; and,
- d. In failing to exercise reasonable control over the manner in which the Defendant, Wade Scott Burkett, was operating the vehicle.

32. The losses, injuries and damages to the Plaintiff, Charles Matthes, hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, S&S Trucking, by and through its employee, agent and/or servant, Defendant, Wade Scott Burkett, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;

- b. In continuing to operate the vehicle in a direction towards the Plaintiff's vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Plaintiff's's vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him.

33. Solely, as a result of the negligence of the Defendant, S&S Trucking, by and through its employee, agent and/or Servant, Wade Scott Burkett, as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;
- c. Limitation of motion in the hand, neck and back;
- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;

- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- l. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury.

34. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000), plus costs.

Respectfully submitted,

GOODRICH & GOODRICH, P.C.

By: William F. Goodrich
William F. Goodrich
ATTORNEY FOR PLAINTIFF

VERIFICATION

I, Charles Matthes, have read the foregoing COMPLAINT IN CIVIL ACTION.

The statements of fact contained therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 PA. C.S. § 4904 relating to unsworn falsification to authorities which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 1-20-06


Charles Matthes

1-1-2000

~~By~~ JAN 24 2000

William A. Shaw
Prothonotary

NY B. Service
City of Doodrich pd \$80.00

WILLIAM F. GOODRICH

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MATTHES, CHARLES
VS
PETERS, KEITH W.

00-88-CD

COMPLAINT

SHERIFF RETURNS

NOW JANUARY 25, 2000 HARRY ERSEK, SHERIFF OF HUNTINGDON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINTS ON S & S TRUCKING AND WADE SCOTT BURKETT, DEFENDANTS.

NOW JANUARY 26, 2000 SERVED THE WITHIN COMPLAINTS ON S & S TRUCKING AND WADE SCOTT BURKETT, DEFENDANTS BY DEPUTIZING THE SHERIFF OF HUNTINGDON COUNTY. THE RETURNS OF SHERIFF ERSEK ARE HERETO ATTACHED AND MADE A PART OF THIS RETURN STATING THAT HE SERVED BOTH COPIES ON WADE SCOTT BURKETT, OWNER.

38.42 SHFF. HAWKINS PAID BY: ATTY.
48.36 SHFF. ERSEK PAID BY: ATTY.
20.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

2nd DAY OF February 2000
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,

Chester A. Hawkins
by Mandy Horn
CHESTER A. HAWKINS
SHERIFF

FILED

FEB 02 2000
0111:24
William A. Shaw
Prothonotary *EHS*



SHERIFF'S OFFICE

HUNTINGDON COUNTY, PENNSYLVANIA

241 Mifflin Street
Huntingdon, PA 16652
Telephone: 814-643-0880
David L. Harker, Sheriff

CHARLES MATTHES

NO. 88 TERM 00

VS:

S & S TRUCKING AND WADE SCOTT BURKETT

NOW, 26 JANUARY, 2000, AT 1456 A.M./P.M. I SERVED THE WITHIN _____

NOTICE AND COMPLAINT _____ UPON

S & S TRUCKING _____ AT

HIS PLACE OF BUSINESS RR#1 BOX 145A ALEXANDRIA PA _____

BY HANDING TO WADE SCOTT BURKETT AS OWNER OF S&S TRUCKING

1 TRUE AND CORRECT COPY/COPIES OF THE WITHIN NOTICE AND COMPLAINT

_____ AND MADE KNOWN TO WADE

THE CONTENTS THEREOF.

SWORN AND SUBSCRIBED TO
BEFORE ME THIS 27th
DAY OF JANUARY
2000, A.D.

SO ANSWERS,

David L. Harker
David L. Harker, Sheriff

Tammy S. Coons
~~PROTHONOTARY~~ NOTARY PUBLIC

KAREN A REDER
CHIEF DEPUTY/DEPUTY

Notarial Seal
Tammy S. Coons, Notary Public
Huntingdon Boro, Huntingdon County
My Commission Expires Apr. 18, 2002
Member, Pennsylvania Association of Notaries

COSTS:

REC & DOC _____
SERVICE _____
MILEAGE/POSTAGE _____
SURCHARGE _____
AFFIDAVIT _____
MISCELLANEOUS _____

TOTAL COSTS _____



SHERIFF'S OFFICE
HUNTINGDON COUNTY, PENNSYLVANIA

241 Mifflin Street
Huntingdon, PA 16652
Telephone: 814-643-0880
David L. Harker, Sheriff

CHARLES MATTHES

NO. 88 TERM 00

VS:

S & S TRUCKING AND WADE SCOTT BURKETT

NOW, 26 JANUARY, 2000, AT 1456 A.M./P.M. I SERVED THE WITHIN

NOTICE AND COMPLAINT UPON

WADE SCOTT BURKETT AT

HIS PLACE OF BUSINESS RR#1 BOX 145A ALEXANDRIA PA

BY HANDING TO WADE SCOTT BURKETT PERSONALLY

1 TRUE AND CORRECT COPY/COPIES OF THE WITHIN NOTICE AND COMPLAINT

AND MADE KNOWN TO WADE

THE CONTENTS THEREOF.

SWORN AND SUBSCRIBED TO
BEFORE ME THIS 27th
DAY OF JANUARY
2000 A.D.

SO ANSWERS,
David L. Harker, Sheriff

Tammy S. Coons
PROTHONOTARY NOTARY PUBLIC

KAREN A REDER
CHIEF DEPUTY/DEPUTY

Notarial Seal
Tammy S. Coons, Notary Public
Huntingdon Boro, Huntingdon County
My Commission Expires Apr. 18, 2002

Member, Pennsylvania Association of Notaries

Table with 2 columns: COSTS and Amount. Rows include REC & DOC (9.00), SERVICE (15.00), MILEAGE/POSTAGE (19.36), SURCHARGE, AFFIDAVIT (5.00 TAM), MISCELLANEOUS.

TOTAL COSTS \$48.36 PAID 1-00



OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765-6089

Sheriff's Office Clearfield County

SUITE 116
1 NORTH SECOND STREET - COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830

CHESTER A. HAWKINS
SHERIFF

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES

VS

KEITH W. PETRS a1

NO. 00-88-CD

ACTION: COMPLAINT

SERVE BY: 2/23/00

OR

HEARING DATE:

SERVE: S&S TRUCKING and WADE SCOTT BURKETT

ADDRESS: RD#1 Box 145A, Alexandria, Pa. 16611

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF of HUNTINGDON County to execute this writ.

This deputation being made at the request and risk of the plaintiff this 25th day of JANUARY 2000.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

MAKE REFUND PAYABLE TO: GOODRICH & GOODRICH, Attorneys

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

COURT NUMBER: 00-88-CD

TYPE OF PLEADING: **PRAECIPE FOR
APPEARANCE**

FILED ON BEHALF OF:

KEITH W. PETERS and ECKLUND
CARRIERS, DEFENDANTS.

NAME, ADDRESS AND TELEPHONE:

X Counsel of Record

_____ Individual, if Pro Se

RICHARD J. TRANKOCY, JR., ESQ.
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's State I.D. #49087
Attorney's Firm I.D. #150

FILED

FEB 18 2000,

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES, :
 :
 Plaintiff, : No. 00-88-CD
 :
 vs. :
 :
 KEITH W. PETERS, ECKLUND :
 CARRIERS, WADE SCOTT :
 BURKETT, S & S TRUCKING, :
 :
 Defendants.

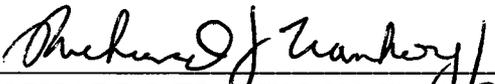
PRAECIPE FOR APPEARANCE

TO: William A. Shaw,

Prothonotary

You are hereby directed to enter my appearance for KEITH W. PETERS
and ECKLUND CARRIERS, defendants in the above stated case.

JURY TRIAL DEMANDED.



RICHARD J. TRANKOCY, JR., ESQ.
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and ECKLUND
CARRIERS.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

FEB 23 2000

William A. Shaw
Prothonotary

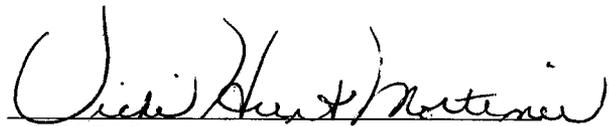
PRAECIPE TO ENTER APPEARANCE

TO: WILLIAM SHAW, PROTHONOTARY

You are hereby directed to enter the appearances of FREDERICK N. EGLER, JR., ESQUIRE, VICKI HUNT MORTIMER, ESQUIRE and EGLER, GARRETT & EGLER on behalf of Defendants, WADE SCOTT BURKETT and S & S TRUCKING, in the above-captioned matter.

EGLER, GARRETT & EGLER

BY:



ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT AND
S & S TRUCKING

DATED: February 21, 2000

F:\WPFILES\GENERAL\16525\PLEADING\PRAECIP.APP

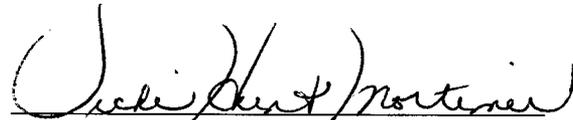
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** has been served on the following by first class mail, postage prepaid on this the 21st day of February, 2000:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

EGLER, GARRETT & EGLER

BY:



ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT AND
S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

TO: within parties

You are hereby notified to file a written response to the enclosed Answer, and New Matter and New Matter Under Rule 2252(d), within twenty (20) days from service hereof or a judgment may be entered against you.

Vicki Hunt Mortimer
Attorney for Wade Scott Burkett
and S&S Trucking

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**ANSWER, NEW MATTER, AND
NEW MATTER UNDER RULE
2252(d)**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

MAR 20 2000

William A. Shaw
Prothonotary

**ANSWER AND NEW MATTER, AND NEW
MATTER UNDER RULE 2252(d)**

Defendants, Wade Scott Burkett and S&S Trucking, by their attorneys, Egler, Garrett & Egler, file the following Answer, New Matter and New Matter Under Rule 2252(d) to plaintiff's Complaint:

1-3. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 1 through 3. The same are therefore denied, and strict proof thereof is demanded at trial.

4. The averments of paragraph 4 are admitted.

5. The averments of paragraph 5 are admitted in part and denied in part. It is denied that S&S Trucking is a Pennsylvania corporation. To the contrary, S&S Trucking is a fictitious name under which defendant Burkett does business. Defendant admits that it does business at RD 1, Box 145A, Alexandria, County of Huntingdon, Commonwealth of Pennsylvania, 16611.

6-7. The averments of paragraphs 6 and 7 are denied. By way of further response to these paragraphs, defendants incorporate herein by reference their response to paragraph 5 as though set forth at length.

8-9. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 8 and 9. The same are therefore denied, and strict proof thereof is demanded at trial.

10. The averments of paragraph 10 are admitted.

11-12. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraphs 11 and 12. The same are therefore denied, and strict proof thereof is demanded at trial.

13. The averments of paragraph 13 are admitted in part and denied in part. It is denied that defendant Burkett was in any way negligent or careless in the operation of his vehicle. To the contrary, at all times material hereto, Mr. Burkett operated his truck in a reasonable and proper manner. It is admitted that Mr. Burkett's vehicle struck Mr. Peters' vehicle, and that Mr. Burkett was operating a 1979 S Model dump truck at the time of the accident. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 13. The same are therefore denied, and strict proof thereof is demanded at trial.

14. The averments of paragraph 14 are denied. The allegation as to whether plaintiff is a full tort claimant is a conclusion of law to which no responsive pleading is required. If a responsive pleading should be required, then said averments are denied, and strict proof thereof is demanded at trial. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of paragraph 14. The same are therefore denied, and strict proof thereof is demanded at trial.

ANSWER TO COUNT I

15-18. The averments of paragraphs 15 through 18 are not directed to these defendants, and no responsive pleading is therefore required. If a responsive pleading should be required, then said averments are denied, and strict proof thereof is demanded at trial.

WHEREFORE, defendants Wade Scott Burkett and S&S Trucking demand judgment in their favor, and against the plaintiff on his claims.

ANSWER TO COUNT II

19-24. The averments of paragraphs 19 through 24 are not directed to these defendants, and no responsive pleading is therefore required. If a responsive pleading should be required, then said averments are denied, and strict proof thereof is demanded at trial.

WHEREFORE, defendants Wade Scott Burkett and S&S Trucking demand judgment in their favor, and against the plaintiff on his claims.

ANSWER TO COUNT III

25. By way of response to paragraph 25, defendants incorporate herein by reference their responses to paragraphs 1 through 24 as though set forth at length.

26. The averments of paragraph 26 and all subparagraphs are denied. To the contrary, at all times material hereto, defendant Wade Scott Burkett operated his vehicle in a reasonable and proper manner.

27. The averments of paragraph 27 are denied. With regard to the alleged negligence of defendant Burkett, said averments are denied. To the contrary at all times material hereto, defendant Burkett operated his vehicle in a reasonable and proper manner. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments relating to plaintiff's alleged injuries. The same are therefore denied, and strict proof thereof is demanded at trial.

28. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 28. The same are therefore denied, and strict proof thereof is demanded at trial.

WHEREFORE, defendants Wade Scott Burkett and S&S Trucking, demand judgment in their favor, and against the plaintiff on his claim.

ANSWER TO COUNT IV

29. By way of response to paragraph 29, defendants incorporate herein by reference their responses to paragraphs 1 through 28 as though set forth at length.

30. The averments of paragraph 30 are denied. To the contrary, Wade Scott Burkett was the owner of the 1979 S Model dump truck at the time of the subject accident. By way of further response to paragraph 30, defendants incorporate herein by reference their response to paragraph 5 as though set forth at length.

31-32. The averments of paragraph 31 and 32 and their subparagraphs are denied. By way of further response to this paragraph, defendants incorporate herein by reference their responses to paragraphs 5 and 26 as though set forth at length.

33. The averments of paragraphs 33 are denied. Defendants incorporate herein by reference their response to paragraphs 5 and 26 as though set forth at length. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 32 relating to plaintiff's alleged injuries. The same are therefore denied, and strict proof thereof is demanded at trial.

34. After a reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 34. The same are therefore denied, and strict proof thereof is demanded at trial.

WHEREFORE, defendants Wade Scott Burkett and S&S Trucking demand judgment in their favor, and against the plaintiff on his claim.

NEW MATTER

By way of further response to plaintiff's complaint, defendants Wade Scott Burkett and S&S Trucking set forth the following New Matter:

35. Plaintiff failed to exercise such due care and caution as was appropriate for his own safety under the circumstances, including but not limited to the entrustment of his vehicle to Greg James when he knew, or in the exercise of reasonable care, should have known that Greg James was not fit or capable of operating his vehicle under the circumstances, and plaintiff's claim is therefore barred in whole or in part by the plaintiff's own negligence and by the relevant portions of the Pennsylvania Comparative Negligence Act.

36. To the extent that another state's law may apply to this matter, plaintiff's claim is barred in whole or in part by his failure to wear a seat belt.

37. The alleged injuries of the plaintiff were caused by the actions of third parties over whom defendants had no control and for whom the defendants are not responsible.

38. Defendant pleads herein as an affirmative defense the sudden emergency doctrine.

39. The weather conditions existing at the time of the accident constituted a superseding and/or intervening cause of the subject accident.

NEW MATTER UNDER RULE 2252(d)

Defendants Wade Scott Burkett and S&S Trucking set forth the following New Matter Under Rule 2252(d) in the nature of a crossclaim against the defendants Keith W. Peters and Ecklund Carriers, Inc.:

38. Defendants incorporate herein by reference, without admitting the truth thereof, but solely for the purposes of contribution and indemnity, the averments of plaintiffs' Complaint.

39. If at the time of trial plaintiffs are found to have suffered any injury, which is denied, then it is averred that the sole cause of plaintiff's injuries were the actions of defendants Keith W. Peters and/or Ecklund Carriers, Inc., for the reasons set forth in plaintiff's Complaint, and defendants Keith W. Peters and Ecklund Carriers, Inc. are therefore solely liable to the plaintiff.

40. If at the time of trial defendants are found to be in any way liable to plaintiff, which is denied, then defendants Keith W. Peters and Ecklund Carriers, Inc are liable over to these defendants for contribution and/or indemnity, for the reasons set forth in plaintiff's Complaint.

WHEREFORE, defendants Wade Scott Burkett and S&S Trucking demand judgment in their favor and against defendants Keith W. Peters and Ecklund Carriers, Inc., and against the plaintiff on his claim.

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR WADE SCOTT
BURKETT and S & S TRUCKING

VERIFIED STATEMENT

I, VICKI HUNT MORTIMER, ESQUIRE, being the attorney for WADE SCOTT BURKETT and S& S TRUCKING in the within action, am duly authorized to make this Verified Statement on his behalf, and make this Verified Statement due to the fact that the Verified Statement of Wade Scott Burkett cannot be obtained within the time limits necessary for filing this pleading, and I hereby verify that the statements set forth in the foregoing **ANSWER, NEW MATTER, AND NEW MATTER UNDER RULE 2252(d)** are true and correct to the best of my information and belief based upon knowledge obtained from Wade Scott Burkett.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsifications to authorities.

A handwritten signature in cursive script, reading "Vicki Hunt Mortimer", written in black ink. The signature is fluid and somewhat stylized, with the first letters of each word being capitalized and prominent.

DATE: March 17, 2000

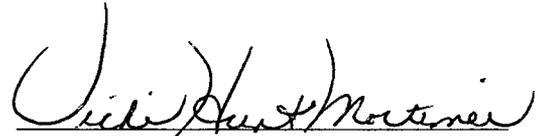
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **ANSWER AND NEW MATTER, AND NEW MATTER UNDER RULE 2252(d)** has been served on the following by first class mail, postage prepaid on this the 17th day of March, 2000:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

EGLER, GARRETT & EGLER

BY:



ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT AND
S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,
Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants,

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF SERVICE OF
PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS AND ALTERNATIVE
INTERROGATORY TO DEFENDANTS
WADE SCOTT BURKETT;
S & S TRUCKING.**

Code:

Filed on behalf of the
Plaintiff, CHARLES MATTHES

Counsel of Record for this
Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH &
LAZZARA, P.C.
Suite 1400 - Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED

MAR 20 2000

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

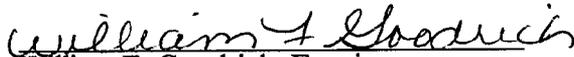
This is to certify that a true and correct copy of the within **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS and INTERROGATORIES DIRECTED TO DEFENDANTS, WADE SCOTT BURKETT and S & S TRUCKING** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following address(s):

**Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**

**Richard J. Trankocy, Jr., Esquire
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222**


William F. Goodrich, Esquire
Attorney for the Plaintiff

Dated: 3-16-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants,

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF SERVICE OF
PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS AND ALTERNATIVE
INTERROGATORY TO DEFENDANTS
KEITH W. PETERS AND ECKLUND
CARRIERS.**

Code:

Filed on behalf of the
Plaintiff, CHARLES MATTHES

Counsel of Record for this
Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH &
LAZZARA, P.C.
Suite 1400 - Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED

MAR 20 2000

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within **PLAINTIFF'S REQUEST FOR ADMISSIONS AND ALTERNATIVE INTERROGATORY TO DEFENDANTS, KEITH W. PETERS AND ECKLUND** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following address(s):

**Richard J. Trankocy, Jr., Esquire
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222**

**Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**

William F. Goodrich
William F. Goodrich, Esquire
Attorney for the Plaintiff

Dated: 3-16-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants,

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF SERVICE OF
PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS AND ALTERNATIVE
INTERROGATORY TO DEFENDANTS
KEITH W. PETERS AND ECKLUND
CARRIERS.**

Code:

Filed on behalf of the
Plaintiff, CHARLES MATTHES

Counsel of Record for this
Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH &
LAZZARA, P.C.
Suite 1400 - Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within **PLAINTIFF'S REQUEST FOR ADMISSIONS AND ALTERNATIVE INTERROGATORY TO DEFENDANTS, KEITH W. PETERS AND ECKLUND** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following address(s):

**Richard J. Trankocy, Jr., Esquire
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222**

**Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**

William F. Goodrich
William F. Goodrich, Esquire
Attorney for the Plaintiff

Dated: 3-16-2000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

CIVIL DIVISION

COURT NUMBER: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

TYPE OF PLEADING: ANSWER,
NEW MATTER AND NEW
MATTER UNDER RULE 2252 (d)

FILED ON BEHALF OF:

KEITH W. PETERS and ECKLUND
CARRIERS, DEFENDANTS.

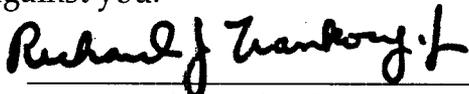
TO THE WITHIN ALL PARTIES

You are required to plead to
the within NEW MATTER AND
NEW MATTER UNDER RULE
2252 (d) within twenty days from
the date of service thereof or a
default judgement may be entered
against you.

NAME, ADDRESS AND TELEPHONE:

X Counsel of Record

_____ Individual, if Pro Se



Attorney for Defendants,
Keith W. Peters and
Ecklund Carriers

RICHARD J. TRANKOCY, JR., ESQ.
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's State I.D. #49087
Attorney's Firm I.D. #150

FILED

MAR 20 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES, :
 :
 Plaintiff, : No. 00-88-CD
 :
 vs. :
 :
 KEITH W. PETERS, ECKLUND :
 CARRIERS, WADE SCOTT :
 BURKETT, S & S TRUCKING, :
 :
 Defendants. :

ANSWER, NEW MATTER AND NEW MATTER UNDER RULE 2252 (d)

AND NOW, comes the defendants, KEITH W. PETERS and ECKLUND CARRIERS through their counsel, BAGINSKI & BASHLINE and RICHARD J. TRANKOCY, JR., and files the following Answer, New Matter, and New Matter Under Rule 2252 (d) and avers the following:

1. Paragraphs 1, 2, 3, 8, 9, 10, 11, and 12 of the Complaint are admitted.
2. Paragraphs 4 and 5 of the Complaint are denied.
3. Regarding Paragraphs 13 and 14 of the Complaint, after reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the allegations appearing in Paragraphs 13 and 14 of the Complaint and therefore they are deemed denied. Strict proof of these allegations are demanded at Trial.

4. The allegations of Paragraphs 6 and 7 of the Complaint are directed to parties other than these defendants, and as such, no response is required on their behalf.

COUNT I

CHARLES MATTHES V. KEITH W. PETERS

The averments contained in Paragraphs 1 through 4 are incorporated herein by reference as though fully set forth at length.

5. Paragraphs 16, 16 (a) through (h), 17, 17 (a) through (k) are denied.

6. Regarding Paragraphs 18 and 18 (a) through (g), after reasonable investigation, defendants are without knowledge or information sufficient to form a belief as to the truth of these averments. Therefore, they are specifically denied. Strict proof of these averments are demanded at Trial.

WHEREFORE, defendants demand judgment against the plaintiff.

COUNT II

CHARLES MATTHES V. ECKLUND CARRIERS

The averments contained in Paragraphs 1 through 6 are incorporated herein by reference as though fully set forth at length.

7. Paragraphs 20, 21, 21 (a) through (d), 22, 22 (a) through (h) are denied.

8. Regarding Paragraphs 23 and 23 (a) through (k), after reasonable investigation, the defendants are without knowledge or information sufficient to form a

belief as to the truth of these averments. Therefore, they are specifically denied and strict proof of these averments are demanded at Trial.

9. Regarding Paragraphs 24 and 24 (a) through (g), after reasonable investigation, the defendants are without knowledge or information sufficient to form a belief as to the truth of these averments. Therefore, they are specifically denied and strict proof of these averments are demanded at Trial.

WHEREFORE, defendants demand judgment against the plaintiff.

COUNT III

CHARLES MATTHES V. WADE SCOTT BURKETT

The averments contained in Paragraphs 1 through 9 are incorporated herein by reference as though fully set forth at length.

10. Paragraphs 26, 26 (a) through (g), 27, 27 (a) through (k), 28, 28 (a) through (g) of the Complaint are directed to parties other than these defendants and as such, no response is required on their behalf.

COUNT IV

CHARLES MATTHES V. S & S TRUCKING

The averments contained in Paragraphs 1 through 10 are incorporated herein by reference as though fully set forth at length.

11. Paragraphs 30, 31, 31 (a) through (d), 32, 32 (a) through (g), 33, 33 (a) through (k), 34, and 34 (a) of the Complaint are directed to parties other than these defendants and as such, no response is required on their behalf.

the truth of these averments. Therefore, they are specifically denied and strict proof of these averments are demanded at Trial.

9. Regarding Paragraphs 24 and 24 (a) through (g), after reasonable investigation, the defendants are without knowledge or information sufficient to form a belief as to the truth of these averments. Therefore, they are specifically denied and strict proof of these averments are demanded at Trial.

WHEREFORE, defendants demand judgment against the plaintiff.

COUNT III

CHARLES MATTHES V. WADE SCOTT BURKETT

The averments contained in Paragraphs 1 through 9 are incorporated herein by reference as though fully set forth at length.

10. Paragraphs 26, 26 (a) through (g), 27, 27 (a) through (k), 28, 28 (a) through (g) of the Complaint are directed to parties other than these defendants and as such, no response is required on their behalf.

COUNT IV

CHARLES MATTHES V. S & S TRUCKING

The averments contained in Paragraphs 1 through 10 are incorporated herein by reference as though fully set forth at length.

11. Paragraphs 30, 31, 31 (a) through (d), 32, 32 (a) through (g), 33, 33 (a) through (k), 34, and 34 (a) of the Complaint are directed to parties other than these defendants and as such, no response is required on their behalf.

**NEW MATTER UNDER RULE 2252(d)
CROSSCLAIM AGAINST DEFENDANTS, WADE SCOTT BURKETT
AND S & S TRUCKING and KEITH W. PETERS and
ECKLUND CARRIERS V. WADE SCOTT BURKETT and S & S TRUCKING**

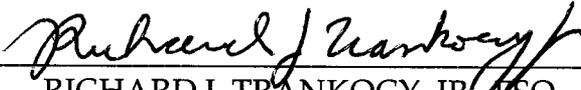
12. Defendants, KEITH W. PETERS and ECKLUND CARRIERS, while continuing to deny the allegations of plaintiff's Complaint as set forth more fully in the preceding Paragraphs of this Answer, state that in the event plaintiff is found entitled to recover in this action, then in that event, these defendants allege that any injuries and damages claimed by the plaintiff were due to the acts of co-defendants, WADE SCOTT BURKETT and S & S TRUCKING, which allegations of negligence and liability are set forth more fully in the allegations of plaintiff's Complaint, which allegations are incorporated herein by reference solely for the purpose of raising this crossclaim, although by making such reference and incorporation, this defendant makes no admission as to the truth of any of the matters contained in plaintiff's Complaint, all said allegations, having been denied as set forth in the preceding paragraphs of this Answer.

13. Defendants, KEITH W. PETERS and ECKLUND CARRIERS, while denying liability and responsibility to the plaintiff on its part, alleges that in the event that plaintiff is found entitled to recover in this action, then in that event, co-defendants, WADE SCOTT BURKETT and S & S TRUCKING are alone liable, jointly and severally liable, or liable over to these defendants for indemnity and/or contribution for any monies for which these defendants are found liable to the plaintiff or any other party in this action.

WHEREFORE, defendants, KEITH W. PETERS and ECKLUND CARRIERS demand that judgment be entered in their favor with costs in their behalf sustained.

JURY TRIAL DEMANDED.

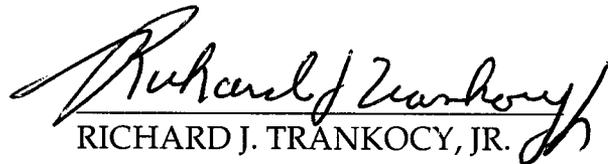
BAGINSKI & BASHLINE

BY 
RICHARD J. TRANKOCY, JR. ESQ.
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and
ECKLUND CARRIERS.

VERIFICATION

I, RICHARD J. TRANKOCY, JR., ESQ., do hereby verify that I am the attorney of record in the within matter. I aver that the statements of fact contained in the ANSWER, NEW MATTER, AND NEW MATTER UNDER RULE 2252 (d) are true and correct to the best of my knowledge, information, and belief, and are made subject to the penalties of 18 PA. CONS. STAT. ANN. §4904 relating to unsworn falsification to authorities.

DATED: March 17, 2000


RICHARD J. TRANKOCY, JR.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES, :
 :
 Plaintiff, : No. 00-88-CD
 :
 vs. :
 :
 KEITH W. PETERS, ECKLUND :
 CARRIERS, WADE SCOTT :
 BURKETT, S & S TRUCKING, :
 :
 Defendants. :

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer, New Matter, and New Matter Under Rule 2252 (d) was hand delivered to plaintiff's attorney, William F. Goodrich, Suite 1400 - Law & Finance Building, 429 Forbes Avenue, Pittsburgh, Pennsylvania 15219, and by first class mail, postage prepaid to Wade Scott Burkett and S & S Truckings' attorney, Vicki Hunt Mortimer, Esq., 2100 Lawyers Building, 428 Forbes Avenue, Pittsburgh, Pennsylvania 15219 on the 17th day of March, 2000.

BAGINSKI & BASHLINE

BY 

RICHARD J. TRANKOCY, JR., ESQ.
ATTORNEY FOR DEFENDANTS
KEITH W. PETERS and
ECKLUND CARRIERS.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

COURT NUMBER: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

TYPE OF PLEADING: NOTICE OF
SERVICE OF KEITH W. PETERS and
ECKLUND CARRIERS' FIRST
REQUEST FOR PRODUCTION OF
DOCUMENTS AND MATERIALS TO
PLAINTIFF, CHARLES MATTHES

Defendants.

FILED ON BEHALF OF:

KEITH W. PETERS and ECKLUND
CARRIERS, DEFENDANTS.

NAME, ADDRESS AND TELEPHONE:

X Counsel of Record

_____ Individual, if Pro Se

RICHARD J. TRANKOCY, JR., ESQ.
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's State I.D. #49087
Attorney's Firm I.D. #150

FILED

MAR 22 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES, :
 :
 Plaintiff, : No. 00-88-CD
 :
 vs. :
 :
 KEITH W. PETERS, ECKLUND :
 CARRIERS, WADE SCOTT :
 BURKETT, S & S TRUCKING, :
 :
 Defendants.

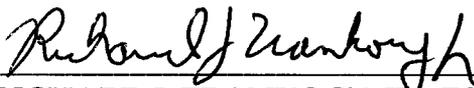
NOTICE OF SERVICE

I hereby certify that a true and correct copy of the within DEFENDANTS, KEITH W. PETERS and ECKLUND CARRIERS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND MATERIALS TO PLAINTIFF, CHARLES MATTHES was served on counsel of record, as set forth below by first-class mail, postage prepaid, on the 22nd day of March, 2000.

William F. Goodrich, Esq.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Vicki Hunt Mortimer, Esq.
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

BAGINSKI & BASHLINE

BY 
RICHARD J. TRANKOCY, JR., ESQ..
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and
ECKLUND CARRIERS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants,

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF SERVICE OF
PLAINTIFFS REQUEST FOR
PRODUCTION OF DOCUMENTS &
INTERROGATORIES DIRECTED TO
DEFENDANTS WADE SCOTT BURKETT
and S & S TRUCKING**

Code:

Filed on behalf of the
Plaintiff, CHARLES MATTHES

Counsel of Record for this
Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH &
LAZZARA, P.C.
Suite 1400 - Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED

MAY 11 1988

William A. Shaw
Proprietary

CERTIFICATE OF SERVICE

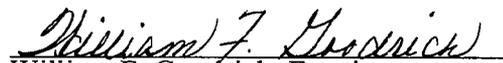
This is to certify that a true and correct copy of the within **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS and INTERROGATORIES DIRECTED TO DEFENDANTS, WADE SCOTT BURKETT and S & S TRUCKING** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following address(s):

**Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**

**Richard J. Trankocy, Jr., Esquire
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222**


William F. Goodrich, Esquire
Attorney for the Plaintiff

Dated: 3/16/00

FILED

MAR 22 2000
M131/NOCC
William A. Shaw
Prothonotary

SEE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,
Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT,
S & S TRUCKING,
Defendants,

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

NOTICE OF SERVICE OF
PLAINTIFFS REQUEST FOR
PRODUCTION OF DOCUMENTS &
INTERROGATORIES DIRECTED TO
DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

Code:

Filed on behalf of the
Plaintiff, CHARLES MATTHES

Counsel of Record for this
Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH &
LAZZARA, P.C.
Suite 1400 - Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED

MAR 22 2000

William A. Shaw
Prothonotary

CERTIFICATE OF SERVICE

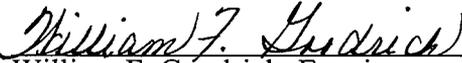
This is to certify that a true and correct copy of the within **PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS and INTERROGATORIES DIRECTED TO DEFENDANTS, KEITH W. PETERS and ECKLUND CARRIERS** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following address(s):

**Richard J. Trankocy, Jr., Esquire
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222**

**Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**



William F. Goodrich, Esquire
Attorney for the Plaintiff

Dated: 3/16/00

FILED

MAR 22 2000
11:32 AM
William A. Shaw
Prothonotary
EAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**RESPONSES TO PLAINTIFF'S
FIRST REQUESTS
FOR ADMISSIONS AND
ALTERNATIVE INTERROGATORY**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

APR 18 2000

William A. Shaw
Prothonotary

**RESPONSES TO FIRST REQUESTS FOR ADMISSIONS
AND ALTERNATIVE INTERROGATORY**

Defendant Wade Scott Burkett and S&S Trucking, by their attorneys, Egler, Garrett & Egler, and pursuant to Trial Rule 36 of the Indiana Rules of Trial Procedure, submit the following Responses to Requests for Admissions and Alternative Interrogatory directed to Defendants:

Request No. 1: Wade Scott Burkett was an employee of S & S Trucking on August 10, 1998.

Response: Denied.

Request No. 2: Wade Scott Burkett was an agent of S & S Trucking on August 10, 1998.

Response: Denied.

Request No. 3: Wade Scott Burkett was the driver of the truck that was involved in the collision with Charles Matthes on August 10, 1998.

Response: Admitted.

Request No. 4: At the time of the wreck on August 10, 1 998, Wade Scott Burkett was acting within the scope and course of his employment with S & S Trucking.

Response: Denied.

Request No. 5: Wade Scott Burkett was not performing any acts or duties for any person or entity other than S & S Trucking at the time of the collision in which he and Charles Matthes were involved on August 10, 1998.

Response: Denied.

Request No. 6: At the time of the collision in which Wade Scott Burkett and Charles Matthes were involved on August 10, 1998, Wade Scott Burkett was not engaged in the commission of criminal activity.

Response: Admitted.

Request No. 7: At the time of the collision on August 10, 1998, Wade Scott Burkett was not involved in a frolic for his own benefit.

Response: Admitted.

Request No. 8: Wade Scott Burkett owned and operated the truck at the time of the collision in which he and Charles Matthes were involved on August 10, 1998.

Response: Admitted.

Request No. 9: At the time of the collision in which Wade Scott Burkett and Charles Matthes were involved on August 10, 1998, Mr. Burkett was operating under the authority of Mr. Burkett's ICC permit.

Response: Denied.

Request No. 10: S & S Trucking is legally responsible for Wade Scott Burkett's actions at the time of the collision in which he and Charles Matthes were involved on August 10, 1998, including any negligence or fault on the part of Wade Scott Burkett which caused or contributed to cause that collision.

Response: Denied.

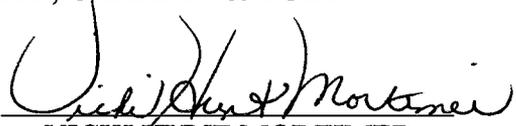
ALTERNATIVE INTERROGATORY

Interrogatory: Contemporaneously herewith, you have been served with 10 Requests for Admissions pursuant to Trial Rule 36 of The Indiana Rules of Trial Procedure. For each Request that you deny or give a response other than an unqualified admission, please:

- a. State with specificity and in detail how the fact or facts which the Plaintiff has requested you admit are not true; and, state what you contend the true facts are.
- b. Identify each and every witness who you contend can or will so testify.
- c. Describe each and every document which you contend tends to refute the fact or facts which you have been requested to admit.
- d. If you give lack of information or knowledge as a reason for failing to admit or deny a request, describe all efforts made by you and/or your attorney to obtain the necessary information to permit you to admit or deny the request and which you contend constitutes "reasonable inquiry" within the meaning of Trial Rule 36.

ANSWER: With regard to Requests for Admissions numbers 1, 2, 4, and 10, S&S Trucking is a fictitious name under which Mr. Burkett does business. It is not a corporation, and therefore it is not a separate legal entity. Therefore, Mr. Burkett is not employed by, and is not the agent of, S&S Trucking. For the same reasons, S&S Trucking cannot be legally responsible for Mr. Burkett's actions at the time of the collision. Mr. Burkett would testify to this. Mr. Burkett has no documents to refute the facts listed in the Requests for Admissions. With regard to Request for Admission number 5, Mr. Burkett was hauling amosite for New Enterprise Stone and Lime at the time of the collision on August 10, 1998. Mr. Burkett would testify to this, as well as representatives of New Enterprise Stone and Lime. With regard to Request for Admission number 9, Mr. Burkett does not have an ICC permit. Mr. Burkett would testify to this. Mr. Burkett has no documents which would refute this Request for Admission.

EGLER, GARRETT & EGLER

BY: 

VICKI HUNT MORTIMER,
ESQUIRE

Pa. I.D. #46632

Egler, Garrett & Egler

Firm #077

2100 Lawyers Bldg.

Pittsburgh, PA 15219

(412) 281-9810

ATTORNEYS FOR WADE SCOTT
BURKETT AND S&S TRUCKING

VERIFIED STATEMENT

I, WADE SCOTT BURKETT, hereby verify that the statements set forth in the foregoing RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR ADMISSIONS AND ALTERNATIVE INTERROGATORY are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Wade Scott Burkett

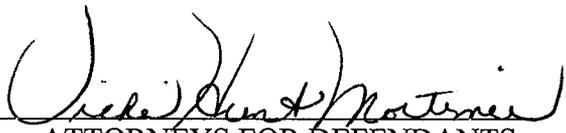
Date: 9-12-00

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR ADMISSIONS AND ALTERNATIVE INTERROGATORY** has been served on the following by first class mail, postage prepaid on this the 17th day of April, 2000:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT AND
S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

COURT NUMBER: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

TYPE OF PLEADING: NOTICE OF
SERVICE OF DEFENDANTS,
KEITH W. PETERS and ECKLUND
CARRIERS' FIRST RESPONSE TO
PLAINTIFF'S REQUEST FOR
ADMISSIONS AND ALTERNATIVE
INTERROGATORY
TO DEFENDANTS, KEITH W. PETERS
AND ECKLUND CARRIERS

Defendants.

FILED ON BEHALF OF:

KEITH W. PETERS and ECKLUND
CARRIERS, DEFENDANTS.

NAME, ADDRESS AND TELEPHONE:

X Counsel of Record

_____ Individual, if Pro Se

RICHARD J. TRANKOCY, JR., ESQ.
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's State I.D. #49087
Attorney's Firm I.D. #150

FILED

APR 20 2000

William A. Shaw
Prothonotary

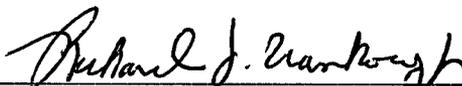
✓
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES, :
 :
 Plaintiff, : No. 00-88-CD
 :
 vs. :
 :
 KEITH W. PETERS, ECKLUND :
 CARRIERS, WADE SCOTT :
 BURKETT, S & S TRUCKING, :
 :
 Defendants. :

**NOTICE OF SERVICE
DEFENDANTS, KEITH W. PETERS AND ECKLUND
CARRIERS' RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS AND ALTERNATIVE INTERROGATORY
TO DEFENDANTS, KEITH W. PETERS AND ECKLUND CARRIERS**

I hereby certify that a true and correct copy of DEFENDANTS, KEITH W. PETERS and ECKLUND CARRIERS' FIRST RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS AND ALTERNATIVE INTERROGATORY TO DEFENDANTS, KEITH W. PETERS and ECKLUND CARRIERS was mailed by first class mail, postage prepaid to plaintiff's attorney, William F. Goodrich, Suite 1400 - Law & Finance Building, 429 Forbes Avenue, Pittsburgh, Pennsylvania 15219, and by first class mail, postage prepaid to Wade Scott Burkett and S & S Truckings' attorney, Vicki Hunt Mortimer, Esq., 2100 Lawyers Building, 428 Forbes Avenue, Pittsburgh, Pennsylvania 15219 on the 17th day of April, 2000.

BAGINSKI & BASHLINE

BY 
RICHARD J. TRANKOCY, JR., ESQ.
ATTORNEY FOR DEFENDANTS
KEITH W. PETERS and
ECKLUND CARRIERS.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

COURT NUMBER: 00-88-CD

TYPE OF PLEADING: **VERIFICATION
OF ECKLUND CARRIERS TO
ANSWER, NEW MATTER AND NEW
MATTER PURSUANT TO 2252(d)**

FILED ON BEHALF OF:

KEITH W. PETERS and ECKLUND
CARRIERS, DEFENDANTS.

NAME, ADDRESS AND TELEPHONE:

X Counsel of Record

_____ Individual, if Pro Se

RICHARD J. TRANKOCY, JR., ESQ.
BAGINSKI AND BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's State I.D. #49087
Attorney's Firm I.D. #150

FILED

MAY 18 2000

William A. Shaw
Prothonotary

VERIFICATION

The undersigned, Lana Ecklund, who is
SECRETARY of ECKLUND CARRIERS
and avers that the statements of fact contained in the attached Answer, New Matter and
New Matter Pursuant to Rule 2252 (d) are true and correct to the best of his/her
information, knowledge and belief, and are made subject to the penalties of 18 PA.
CONS. STAT. ANN. § 4909 relating to unsworn falsification to authorities.

DATE: 4-25-00

Lana Ecklund

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**REPLY TO NEW MATTER UNDER
RULE 2252(d)**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

MAY 25 2000

William A. Shaw
Prothonotary

REPLY TO NEW MATTER UNDER RULE 2252(d)

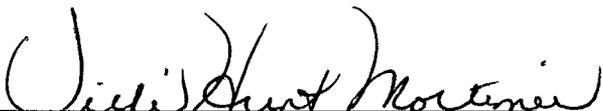
Defendants, Wade Scott Burkett and S&S Trucking (a fictitious name), by their attorneys, Egler, Garrett & Egler, file the following Reply to defendants Keith W. Peter's and Ecklund Carrier's New Matter Under Rule 2252(d):

12. The averments of paragraph 12 are admitted in part and denied in part. It is admitted that defendants Keith W. Peters and Ecklund Carriers have denied liability to the plaintiff. However, by admitting this allegation, defendants do not intend to admit that those defendants in fact have no liability to plaintiff. While defendants admit that Mr. Burkett impacted the tractor trailer driven by defendant Peters, defendants deny that those actions were in any way negligent. By way of further response to paragraph 12, defendants incorporate herein by reference their Answer, New Matter, and New Matter Under Rule 2252(d) filed in response to plaintiff's Complaint as though set forth at length.

13. The averments of paragraph 13 are admitted in part and denied in part. It is admitted that defendants Keith W. Peters and Ecklund Carriers have denied liability to the plaintiff. However, by admitting this allegation, defendants do not intend to admit that those defendants in fact have no liability to plaintiff. Defendants deny that they are in any way liable to plaintiff or to defendants Keith W. Peters and/or Ecklund Carriers.

WHEREFORE, defendants Wade Scott Burkett and S&S Trucking demand judgment in their favor and against Keith W. Peters and Ecklund Carriers, and against plaintiff on his claims.

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR WADE SCOTT
BURKETT and S & S TRUCKING

VERIFIED STATEMENT

I, WADE SCOTT BURKETT, hereby verify that the statements set forth in the foregoing **REPLY TO NEW MATTER UNDER RULE 2252(d)**, are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Section 4904, relating to unsworn falsification to authorities.

Wade Scott Burkett
WADE SCOTT BURKETT

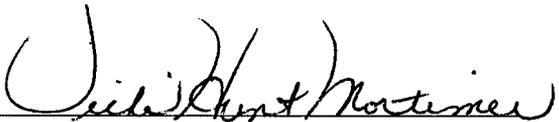
Date: 5-14-00

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **REPLY TO NEW MATTER UNDER RULE 2252(d)** has been served on the following by first class mail, postage prepaid on this the 23rd day of May, 2000:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT AND
S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**VERIFIED STATEMENT IN
SUPPORT OF ANSWER, NEW
MATTER, AND NEW MATTER
UNDER RULE 2252(d)**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

MAY 25 2000

William A. Shaw
Prothonotary

VERIFIED STATEMENT

I, Wade Scott Burkett, hereby verify that the statements set forth in the foregoing ANSWER, NEW MATTER and New Matter Under Rule 2252(d) are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Section 4904, relating to unsworn falsification to authorities.

Wade Scott Burkett
WADE SCOTT BURKETT

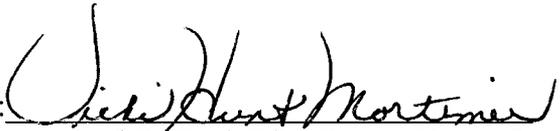
Date: 5-14-00

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **VERIFIED STATEMENT IN SUPPORT OF ANSWER, NEW MATTER, AND NEW MATTER UNDER RULE 2252(d)** has been served on the following by first class mail, postage prepaid on this the 23rd day of May, 2000:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT AND
S & S TRUCKING

(18)
CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,
Plaintiff,

v.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT,
S & S TRUCKING,
Defendants

CIVIL DIVISION
No.: 00-88-CD

FILED

JUN 12 2000

William A. Shaw
Prothonotary

PETITION FOR ADMISSION PRO HAC VICE

AND NOW, comes the Plaintiff, CHARLES MATTHES, by and through his attorneys, GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE, and moves that FRANK E. TOLBERT, ESQUIRE, be specially admitted to the Bar of the Court of Common Pleas of Clearfield County for purposes limited to this case alone, to include acting as an attorney of record. In support thereof, Movant submits the attached Affidavit of FRANK E. TOLBERT, ESQUIRE, and avers as follows:

1. Frank E. Tolbert, Esquire, is a member in good standing of the State Bar of Indiana and has been so since June 15, 1955.

2. Frank E. Tolbert, Esquire, is a member of the law firm of MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., 216 Fourth Street, Logansport, IN 46947.

3. Frank E. Tolbert, Esquire, is counsel for Plaintiff, Charles Matthes, a resident of the State of Indiana, as the result of personal injuries he sustained in an automobile accident which occurred August 10, 1998, in the Municipality of Pine Township, County of Clearfield, Commonwealth of Pennsylvania.

4. Frank E. Tolbert, Esquire, is the original attorney contacted by the Plaintiff with regard to the August 10, 1998, incident and Attorney Tolbert requested this attorney's assistance with regard to the laws of Pennsylvania.

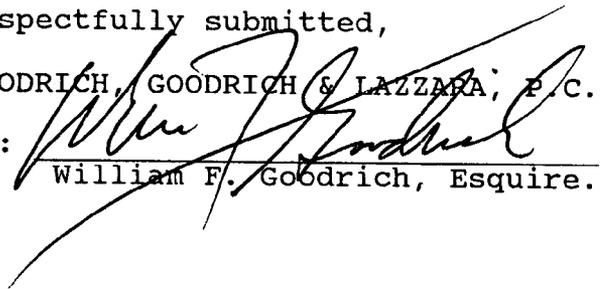
5. The Affidavit of Frank E. Tolbert, Esquire, a copy of the current certification of the Indiana Supreme Court, and copies of Certificates of Admission to the United States Court of Appeals for the Seventh Circuit and the United States Supreme Court, are attached hereto.

WHEREFORE, the undersigned, a member in good standing of the Bar of Pennsylvania, and Counsel of record for Plaintiff, Charles Matthes, respectfully requests the Court grant this Petition.

Respectfully submitted,

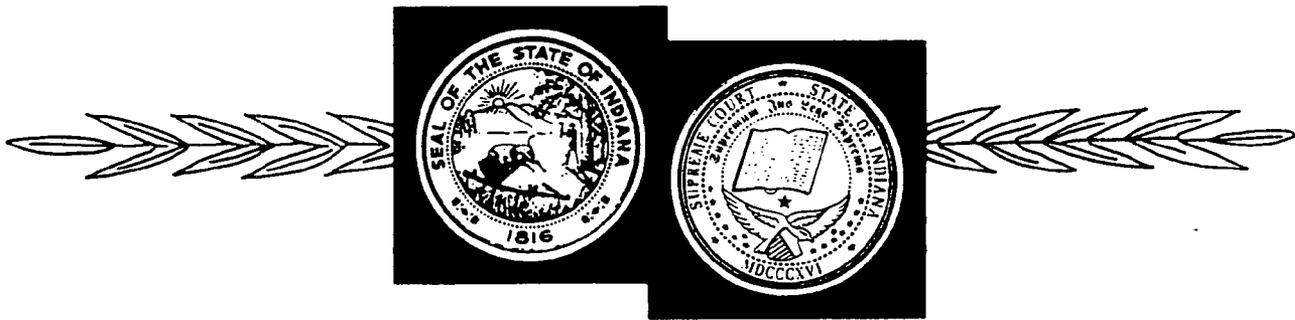
GOODRICH, GOODRICH & LAZZARA, P.C.

By:



William F. Goodrich, Esquire.

LEGAL PROFESSIONAL CORPORATION



Be it known that having given satisfactory evidence of professional qualifications, having shown compliance with all requirements of the Indiana Supreme Court, the State Board of Law Examiners, and the Laws of the State of Indiana under which this Professional Corporation was formed,

Miller, Tolbert, Muehlhausen, Muehlhausen & Groff
Professional Corporation

is hereby granted this Certificate of Registration which shall expire January 1, 2001.

Certificate issued this 24th of January, 2000.



United States Court of Appeals

FOR THE SEVENTH CIRCUIT

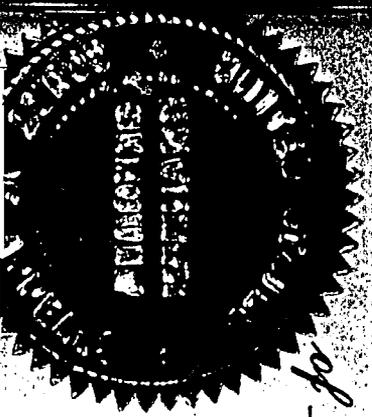
Paul J. Volkert

was admitted and qualified as an Attorney and Counsellor of the United States Court of Appeals for the Seventh Circuit on the seventh day of November in the year of our Lord one thousand nine hundred and seventy and of the Independence of the United States of America the two hundred and seventy.

In testimony whereof, Thomas F. Shubbe, Clerk of said Court have hereunto set my hand and affixed the Seal of said Court, at the City of Chicago, this 7th day of November in the year of our Lord one thousand nine hundred and 77.

Thomas F. Shubbe

Clerk  United States Court of Appeals  Seventh Circuit



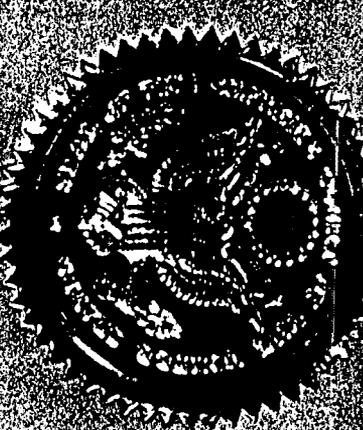
Supreme Court of the United States of America



of the Supreme Court of the United States
do hereby certify that the following
was on motion first made to the Court in this behalf by
Gerrit P. Smith

fully admitted and qualified as an Attorney and Counselor at Law before the Supreme Court of the United States
on the small day of _____ in the year of our Lord one thousand nine
hundred and eighty-one and of the Independence of the United States of America the
two hundred and seventh

The testimony whereof as Clerk of said Court I have set my hand and affix
the seal of the Court in Washington, D.C. this _____
day of _____, 1881



Alexander L. Stevens
Clerk of the Supreme Court of the United States



Goodrich, Goodrich & Lazzara, P.C.

Attorneys at Law

William F. Goodrich
John P. Goodrich
Beth A. Lazzara

SUITE 1400
LAW & FINANCE BUILDING
429 FOURTH AVENUE
PITTSBURGH, PA 15219

GREENSBURG OFFICE
(412) 834-5122

OF COUNSEL
Nancy Z. Goodrich

(412) 281-1455 • FAX (412) 232-4545 • 800-215-1455

PENN HILLS OFFICE
(412) 795-5355

June 8, 2000

William A. Shaw
P.O. Box 549
Clearfield, PA 16830

In re: Charles Matthes v. Keith W. Peters, Ecklund Carriers, Wade Scott Burkett and S & S Trucking, Court of Common Pleas of Clearfield County, PA; Civil Division-No.: 00-88-CD

Dear Sir or Madame

Please find enclosed Frank E. Tolbert's, the out of state counsel, Affidavit in Support of my Motion to Appear Pro Hac Vice in the above captioned case. Also enclosed is a Petition for Admission Pro Hac Vice, Frank E. Tolbert's current certification of the Indiana Supreme Court, and Xerox copies of Frank E. Tolbert's admission to the Bar of the Seventh Circuit, and the United States Supreme Court, all of which are conditioned on the status of Frank E. Tolbert's status as a lawyer in the State of Indiana.

Thank you in advance for your cooperation in this matter.

Sincerely,

William F. Goodrich

William F. Goodrich

WFG/SMB

Enclosures:

1. Affidavit
2. Petition for Admission Pro Hac Vice
3. Copy of Current Certification of the Indiana Supreme Court
4. Copies of Certificates of Admission to the Bar of the 7th Circuit and the United States Supreme Court.

CHARLES MATTHES,)
Plaintiff,)
)
v.)
)
KEITH W. PETERS,)
ECKLUND CARRIERS,)
WADE SCOTT BURKETT,)
S & S TRUCKING,)
Defendants)

CIVIL DIVISION
No.: 00-88-CD

COPY
FILED
JUN 12 2000
William A. Shaw
Prothonotary

PETITION FOR ADMISSION PRO HAC VICE

AND NOW, comes the Plaintiff, CHARLES MATTHES, by and through his attorneys, GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE, and moves that FRANK E. TOLBERT, ESQUIRE, be specially admitted to the Bar of the Court of Common Pleas of Clearfield County for purposes limited to this case alone, to include acting as an attorney of record. In support thereof, Movant submits the attached Affidavit of FRANK E. TOLBERT, ESQUIRE, and avers as follows:

1. Frank E. Tolbert, Esquire, is a member in good standing of the State Bar of Indiana and has been so since June 15, 1955.
2. Frank E. Tolbert, Esquire, is a member of the law firm of MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., 216 Fourth Street, Logansport, IN 46947.
3. Frank E. Tolbert, Esquire, is counsel for Plaintiff, Charles Matthes, a resident of the State of Indiana, as the result of personal injuries he sustained in an automobile accident which occurred August 10, 1998, in the Municipality of Pine Township, County of Clearfield, Commonwealth of Pennsylvania.
4. Frank E. Tolbert, Esquire, is the original attorney contacted by the Plaintiff with regard to the August 10, 1998, incident and Attorney Tolbert requested this attorney's assistance with regard to the laws of Pennsylvania.

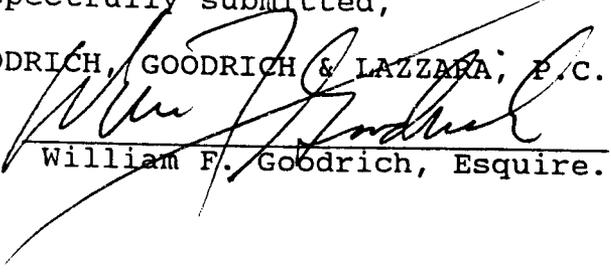
5. The Affidavit of Frank E. Tolbert, Esquire, a copy of the current certification of the Indiana Supreme Court, and copies of Certificates of Admission to the United States Court of Appeals for the Seventh Circuit and the United States Supreme Court, are attached hereto.

WHEREFORE, the undersigned, a member in good standing of the Bar of Pennsylvania, and Counsel of record for Plaintiff, Charles Matthes, respectfully requests the Court grant this Petition.

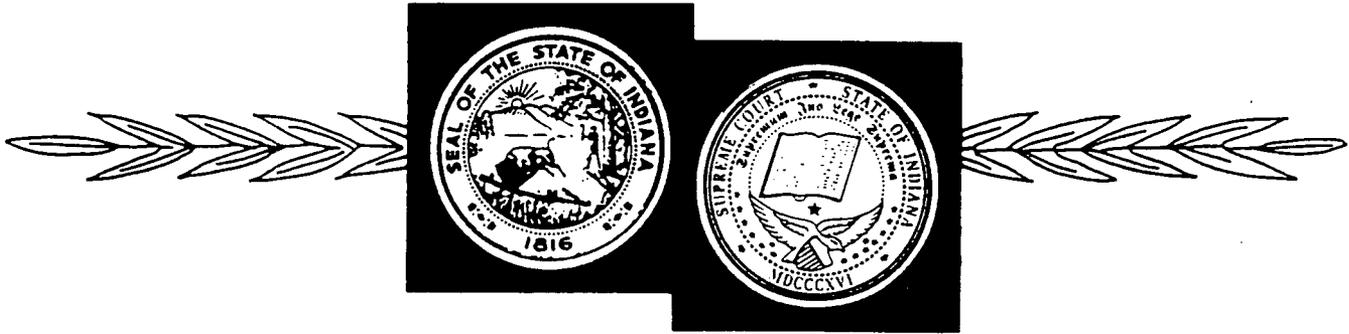
Respectfully submitted,

GOODRICH, GOODRICH & LAZZARA, P.C.

By:


William F. Goodrich, Esquire.

LÉGAL PROFESSIONAL CORPORATION



Be it known that having given satisfactory evidence of professional qualifications, having shown compliance with all requirements of the Indiana Supreme Court, the State Board of Law Examiners, and the Laws of the State of Indiana under which this Professional Corporation was formed,

Miller, Tolbert, Muehlhausen, Muehlhausen & Groff

Professional Corporation

is hereby granted this Certificate of Registration which shall expire January 1, 2001.

Certificate issued this 24th of January, 2000.

7. I have personally represented Charles Matthes in litigation relative to injuries he sustained in the accident of August 10, 1998.

Respectfully submitted,

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.

By: _____

Frank E. Tolbert

STATE OF INDIANA)
) SS:
COUNTY OF CASS)

Subscribed and sworn to before me by the above named Frank E. Tolbert this 30th day of May, 2000.



Kay A. Weatherwax, Notary Public
A Resident of Cass County, IN.

My Commission Expires:
2-14-07

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,)
Plaintiff,)
)
v.)
)
KEITH W. PETERS,)
ECKLUND CARRIERS,)
WADE SCOTT BURKETT,)
S & S TRUCKING,)
Defendants)

CIVIL DIVISION
No.: 00-88-CD

FILED

JUN 12 2000

William A. Shaw
Prothonotary

AFFIDAVIT IN SUPPORT OF
MOTION TO APPEAR PRO HAC VICE

1. I submit this Affidavit in Support of my Petition for Admission Pro Hac Vice in the above captioned case.

2. I have been admitted to practice in the following jurisdictions:

- (a) State of Indiana, 1955,
Registration Number: 863-09
- (b) United States District Court for the
Northern and Southern Districts of Indiana,
June 15, 1955.
- (c) United States Court of Appeals of the
Seventh Circuit, December 7, 1977.
- (d) United States Supreme Court,
November 9, 1981.

3. I am a member in good standing in all the above jurisdictions.

4. I have never been suspended, disbarred, nor have I resigned from the practice of law in any jurisdiction.

5. I am aware of no present or past disciplinary proceedings pending against me.

6. I am a partner in the law firm of Miller, Tolbert, Muehlhausen, Muehlhausen, Groff & Damm, P.C., where I have practiced since June 15, 1955. My office is located in Logansport, Indiana.

7. I have personally represented Charles Matthes in litigation relative to injuries he sustained in the accident of August 10, 1998.

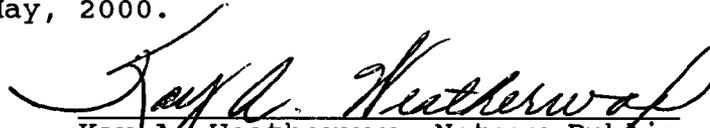
Respectfully submitted,

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.

By: Frank E. Tolbert

STATE OF INDIANA)
) SS:
COUNTY OF CASS)

Subscribed and sworn to before me by the above named Frank E. Tolbert this 30th day of May, 2000.


Kay A. Weatherwax, Notary Public
A Resident of Cass County, IN.

My Commission Expires:
2-14-07

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

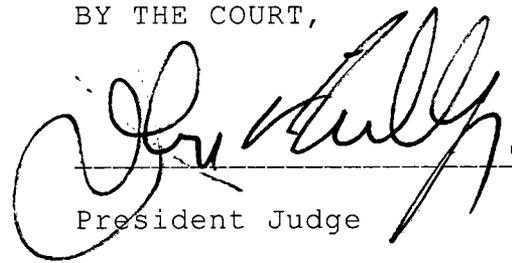
CIVIL DIVISION

CHARLES MATTHES	:	
	:	
-vs-	:	No. 00-88-CD
	:	
KEITH W. PETERS,	:	
ECKLUND CARRIERS,	:	
WADE SCOTT BURKETT,	:	
S & S TRUCKING	:	

O R D E R

NOW, this 26th day of June, 2000, following status conference into the above captioned matter, it is the ORDER of this Court that all Discovery shall be completed within six (6) months from date hereof, at which time, the Court Administrator shall place the matter on the next available call of the civil trial list.

BY THE COURT,



President Judge

FILED

JUN 28 2000

William A. Shaw
Prothonotary

FILED

JUN 28 2000

OP 2091156
William A. Shain
Prothonotary

cc atty Goodrich

cc atty Franko

cc atty Matsumoto

ESB

(20)
A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

MOTION TO AMEND CAPTION

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

JUL 28 2000

William A. Shaw
Prothonotary

MOTION TO AMEND CAPTION

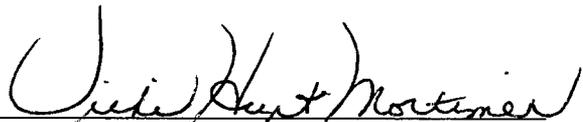
Defendant, Wade Scott Burkett, by his attorneys, Egler, Garrett & Egler, files the following Motion to Amend Caption, and avers in support thereof as follows:

1. This civil action was commenced by Complaint filed on or about January 24, 2000. Plaintiff claims that he was injured in a multi-vehicle accident that occurred on August 10, 1998.
2. Plaintiff has named S&S Trucking as a defendant in this matter. Paragraph 5 of the Complaint alleges that S&S Trucking is a Pennsylvania corporation.
3. Defendant Wade Scott Burkett, in his Answer and New Matter to the Complaint denied the allegations of paragraph 5, and alleged that S&S Trucking was a fictitious name under which defendant Burkett conducted his business.
4. Based on these representations, all counsel have agreed to dismiss S&S Trucking from this case without prejudice, and to permit the caption to be amended to name Wade Scott Burkett, d/b/a S&S Trucking as the proper defendant. A true and correct copy of the Stipulation of Counsel is attached hereto as Exhibit "A."
5. No party will be prejudiced by this amendment to the caption of this case.

WHEREFORE, defendant, Wade Scott Burkett, requests this Honorable Court to amend the caption of this case by deleting defendant S&S Trucking from the caption, and amending the caption to name Wade Scott Burkett, d/b/a S&S Trucking as a defendant, and to enter an Order in the form attached hereto.

Respectfully submitted,

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR WADE SCOTT
BURKETT and S & S TRUCKING

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

STIPULATION OF COUNSEL

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

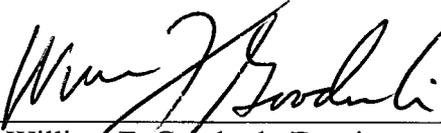
STIPULATION OF COUNSEL

It is hereby stipulated and agreed between the parties, Charles Matthes, Wade Scott Burkett, Keith W. Peters, and Ecklund Carriers, by their counsel, that based on counsel for Mr. Burkett's representations and Mr. Burkett's Answer to the Complaint, stating that S&S Trucking is not a corporation or separate legal entity, but is only the name under which Mr. Burkett conducts business, S&S Trucking is hereby dismissed from this action without prejudice, and the caption of this matter may be changed to name Wade Scott Burkett, d/b/a S&S Trucking as the proper defendant.

GOODRICH, GOODRICH & LAZZARA, P.C.

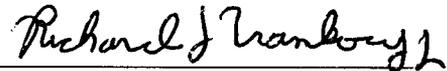
BAGINSKI AND BASHLINE

BY:



William F. Goodrich, Esquire
Attorney for Plaintiff, Charles Matthes

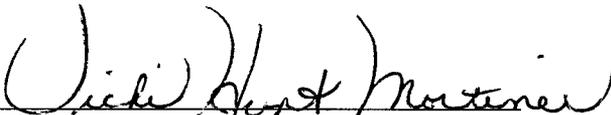
BY:



Richard J. Trankocy, Jr., Esquire
Attorney for Keith W. Peters
and Ecklund Carriers

EGLER, GARRETT & EGLER

BY:



Vicki Hunt Mortimer, Esquire
Attorneys for Wade Scott
Burkett

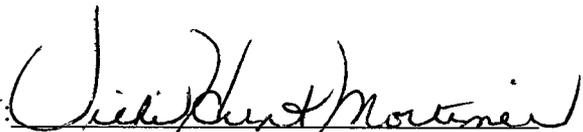
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **MOTION TO AMEND CAPTION** has been served on the following by first class mail, postage prepaid on this the 26th day of July, 2000:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

ORDER OF COURT

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

No. 00-88 C.D.

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

ORDER OF COURT

AND NOW, this 31st day of July, 2000, defendant Wade Scott Burkett's Motion to Amend Caption is granted. It is hereby ordered that the caption of the above matter is hereby amended to:

Charles Matthes,

Plaintiff,

v.

Keith W. Peters, Ecklund
Carriers, and Wade Scott Burkett
d/b/a S&S Trucking,

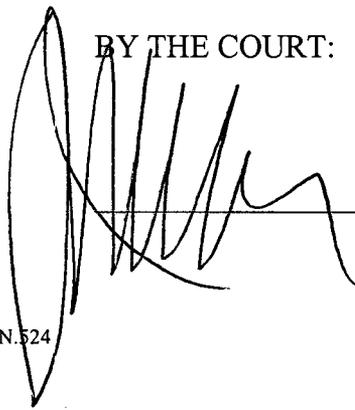
Defendants.

FILED

AUG 01 2000

William A. Shaw
Prothonotary

BY THE COURT:



, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF SERVICE OF
RESPONSE TO REQUEST FOR
PRODUCTION OF DOCUMENTS
AND ANSWERS TO
INTERROGATORIES DIRECTED
TO WADE SCOTT BURKETT d/b/a
S & S TRUCKING**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Vicki Hunt Mortimer, Esquire
Pa. I.D. No. 46632

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

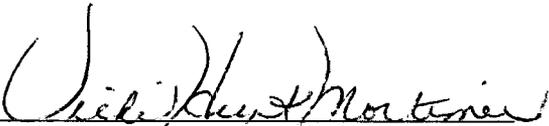
FILED

AUG 21 2000
m/j2:05/lor
William A. Shaw
Prothonotary
no c/c *[Signature]*

**NOTICE OF SERVICE OF RESPONSE TO
REQUEST FOR PRODUCTION OF DOCUMENTS
AND ANSWERS TO INTERROGATORIES DIRECTED
TO WADE SCOTT BURKETT d/b/a S & S TRUCKING**

Defendant, Wade Scott Burkett d/b/a S & S Trucking, by and through his attorneys, EGLER, GARRETT & EGLER, hereby notifies the Court that Response to Request for Production of Documents and Answers to Interrogatories have been served upon the plaintiff's counsel, William F. Goodrich, Esquire, by mailing same on this 18th day of August, 2000.

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANT
WADE SCOTT BURKETT d/b/a
S & S TRUCKING

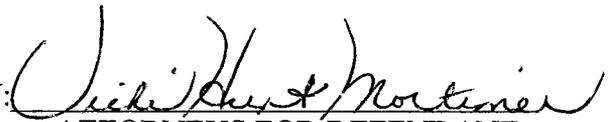
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **NOTICE OF SERVICE OF RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES DIRECTED TO WADE SCOTT BURKETT d/b/a S & S TRUCKING** has been served on the following by first class mail, postage prepaid on this the 18th day of August, 2000:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANT,
WADE SCOTT BURKETT d/b/a S &
S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT and
S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-C.D.

**NOTICE OF SERVICE OF
PLAINTIFF'S SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT
WADE SCOTT BURKETT d/b/a
S & S TRUCKING**

Filed on behalf of Plaintiff,
Charles Matthes

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

(412) 281-1455

FILED

SEP 29 2000

William A. Shaw
Prothonotary

Date		Judge
11/15/2000	Please refer to docket book for entries prior to November, 2000.	John K. Reilly Jr.
11/16/2000	Certificate of Service, Notice of Service of Second Set of Interrogatories Directed to Defendant Ecklund Carriers, upon Atty Trankocy, Jr and Atty Mortimer s/William F. Goodrich, Esq. No C/C	No Judge
11/20/2000	Notice of Deposition of KEITH W. PETERS, filed by s/William F. Goodrich, Esq. Certificate of Service NO CC	No Judge
11/29/2000	Notice of Service of Defendants' Keith W. Peters and Ecklund Carriers, First Set of Interrogatories to Plaintiff, Charles Matthes, and Defendants, Wade Scott Burkett and S&S Trucking. filed by s/ Richard J. Trankocy, Jr., Esq. NO CC	No Judge
27 01/02/2001	Motion to Continue, filed by s/William F. Goodrich, Esq. 4 CC atty.	No Judge
15 01/03/2001	Order, re: Continued to Spring Term of Court and Civil Call. By the Court, s/JKR,JR.,PJ 1 cc atty Trankocy, Goodrich, Egler	No Judge
22 01/29/2001	Notice of Service of Plaintiff's Answers to Defendants' Keith W. Peters & Ecklund Carriers, First Set of Interrogatories, upon Richard J. Trankocy, Jr., Esq. s/William F. Goodrich, Esq. no cc	No Judge
30 02/05/2001	Defendants Peters and Ecklund Carriers' Motion to Bifurcate. s/Richard J. Trankocy, Jr., Esq. Cert. of Service no cc	John K. Reilly Jr.
31 02/06/2001	Scheduling Order, re: Motion for Travel Expenses and Motion to Bifurcate scheduled for Feb. 14, 2001. By the Court, s/JKR,JR.,PJ. 02/05/01. 1 cc atty Trankocy	John K. Reilly Jr.
02/21/2001	Deposition Transcript of CHARLES MATTHES, Dec. 01, 2000. Filed	John K. Reilly Jr.
3 02/23/2001	Defendants Keith W. Peters and Ecklund Carriers' Motion for Summary Judgment. Filed by s/Richard J. Trankocy, Jr., Esq. Cert of Service no cc	John K. Reilly Jr.
33 02/27/2001	Scheduling Order Pertaining to Defendants Keith W. Peters and Ecklund Carriers' Motion For Summary Judgment, scheduled for Mar. 14, 2001. By the Court, s/JKR,JR.,PJ 02/27/01 1 cc atty Trankocy	John K. Reilly Jr.
03/08/2001	Transcript of Deposition of Wade Scott Burkett, Dec. 14, 2000. Filed.	John K. Reilly Jr.
	Transcript of Deposition of Keith W. Peters. Filed.	John K. Reilly Jr.
34 03/13/2001	Reply to Defendants Keith W. Peters and Ecklund Carriers Motion for Summary Judgment, filed by s/William F. Goodrich, Esq. Certificate of Service, filed. No Certified Copies	John K. Reilly Jr.
3 03/14/2001	ORDER, NOW this 14th day of March, 2001, Argument into Motion for Summary Judgment filed on behalf of Defendants if continued. By the Court John K. Reilly, Jr., PJ. 1cc to Atty Goodrich, 1cc to Atty Mortimer, 1cc Atty Trankocy, Jr.	John K. Reilly Jr.

Date		Judge
03/21/2001 (36)	Notice to Take Oral Deposition of Glen Figaro. Filed by Atty Trankocy, Jr., Esq. Cert of Service no cc	John K. Reilly Jr.
(37)	Notice to Take Oral Deposition of Kenneth Lytle. Filed by Atty Trankocy, Jr., Esq. Cert of Service no cc	John K. Reilly Jr.
(38) 03/22/2001	Substitution of Counsel: Edward L. Russakoff, Esq. on behalf of Wade Scott Burkett d/b/a S & S Trucking, for Vicki Hunt Mortimer, Esq. Filed by s/Edward L. Russakoff, Esq. Cert of Service no cc	John K. Reilly Jr.
04/09/2001	Deposition of Clemic Figaro on April 3, 2001, filed. Deposition of Kenneth L. Lytle on April 3, 2001, filed.	John K. Reilly Jr.
(39) 04/11/2001	PRE-TRIAL ORDER, NOW, this 10th day of Apr., 2001, re: Jury Selection on Apr. 20, 2001, Trial Aug. 6 thru Aug. 10, 2001. By the Court, s/JKR, JR., P.J. cc atty Russakoff, Trankocy, and Goodrich	John K. Reilly Jr.
(40) 04/18/2001	Notice to Attend Directed to Defendant, Wade Scott Burkett. Filed by s/William F. Goodrich, Esq. no cc	John K. Reilly Jr.
(41)	Notice to Attend Directed to Defendant, Keith W. Peters. Filed by s/William F. Goodrich, Esq. no cc	John K. Reilly Jr.
(42) 04/19/2001	ORDER, NOW, this 18th day of April, 2001, re: Motion for Summary Judgment is DISMISSED w/o Prejudice. By the Court, s/JKR, JR., P.J. 1 cc atty Russakoff, Trankocy, & Goodrich	John K. Reilly Jr.
(43)	Responses and Objections to Plaintiff's Proposed Voir Dire. filed by s/Edward L. Russakoff, Esq. Certificate of Service no cc	John K. Reilly Jr.
(44)	Proposed Voir Dire of Defendants, Wade Scott Burkett d/b/a S & S Trucking. s/Edward L. Russakoff, Esq. Certificate of Service no cc	John K. Reilly Jr.
(45)	Plaintiff's Reply to Defendants Keith W. Peters and Ecklund Carriers' Memorandum of Law in Support of Motion for Summary Judgment. filed by s/William F. Goodrich, Esq. Certificate of Service no cc	John K. Reilly Jr.
(46) 06/27/2001	Defendant Keith W. Peters and Ecklund Carriers' Delay Damage Letter. filed by s/Richard J. Trankocy, Jr., Esq. no cc	John K. Reilly Jr.
(47) 07/02/2001	Notice of Telephone Deposition of Dr. Charles Heinsen. Filed by s/William F. Goodrich, Esq. Cert of Svc no cc	John K. Reilly Jr.
07/09/2001	Transcript of Jury Selection held on Apr. 20, 2001, before Judge Reilly.	John K. Reilly Jr.
(48) 07/23/2001	Return of Service, Subpoena served upon Don Logan of the Bennetts Valley Ambulance Service. Filed by s/James Fandray no cc	John K. Reilly Jr.
(49) 07/30/2001	Substitution of Appearance, on behalf of Defendants, WADE SCOTT BURKETT and S&S TRUCKING S/Edward A. Russakoff, Esq. Cert of Svc. 1 cc atty Russakoff	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF SERVICE OF SECOND SET
OF INTERROGATORIES DIRECTED
TO DEFENDANT ECKLUND CARRIERS**

Filed on behalf of CHARLES MATTHES,
Plaintiff

Counsel of Record for this Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED

NOV 16 2000
012:50 (m)
William A. Shaw
Prothonotary
no c/c EAB

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within **NOTICE OF SERVICE OF SECOND SET OF INTERROGATORIES DIRECTED TO DEFENDANT ECKLUND CARRIERS** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following address(s):

**Richard J. Trankocy, Jr., Esquire
BAGINSKI & BASHLINE
One PPG Place, 16th Floor
Pittsburgh, PA 15222**

**Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 The Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**

William F. Goodrich
William F. Goodrich, Esquire
Attorney for the Plaintiff

Dated: 11-14-00

Date	Selected Items	Judge
07/30/2001	50 Motion In Limine. Filed by s/Edward L. Russakoff, Esq. Cert of Svc no cc	John K. Reilly Jr.
08/02/2001	51 Motion In Limine. Filed by s/William F. Goodrich, Esq. s/Frank E. Tolbert, Esq. Cert of Svc 1 cc atty Goodrich	John K. Reilly Jr.
	52 Plaintiff's Response to Defendant Wade Scott Burkett's Motion In Limine. Cert in Svc	John K. Reilly Jr.
	53 ORDER, NOW, this 2nd day of Aug. 2001, re: Motion in Limine Seeking to Exclude From Trial Any Testimony or Evidence Concerning Extent of Injurice Suffered by Either of the Defendants, Motion is GRANTED and such evidence and testimony precluded from trial. by the Court, s/JKR, JR .P.J. 1 cc atty Trankocy, Goodrich, and Rusafoff	John K. Reilly Jr.
08/06/2001	54 Motion in Limine as to Photographs of Southbounq Pennsylvania Route 153, filed by Att. Russakoff One Cert. to Atty. Russakoff	John K. Reilly Jr.
08/07/2001	55 Defendants Keith W. Peters and Ecklund Carriers' Proposed Verdict Slip. filed by At.y. Trankocy, Jr. 4 Cert. to Atty.	John K. Reilly Jr.
08/10/2001	56 Verdict--For the Plaintiff and Against Defendant Wade Scott Burkett d/b/a S & S Trucking in the amount of \$325,000.00 (Defendants Keith W. Peters and Ecklund Carriers were DISMISSED from the case by Judge Reilly)	John K. Reilly Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF DEPOSITION OF
KEITH W. PETERS**

Filed on behalf of CHARLES MATTHES,
Plaintiff

Counsel of Record for this Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED
JUN 21 2000
W. A. S. W.
CLEARFIELD COUNTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,	)	CIVIL DIVISION
Plaintiff,)	
	)	No. 00-88-CD
vs.)	
)	
KIETH W. PETERS, ECKLUND)	
CARRIERS, WADE SCOTT)	
BURKETT, S & S TRUCKING,)	
Defendants.)	

NOTICE OF DEPOSITION OF KEITH W. PETERS

TO: COUNSEL OF RECORD

PLEASE TAKE NOTICE that the deposition of **KEITH W. PETERS**, will be taken for the purpose of discovery and for the use at trial and in accordance with the Pennsylvania Rules of Civil Procedure before a notary public duly authorized to administer oaths on Monday, December 11, 2000 at 1:00 p.m. at the offices of GOODRICH, GOODRICH & LAZZARA, P.C. WILLIAM F. GOODRICH, ESQUIRE, located at Suite 1400 - Law & Finance Building, 429 Fourth Avenue, Pittsburgh, PA 15219, at which time and place you are invited to appear and take such part as shall be fitting and proper.

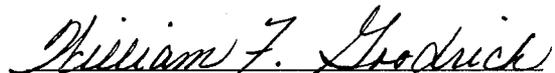
The scope and purpose of this deposition is to inquire into all of the facts of which you may have knowledge surrounding the happening of the incident in the above captioned case; and to inquire into all of the facts and circumstances of which you may have knowledge which relate to the

No. 00-88-CD

injuries and damages which Plaintiff has suffered as a result of the incident out of which the above captioned case arises.

Respectfully submitted:

GOODRICH, GOODRICH & LAZZARA, P.C.


William F. Goodrich, Esquire
Attorney for the Plaintiff

CERTIFICATE OF SERVICE

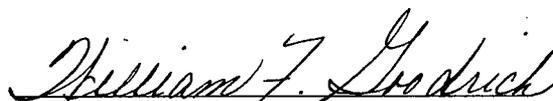
This is to certify that a true and correct copy of the within **NOTICE OF DEPOSITION OF KEITH W. PETERS** has been served upon all parties either individually or through counsel by:

- Hand-Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following address(es):

**Richard J. Trankocy, Jr., Esquire
BAGINSKI & BASHLINE
One PPG Place, Suite 1650
Pittsburgh, PA 15222**

**Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 The Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**


William F. Goodrich, Esquire
Attorney for the Plaintiff

Dated: 11-17-00

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

COURT NUMBER: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

**TYPE OF PLEADING: NOTICE OF
SERVICE OF DEFENDANTS', KEITH
W. PETERS AND ECKLUND
CARRIERS, FIRST SET OF
INTERROGATORIES TO PLAINTIFF,
CHARLES MATTHES, AND
DEFENDANTS, WADE SCOTT
BURKETT AND S & S TRUCKING**

Defendants.

FILED ON BEHALF OF:

KEITH W. PETERS and ECKLUND
CARRIERS, DEFENDANTS.

NAME, ADDRESS AND TELEPHONE:

X Counsel of Record

_____ Individual, if Pro Se

RICHARD J. TRANKOCY, JR., ESQ.
BASHLINE & HUTTON
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's State I.D. #49087
Attorney's Firm I.D. #150

FILED

NOV 29 2000
M/12:48/W
William A. Shaw
Prothonotary
w c/c EKS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,	:	
Plaintiff,	:	No. 00-88-CD
	:	
vs.	:	
	:	
KEITH W. PETERS, ECKLUND	:	
CARRIERS, WADE SCOTT	:	
BURKETT, S & S TRUCKING,	:	
Defendants.	:	

**NOTICE OF SERVICE
DEFENDANTS', KEITH W. PETERS AND ECKLUND CARRIERS,
FIRST SET OF INTERROGATORIES TO PLAINTIFF,
CHARLES MATTHES, AND DEFENDANTS,
WADE SCOTT BURKETT AND S & S TRUCKING**

I hereby certify that a true and correct copy of Defendants', Keith W. Peters and Ecklund Carriers, First Set of Interrogatories to Plaintiff, Charles Matthes, and Defendants, Wade Scott Burkett and S & S Trucking, was served by first class mail, postage prepaid to all counsel of record listed below on the 17th day of November, 2000.

William F. Goodrich, Esq.
Suite 1400 - Law & Finance Building
429 Forbes Avenue
Pittsburgh, PA 15219

Vicki Hunt Mortimer, Esq.
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

BASHLINE & HUTTON

BY 
RICHARD J. TRANKOCY, JR., ESQ.
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and
ECKLUND CARRIERS.

27 CT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,
Plaintiff,

CIVIL DIVISION
Case No. 00-88-CD

vs.

MOTION TO CONTINUE

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S&S TRUCKING,
Defendants.

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

(412) 281-1455

FILED

JAN 02 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT)
 BURKETT, S&S TRUCKING,)
)
 Defendant.)

MOTION TO CONTINUE

AND NOW, comes the Plaintiff, Charles Matthes, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C., and WILLIAM F. GOODRICH, ESQUIRE, and
FRANK TOLBERT, ESQUIRE, and respectfully presents to the Court the following:

1. The above captioned case arises out of a motor vehicle accident occurring on August 10, 1998, in which the Plaintiff was injured.
2. Counsel for all parties have been conducting discovery pursuant to the Court's Order of June 26, 2000, wherein the Court had scheduled discovery to be completed within the six (6) months of date of the Order that being December 26, 2000.
3. At the status conference on June 26, 2000, the Court had indicated that eight (8) months would be provided to parties to complete discovery.

4. Discovery has not been completed to date in that witnesses involved in the case are from four (4) different states, that being Indiana, Illinois, Wisconsin and Pennsylvania.

5. Counsel for the parties in this case have diligently attempted to conduct all discovery, however, because of the distance and logistics involved with some of the witnesses, several depositions of the parties still need to be taken.

6. Additionally, Plaintiff is still undergoing treatment, and possibilities of surgical procedures in the near future exist.

7. This is the first time that this case has appeared on the trial list and the continuance of this matter to the next available trial list would not prejudice any of the parties herein.

8. Neither of the Defendants object to the continuance of this case at this time.

WHEREFORE, Plaintiff, Charles Matthes, respectfully requests this Court to continue this case to the next available trial list.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA

BY: 

WILLIAM F. GOODRICH, ESQ.
and on behalf of
FRANK TOLBERT, ESQ.
Attorneys for Plaintiff,
Charles Matthes

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT)
 BURKETT, S&S TRUCKING,)
)
 Defendants.)

ORDER OF COURT

AND NOW, to wit, this _____ day of January, 2001, upon motion of Plaintiff herein, it is hereby **ORDERED, ADJUDGED and DECREED** that the above captioned case shall be continued to the 2001 Spring Term of the trial list in Clearfield County.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

I hereby certify that on this 30 day of December, 2000, a true and correct of the within Motion to Continue was served upon Defendants by mailing same by regular first class mail, postage prepaid to their counsels of record as follows:

RICHARD J. TRANKOCY, JR., ESQUIRE
BASHLINE & HUTTON
Suite 1650, One PPG Place
Pittsburgh, PA 15222

VICKI HUNT MORTIMER, ESQUIRE
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

GOODRICH, GOODRICH & LAZZARA

BY: 
WILLIAM F. GOODRICH, ESQ.
and on behalf of
FRANK TOLBERT, ESQ.
Attorneys for Plaintiff,
Charles Matthes

FILED

JAN 02 2001
09:19 AM
William A. Shaw
Prothonotary
W. A. Shaw

OK

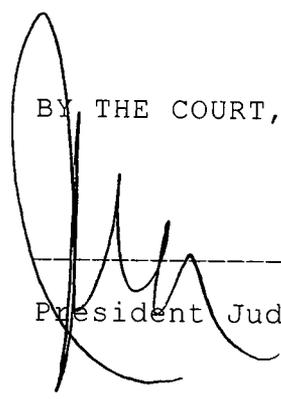
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES :
 :
-vs- : No. 00-88-CD
 :
KEITH W. PETERS, :
ECKLUND CARRIERS, :
WADE SCOTT BURKETT, d/b/a :
S & S TRUCKING :

O R D E R

NOW, this 2nd day of January, 2001, this being the date set for Call of the Civil Jury Trial List; upon Motion for Continuance requested on behalf of counsel, it is the ORDER of this Court that said request is hereby granted and the Court Administrator directed to schedule this matter for the Spring Term of Court and Civil Call. The Court notes that no further continuances will be granted.

BY THE COURT,



President Judge

FILED

JAN 03 2001

William A. Shaw
Prothonotary

FILED

JAN 03 2001

019125 / cc atty Trantocoy
William A. Shaw
Prothonotary / cc atty Woodrich
/ cc atty Epler ~~ERS~~

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**NOTICE OF SERVICE OF
PLAINTIFF'S ANSWERS TO
DEFENDANTS' KEITH W. PETERS &
ECKLUND CARRIERS, FIRST SET OF
INTERROGATORIES**

Filed on behalf of CHARLES MATTHES,
Plaintiff

Counsel of Record for this Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

Frank E. Tolbert, Esquire
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

JURY TRIAL DEMANDED

FILED

JAN 29 2001

mll/sg/noc
William A. Shaw
Prothonotary *Geo*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

No.: 00-88-CD

vs.

Issue No.:

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

**NOTICE OF SERVICE OF PLAINTIFF'S ANSWERS TO DEFENDANTS' KEITH W.
PETERS & ECKLUND CARRIERS, FIRST SET OF INTERROGATORIES**

TO: CLEARFIELD COUNTY PROTHONOTARY:

AND NOW, comes the Plaintiff, CHARLES MATTHES, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE, and
certify that Plaintiff's Answers to Defendants' Keith W. Peters and Ecklund Carriers, First Set of
Interrogatories were served upon counsel for Defendant, by United States mail, postage pre-paid
this 25th day of January, 2001 at the following addresses:

Richard J. Trankocy, Jr., Esquire
Bashline & Hutton
Suite 1650
One PPG Place
Pittsburgh, PA 15222

GOODRICH, GOODRICH & LAZZARA, P.C.

By: William F. Goodrich

William F. Goodrich, Esquire.
Attorney for the Plaintiff

302
CA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

DEFENDANTS PETERS AND
ECKLUND CARRIERS' MOTION TO
BIFURCATE

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

JURY TRIAL DEMANDED

BASHLINE & HUTTON
FIRM I.D. #150
ONE PPG PLACE, SUITE 1650
PITTSBURGH, PA 15222
(412) 391-7005

FILED

FEB 05 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES	:	CIVIL DIVISION
Plaintiff,	:	
vs.	:	COURT NUMBER: 00-88-CD
KEITH W. PETERS, ECKLUND	:	
CARRIERS, WADE SCOTT	:	
BURKETT, S&S TRUCKING,	:	
Defendants.	:	

MOTION TO BIFURCATE

AND NOW, come the Defendants, KEITH W. PETERS and ECKLUND CARRIERS, by and through its attorneys, BASHLINE & HUTTON and RICHARD J. TRANKOCY, JR., ESQUIRE, and set forth the following Motion to Bifurcate, and in support thereof, set forth the following:

1. This is an action for personal injury which allegedly stemmed from a automobile accident that occurred on August 10, 1998 on State Road 153, Pine Township, Clearfield County, Pennsylvania.

2. Plaintiff alleges that he was injured as a result of the automobile accident that occurred on August 10, 1998. Plaintiff was a front seat passenger in a 1989 Ford Mustang. The automobile in which Plaintiff was a passenger stopped to make a left-turn, and Defendant, Keith W. Peters, was stopped with his four-way flashers activated behind Plaintiff in a tractor trailer owned by Defendant, Ecklund Carriers, Defendant, Wade Scott Burkett, operated a 1979 S. Model dump truck in a manner so as to collide with Defendant, Keith W. Peters'' vehicle, causing a chain reaction collision.

3. Plaintiff has raised claims of liability against Co-Defendant, Wade Scott Burkett and S & S Trucking. The testimony regarding the two Defendants' involvement in the accident will require numerous lay and expert witnesses.

4. In support of the damages portion of his case, it is expected that Plaintiff will be submitting video tape deposition testimony from Paul Roberts, Ph.D., Dan A. Sapir, M.D. and Charles P. Heinsen, M.D., his treating physicians. In addition, Plaintiff also intends to present testimony from an economist, John P. Tierney, who will testify regarding the nature and extent of Plaintiff's employability, in light of the Plaintiff's disability.

5. Discovery has revealed no evidence of negligence by Defendants, Keith W. Peters and Ecklund Carriers and neither the Plaintiff or Defendants, Wade Scott Burkett and S & S Trucking have any expert opinions supporting any negligence against Defendants, Keith W. Peters and Ecklund Carriers.

6. Defendants, Keith W. Peters and Ecklund Carriers, respectfully requests that this Court bifurcate the liability issues and the damages testimony. Defendant suggest that such a bifurcation is in the interest of justice and judicial economy.

7. The interest of justice will be preserved as it will permit the jury to make a fair and independent assessment of liability based solely on the facts of the accident, without reference to the plaintiff's alleged injuries and damages claim. It is further in the interest of judicial economy since the jury will not be required to hear lengthy testimony regarding damages if there is a finding of no liability on the part of the defendants. Further, settlement discussions will likely be entertained in the event the jury finds liability in the initial portion of the trial phase.

WHEREFORE, Keith W. Peters and Ecklund Carriers requests that the Court enter an Order bifurcating the case.

Respectfully submitted,

BASHLINE & HUTTON

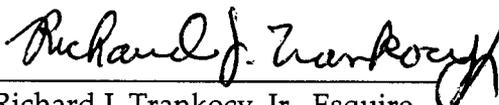
BY: *Richard J. Trankocy Jr.*
RICHARD J. TRANKOCY, JR., ESQUIRE
Attorneys for Defendants,
KEITH W. PETERS AND ECKLUND
CARRIERS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within *MOTION TO EIFURCATE* was served upon counsel all counsel of record, via first-class mail, postage prepaid, on the 2nd day of February, 2001.

William F. Goodrich, Esquire
GOODRICH, GOODRICH & LAZARRA, P.C.
1400 Law & Finance Building
Pittsburgh, PA 15219
(Counsel for Plaintiffs)

Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219
(Counsel for Defendants Burkett and S&S Trucking)


Richard J. Trankocy, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES : CIVIL DIVISION
Plaintiff, :
 : COURT NUMBER: 00-88-CD
vs. :
 :
KEITH W. PETERS, ECKLUND :
CARRIERS, WADE SCOTT :
BURKETT, S&S TRUCKING, :
Defendants. :

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2001, upon presentation of the attached Motion to Bifurcate, in consideration of the arguments of counsel thereon, it is hereby ORDERED, ADJUDGED and DECREED that the trial in the above case is bifurcated, and that the liability case will be tried. The issue of Defendants' liability will be presented to the jury prior to any damage testimony being offered in this matter.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

SCHEDULING ORDER

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

BASHLINE & HUTTON
FIRM I.D. #150
ONE PPG PLACE, SUITE 1650
PITTSBURGH, PA 15222
(412) 391-7005

JURY TRIAL DEMANDED

FILED

FEB 06 2001
011133)kk
William A. Shaw
Prothonotary

att. Trankocy
EJ
KMS

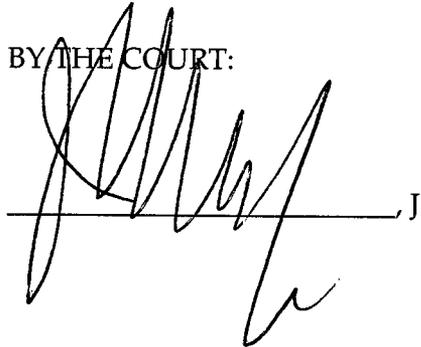
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,	)	CIVIL DIVISION
)	
PLAINTIFF,	)	NO.: 00/88-CD
)	
vs.)	
)	
KEITH W. PETERS, ECKLUND)	
CARRIERS, WADE SCOTT)	
BURKETT, S&S TRUCKING,)	
)	
DEFENDANTS.)	

SCHEDULING ORDER

Defendants Keith W. Peters and Ecklund Carriers' Motion for Travel Expenses and Motion to Bifurcate are hereby scheduled for argument on the 14th day of *February, 2001*, at 2:00 *p.m.* and will be argued via telephone with Richard J. Trankocy, Jr., Esquire, initiating the call between all counsel and the Honorable John K. Reilly, Jr. This argument via telephone has been agreed to by all counsel of record.

BY THE COURT:


_____, J.

2-501

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

**DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS' MOTION FOR
SUMMARY JUDGMENT**

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

JURY TRIAL DEMANDED

BASHLINE & HUTTON
FIRM I.D. #150
ONE PPG PLACE, SUITE 1650
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FILED

FEB 23 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,	) CIVIL DIVISION
)
Plaintiff,)
	) COURT NUMBER: 00-88-CD
vs.)
)
KEITH W. PETERS, ECKLUND)
CARRIERS, WADE SCOTT)
BURKETT, S&S TRUCKING,)
)
Defendants.)

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
PURSUANT TO PA. R. C. P. 1035.2(2)**

AND NOW, come the Defendants, KEITH W. PETERS and ECKLUND CARRIERS, by and through their attorneys, BASHLINE & HUTTON and RICHARD J. TRANKOCY, JR., ESQUIRE, and file the following Motion for Summary Judgment, averring in support thereof as follows:

1. This is an action for personal injury which stemmed from an automobile accident that occurred on August 10, 1998 on State Road 153, Pine Township, Clearfield County, Pennsylvania. The Plaintiff, Charles Matthes, filed a Complaint in Civil Action at 00-88-CD. A true and correct copy of the Plaintiff's Complaint is attached hereto and marked as Exhibit "A."

2. This case is listed as the first case on the Spring, 2001 Civil Trial Term which is scheduled for call on April 3, 2001.

3. The Plaintiff's Complaint alleges he was injured as a result of the automobile accident that occurred on August 10, 1998. Plaintiff was a front-seat passenger in a 1989 Ford Mustang. The automobile which Plaintiff was a passenger stopped to make a left turn, and Defendant Keith W. Peters was stopped with his four-way flashers activated behind Plaintiff in a tractor trailer owned by Defendant Ecklund Carriers and Defendant Wade Scott Burkett operated a 1979 S. Model dump truck in a manner so as to collide with Defendant Keith W. Peters' vehicle, causing a chain reaction collision.

4. Plaintiff alleges that his injuries were the direct and proximate result of the negligence of Defendants Keith W. Peters and Ecklund Carriers and the other Defendants.

5. Defendants Keith W. Peters and Ecklund Carriers in their Answer, New Matter and New Matter Under Rule 2252(d) denied liability and responsibility to the Plaintiff on their part, allege that in the event that Plaintiff is found entitled to recover in this action, then in that event, cc-defendants Wade Scott Burkett and S&S Trucking are alone liable, jointly and severally.

6. Commonwealth of Pennsylvania Police Accident Report attached hereto and marked as Exhibit "B;" Operator number is same as unit number; Unit #1 Wade Scott Burkett, Unit #2 Keith W. Peters, Unit #3 Greg James, Unit #4 Patricia Bickel.

- a. This accident occurred as Unit #3 was stopped on SR 153 waiting to make a left turn onto T925. Unit #2 was stopped behind Unit #3. Unit #1 which was heading North on ST 153 approached Units #2 and #3. Oper. #1 didn't realize the two units were stopped. When Oper #1 realized that Unit #2 was stopped, Oper #1 applied his brakes in an attempt to avoid Unit #2.....The impact of Units #2 and Unit #3 pushed Unit #3 approx. 100 yards in a northerly direction;
- b. Oper. #1 was interviewed on 8/10/98 at 1330 at the Clearfield Hosp. Oper. #1 stated "As I came over the hill I shifted into high gear. I came up behind the other truck and didn't realize it was stopped until about 2 truck lengths behind it. I hit my brakes to stop but I still struck the truck;

- c. Witness # 1, Figard was interviewed on 8/10/98 at 1325. Figard stated "I was coming the opposite direction. I saw the red car stopped with its turn signal on waiting to make the turn. A tractor-trailer was stopped behind with his 4-ways on. Then I saw the dump truck rear-end the Tractor-trailer;" and
- d. Witness Kenneth Lee Lytle was interviewed 8/10/98 at 1232 hrs at the accident scene. Lytle related the car was stopped with the turn signal on to turn left. He was waiting for traffic. The Tractor-trailer was stopped behind him with his flashers on. The Tractor-trailer got hit from the rear by the dump truck.

7. The discovery deposition of Charles Matthes occurred on December 1, 2000. Mr. Matthes testified with regard to events related to the motor vehicle accident that occurred on August 10, 1998. A true and correct copy of the pertinent deposition transcript pages are attached hereto and marked as exhibit "C."

Q. Did you have any information that you provided to the lawyer that Mr. Peters, the driver of the tractor-trailer, was not paying attention at the time of the accident.

A. No.

(Deposition page 212, line 18 through line 22).

Q. You agree that Mr. Peters was stopped at the time of the accident?

A. Yes.

(Deposition, page 212, line 23 through line 25).

Q. And you agree that his four-way flashers were activated on the tractor at the time of the accident?

A. The side that I could see they were, yes.

(Deposition page 213 lines 1 through line 4).

Q. Did you hear a sound of a diesel horn at any time prior to impact?

A. No.

(Deposition page 213, line 5 through line 7).

Q. Mr. Matthes, as you sit here today, do you have any evidence or any knowledge whatsoever to implicate the driver of the tractor-trailer in causing this accident?

A. Do I possess any knowledge?

Q. Yes, sir.

A. No, I wouldn't say.

(Deposition page 216, line 7 through line 13).

8. The discovery deposition of Keith W. Peters occurred on December 12, 2000. Mr. Peters testified with regard to events related to the motor vehicle accident that occurred on August 10, 1998. A true and correct copy of the pertinent deposition transcript pages are attached hereto and marked as exhibit "D."

Q. Now, before you would go back out on the road, would you do inspections of your vehicle?

A. Yes.

Q. Tell me what kind of inspections you would do on your vehicle after, in this case, you would have unloaded? What would you do before you'd go back out on the road?

A. In the morning before we pull out, we do a walk-around and check all the lights, check for any leaks, make sure everything is ready to go.

Q. Would you put your flashers on to make sure all your flasher are on?

A. Yes.

Q. Did you check your vehicle that day?

A. Yes.

Q. Did you check your vehicle for its flashers?

A. Yes.

- Q. Where are the flashers located on the trailer?
- A. On the bottom above the ICC bumper just below the doors.
- Q. Ate there any flashers on the top of the trailer?
- A. There is marker lights up there.
- Q. When we say marker lights, what are we referring to?
- A. Little square lights on the corners.
- Q. Would you have checked those lights to see if they were operational that morning?
- A. Yes.

(Deposition page 20 line 16 through line 25; page 21 line 2 through line 24).

- Q. Did you get out of your vehicle at that point?
- A. Yes.
- Q. Do you remember how long that would have been before the accident occurred?
- A. Five minutes, yeah. Well, I was there about five minutes.
- Q. So you were at the site for about five minutes. Did you walk around your vehicle?
- A. Yes.
- Q. Did you have your flashers on?
- A. Yes.
- Q. Did you check your flashers?
- A. Yes.
- Q. Were they all working?
- A. Yes.
- Q. Did you have your lights on on the tractor?

A. Yes.

Q. Did you have your lights on on the trailer?

A. Yes.

Q. And were the light on on the corners of the trailer up at the top?

A. Yes.

Q. Were there any lights on your vehicle that were not operative at that point in time when you inspected your vehicle?

A. No.

Q. Did you have any difficulty with any of the operational equipment of the tractor on your trip from Ellwood City to the ramp at 153?

A. No.

Q. Did you have any difficulty on any of the operational equipment, brakes, lights, anything at all from when you drove from Wisconsin out to Ellwood City?

A. No.

Q. How many time would you have checked your vehicle from the time you left your yard out in Wisconsin to when this accident would have occurred?

A. Altogether it would have been four times.

(Deposition page 32 line 21 through line 25; page 33 line 2 through line 25; page 34 line 2 through line 25).

Q. Did you bring your vehicle to a stop?

A. Yes.

Q. How far from the Mustang did you bring your vehicle to a stop?

A. Around 25 feet.

Q. So you were about 25 feet stopped behind him?

A. Yes.

Q. The front end of your tractor would have been how far from the stopped Mustang?

A. About 25 feet would have been where the front of my truck had stopped.

Q. What's that; about two car lengths, less?

A. Yeah, two car lengths

(Deposition page 45 line 20 through line 25, page 46, line 1 through 10).

Q. Now, when you came down, was there a point in time -- when you were stopped, did you have your lights on, your four-ways?

A. Yes. I had them on before we came down the hill.

Q. Did you put them on before you got to the crest of that hill?

A. Yes.

(Deposition page 47 line 17 through line 25).

Q. There was some indication to you of turning the signals left or right and hitting the brakes that there was going to be some type of action on their part?

A. Yes.

Q. Is that when you put your four-ways on?

A. Yes.

Q. When you put your four-ways on, were they on the entire way coming down the hill?

A. Yes.

Q. Did you have any difficulty with traction as you're coming down the hill?

A. No.

(Deposition page 48 line 12 through line 24).

Q. Did you have any opinion that day as to whether there might have been a problem with your tractor or trailer that may have contributed to the accident?

A. No.

(Deposition page 93 line 18 through line 22).

Q. How far from the crest of the hill immediately prior to the accident did you put your four-ways on?

A. Probably 500 feet before the crest.

(Deposition page 94 line 22 through line 25).

Q. Is there any question in your mind that your tractor-trailer was completely stopped prior to the coal truck impacting the rear of the trailer?

A. No.

Q. Is there any question in your mind that your four-way flashers were activated prior to the coal truck impacting the rear of the trailer?

A. Yes, they were.

Q. Could you describe how many flashers would have been activated on the tractor?

A. There would have been six on the tractor.

Q. How many on the trailer?

A. Two on the back

Q. What color would the tractor flasher be flashing?

A. There would be two yellow ones on the front, two yellow ones on the wings on the sleeper and then two taillights on the tractor.

(Deposition page 96 line 5 through line 25).

Q. What color would the trailer lights be flashing?

A. Red.

(Deposition page 97 line 1 through line 4).

9. The discovery deposition of Wade Scott Burkett occurred on December 14, 2000. Mr. Burkett testified with regard to events related to the motor vehicle accident that occurred on August 10, 1998 . A true and correct copy of the pertinent deposition transcript pages are attached hereto and marked as exhibit "E."

Q. When was the first time you saw the trailer truck that your vehicle was involved in the accident with?

A. When I come out over the third downgrade or what you want to call a recess in the side of the ridge there, when I come out over the top of it, I had just made out three marker lights on the top of the box trailer.

Q. There were lights on the top of the box trailer?

A. Clean at the top I remember seeing three lights. They're the only three lights I had seen at all.

Q. Up to that point in time.

A. Up to that point in time.

(Deposition page 92 line 18 through line 25; page 93 line 1 through line 11).

Q. Now, your testimony is, and just correct me if I misstate anything here, when you came onto the crest of the last hill prior to the accident, you're absolutely sure that you were able to see the trailer lights on the top of the trailer; is that correct?

A. That's what I remember seeing, the top three lights in the middle of the top of the trailer.

Q. Do you remember what color they were?

A. Red.

Q. Do you remember the size?

A. They were just small. Within I would say three inches by one inch.

Q. Do you know the shape of the lights?

A. They would have been kind of egg-shaped, the older style sealed beam.

Q. And the location of the three lights were on the top of the trailer?

A. Yeah. There was three lights, one dead center of the trailer and one on each side of it.

Q. These were actually lights as opposed to reflectors?

A. As far as what I remember seeing they were lights.

Q: Did you see any amber or red flashing lights on any portion of the trailer or tractor?

A: I did not see anything except for those three marker lights.

(Deposition page 165 line 15 through line 25; page 166 line 1 through line 25; and page 167, line 1).

10. Plaintiff's deposition for use at trial of Dr. Roberts, Plaintiff's treating doctor, was taken on February 19, 2001. Dr. Roberts is a Board-Certified Neuropsychologist. Plaintiff's deposition for use at trial showed no evidence to implicate Defendants Keith W. Peters and Ecklund Carriers.

11. Defense counsel for Defendants Keith W. Peter and Ecklund Carriers had Dr. Roberts testify that it was reported to him that his initial evaluation of the Plaintiff on May 25, 1999, that Greg James was signaling his intention to turn to the left and stopped with a semi stopped directly behind his vehicle owned by Ecklund Carriers.

12. Plaintiffs and Co-Defendants' Answers to Interrogatories list no experts implementing any negligence on the part of Defendants Keith W. Peters and Ecklund Carriers.

Plaintiff and Co-Defendants have no evidence to support Plaintiff's allegation that his injuries were the direct and proximate result of the negligence of the Defendants Keith W. Peters and Ecklund Carriers.

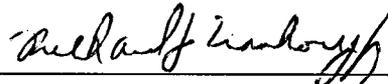
13. As the moving party, Plaintiff has the burden of presenting evidence supporting its contention Defendants Keith W. Peters and Ecklund Carriers were negligent.

14. Since Plaintiff and Co-Defendant has no evidence to present to the jury to support his claim that Defendants Keith W. Peters and Ecklund Carriers were negligent, Defendants Keith W. Peters and Ecklund Trucking and, thus, there are no issues of fact to be tried involving Defendants Keith W. Peters and Ecklund Carriers.

WHEREFORE, Defendants Keith W. Peters and Ecklund Carriers request summary judgment in their favor.

Respectfully Submitted:

BASHLINE AND HUTTON



Richard J. Trankocy, Jr., Esquire
Attorney for Defendants Keith W.
Peters and Ecklund Carriers

EXHIBIT "A"

Goodrich & Goodrich P.C.

Attorneys at Law

SUITE 1400
LAW & FINANCE BUILDING
420 FOURTH AVENUE
PITTSBURGH, PA 15219

CERTIFIED COPY

William F. Goodrich
ATTORNEY FOR
Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT;
S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No:

PLAINTIFF'S COMPLAINT

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE OR KNOW A LAWYER, THEN YOU SHOULD GO TO OR PHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

VIRGINIA M. EVANKO, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 1683

TELEPHONE: (814) 765-2641 Ext. 32

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS,
WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-00

Issue No.:

PLAINTIFF'S COMPLAINT IN
CIVIL ACTION

Code:

Filed on behalf of the
Plaintiff, CHARLES MATTHES

Counsel of Record for this
Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH &
LAZZARA, P.C.
Suite 1400 - Law & Finance Bldg.
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

FILED
JAN 24 2000
11:45 am
William A. Shaw
Notary

COMPLAINT IN CIVIL ACTION

The Plaintiff, Charles Matthes, complains of the Defendants, Wade Scott Burkett and S & S Trucking, and for cause of action, says:

1. Plaintiff, Charles Matthes, resides at 2979 North 800 W, City of Winamac, State of Indiana, 46996.
2. Defendant, Keith W. Peters, resides at 193 N. Kossurth Street, City of Berlin, State of Wisconsin, 54923.
3. Defendant, Ecklund Carriers, is a corporation, trading and doing business in the commonwealth of Pennsylvania on a regular basis, with a principal place of business at P. O. Box 387, Neenah, State of Wisconsin, 54957.
4. Defendant, Wade Scott Burkett, resides at Rd 1, Box 145A, Alexandria, County of Huntingdon, Commonwealth of Pennsylvania, 16611.
5. Defendant, S&S Trucking, is a Pennsylvania Corporation, licensed to do business at Rd 1, Box 145A, Alexandria, County of Huntingdon, Commonwealth of Pennsylvania, 16611.
6. At all times mentioned herein, Defendant, S&S Trucking, was acting through its agents, servants and/or employees, Defendant, Wade Scott Burkett.
7. At all times mentioned herein, Defendant, Wade Scott Burkett, was an agent, servant and/or employee of Defendant, S&S Trucking.
8. At all times mentioned herein, Defendant, Ecklund Carriers, was acting through its agents, servants and/or employees, Defendant, Keith W. Peters.
9. At all times mentioned herein, Defendant, Keith W. Peters, was an agent, servant and/or employee of Defendant, Ecklund Carriers.
10. State Road 153 is a public thoroughfare located in the Municipality of Pine township, County of Clearfield, Commonwealth of Pennsylvania, and running

generally in a North/South direction.

11. That on or about August 10, 1998, at or about 11:35 a.m., Plaintiff, Charles Matthes, was riding as a front seat passenger in a 1989 Ford Mustang, which he owned and which was being operated by Gregory James in a northerly direction along State Road 153.

12. At or about the same time, Defendant, Keith W. Peters, was operating a 1995 Freightliner Semi Tractor trailer which was owned by Defendant, Ecklund Carriers, in a northerly direction along State Road 153 behind the automobile in which Plaintiff was a passenger.

13. As the automobile in which Plaintiff, Charles Matthes, was a passenger stopped to make a left-turn from State Road 153, and Defendant, Keith W. Peters, was stopped behind the Plaintiff in the tractor trailer owned by Defendant, Ecklund Carriers, Defendant, Wade Scott Burkett, operated a 1979 S Model dump truck in a northerly direction along State Road 153 in such a negligent and careless manner so as to collide with Defendant, Keith W. Peters' vehicle, causing a chain reaction, with the result that the Plaintiff, Charles Matthes, suffered severe and serious injuries and damages as are hereinafter set forth.

14. At the time of said accident, Plaintiff, Charles Matthes, was not a resident of the Commonwealth of Pennsylvania, named as an insured under any policy of automobile insurance within the Commonwealth of Pennsylvania, or a member of or a relative in a household with an automobile insured in the Commonwealth of Pennsylvania, and as such is a full tort claimant.

COUNT 1

CHARLES MATTHES v. KEITH W. PETERS

15. The averments contained in Paragraphs one through fourteen are incorporated herein by reference as though fully set forth at length.

16. The losses, injuries and damages to the Plaintiff hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, Keith W. Peters, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;
- b. In continuing to operate the vehicle in a direction towards the Plaintiff's vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Plaintiff's's vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him; and,
- h. In failing to give adequate warning to the following Defendant, Wade Scott Burkett, of the stopped position of his vehicle.

17. Solely as a result of the negligence of the Defendant as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;
- c. Limitation of motion in the hand, neck and back;

- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;
- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- i. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury.

18. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000) plus costs.

COUNT II**CHARLES MATTHES v. ECKLUND CARRIERS**

19. Plaintiff incorporates Paragraphs one through eighteen of the Complaint as though they were set forth fully herein at length.

20. At all times mentioned herein, Defendant, Ecklund Carrier, was acting through its employee, agent and/or servant Defendant, Keith W. Peters, who was operating a 1995 Freightliner Semi tractor trailer owned by Defendant, Ecklund Carries, with the knowledge, consent and permission of Defendant, Ecklund Carriers.

21. The injuries and damages set forth within this Complaint were caused solely by and were the direct and proximate result of the negligence of the Defendant, Ecklund Carriers, by and through its employee, agent and/or servant, Defendant, Keith W. Peters, in the following respects:

- a. In negligently entrusting its vehicle to Defendant, Keith W. Peters, when Defendant knew, or in the exercise of reasonable care should have known, that it was not prudent to do so under the circumstances;
- b. In negligently entrusting its vehicle to Defendant, Keith W. Peters, with knowledge that he was a poor driver and unfit to operate said vehicle;
- c. In negligently refraining from preventing the operation of its vehicle by Defendant, Keith W. Peters, with the result that the vehicle struck the Plaintiff's vehicle, injuring Plaintiff, Charles Matthes, while a passenger in that vehicle; and,
- d. In failing to exercise reasonable control over the manner in which the Defendant, Keith W. Peters, was operating the vehicle.

22. The losses, injuries and damages to the Plaintiff, Charles Matthes, hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, Ecklund Carriers, by and through its employee, agent and/or servant, Defendant, Keith W. Peters, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;
- b. In continuing to operate the vehicle in a direction towards the Plaintiff's vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Plaintiff's's vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him; and,
- h. In failing to give adequate warning to the following Defendant, Wade Scott Burkett, of the stopped position of his vehicle.

23. Solely, as a result of the negligence of the Defendant, Ecklund Carriers, by and through its employee, agent and/or Servant, Keith W. Peters, as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;

- c. Limitation of motion in the hand, neck and back;
- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;
- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- i. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury, resulting in a brain injury.

24. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000), plus costs.

COUNT III

CHARLES MATTHES v. WADE SCOTT BURKETT

25. The averments contained in Paragraphs one through twenty-four are

incorporated herein by reference as though fully set forth at length.

26. The losses, injuries and damages to the Plaintiff, Charles Matthes, hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, Wade Scott Burkett, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;
- b. In continuing to operate the vehicle in a direction towards Defendant, Keith W. Peters' vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Defendant, Keith W. Peters' vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him.

27. Solely, as a result of the negligence of the Defendant, Wade Scott Burkett, as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated

intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;

- c. Limitation of motion in the hand, neck and back;
- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;
- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- i. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury.

28. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000), plus costs.

COUNT IV**CHARLES MATTHES v. S&S TRUCKING**

29. Plaintiff incorporates Paragraphs one through twenty-eight of the Complaint as though they were set forth fully herein at length.

30. At all times mentioned herein, Defendant, S&S Trucking, was acting through its employee, agent/or servant Defendant, Wade Scott Burkett, who was operating 1979 International S-model dump truck owned by Defendant, S & S Trucking, with the knowledge, consent and permission o Defendant, S&S Trucking.

31. The injuries and damages set forth within this Complaint were caused solely by and were the direct and proximate result of the negligence of the Defendant, S&S Trucking, by and through its employee, agent and/or servant, Defendant, Wade Scott Burkett, in some or all of the following respects:

- a. In negligently entrusting its vehicle to Defendant, Wade Scott Burkett, when Defendant knew, or in the exercise of reasonable care should have known, that it was not prudent to do so under the circumstances;
- b. In negligently entrusting its vehicle to Defendant, Wade Scott Burkett, with knowledge that he was a poor driver and unfit to operate said vehicle;
- c. In negligently refraining from preventing the operation of its vehicle by Defendant, Wade Scott Burkett, with the result that the vehicle struck the Plaintiff's vehicle, injuring Plaintiff, Charles Matthes, while a passenger in that vehicle; and,
- d. In failing to exercise reasonable control over the manner in which the Defendant, Wade Scott Burkett, was operating the vehicle.

32. The losses, injuries and damages to the Plaintiff, Charles Matthes, hereinafter described, were caused solely by and were the direct and proximate result of the negligence of the Defendant, S&S Trucking, by and through its employee, agent and/or servant, Defendant, Wade Scott Burkett, in some or all of the following respects:

- a. In failing to have the vehicle under proper control;

- b. In continuing to operate the vehicle in a direction towards the Plaintiff's vehicle, when its operator saw or in the exercise of reasonable diligence should have seen that further operation in that direction would result in a collision;
- c. In that the driver was inattentive and failed to maintain a sharp lookout of the road and the condition of traffic surrounding him;
- d. In failing to sound a horn or give other warnings of the approach of said vehicle;
- e. In failing to operate the brakes in such a manner so that the vehicle could be stopped before colliding with the Plaintiff's's vehicle;
- f. In failing to drive around the Plaintiff's vehicle, instead of colliding with it;
- g. In failing to allow a safe stopping distance between himself and the car in front of him.

33. Solely, as a result of the negligence of the Defendant, S&S Trucking, by and through its employee, agent and/or Servant, Wade Scott Burkett, as aforesaid, the Plaintiff, Charles Matthes, has suffered the following injuries, all of which are or may be of a permanent nature:

- a. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the hand, resulting in severe deep lacerations, approximately 25 centimeters in length, causing numbness to the scalp, light-headedness, severe headaches, blurred vision, dizziness and tinnitus;
- b. Severe sprains and strains of and injury and damage to the bones, joints, muscles, ligaments, tendons, and nerves of the back, resulting in pain in cervical and lumbar spine, as well as a herniated Intervertebral disc at level of L5/S1 and causing pain in the lumbar spine when walking; weakness in the abductor pollicis brevis and the abductor digiti minimi;
- c. Limitation of motion in the hand, neck and back;
- d. Severe and recurring headaches;
- e. Vertigo;
- f. Shock and injury to the nerves and nervous system;

- g. Nervousness, emotional tension and anxiety;
- h. Sleep disturbance;
- i. Shock, loss of strength and fatigue; and,
- j. Dysfunction of the right hand.
- k. A closed head injury.

34. As a result of the injuries as aforesaid, Plaintiff, Charles Matthes, sustained the following damages:

- a. He has suffered and will suffer great pain, inconvenience, embarrassment and mental anguish;
- b. He has and will be required to expend large sums of money for surgical and medical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. He has been and will be deprived of his earnings;
- d. His earning capacity has been reduced and may be permanently impaired;
- e. His general health, strength and vitality have been impaired;
- f. He has been and will in the future be unable to enjoy various pleasures of life that he previously enjoyed;
- g. He has been scarred and/or disfigured.

WHEREFORE, Plaintiff, Charles Matthes, demands judgment against the Defendants in an amount in excess of TWENTY THOUSAND DOLLARS (\$20,000), plus costs.

Respectfully submitted,

GOODRICH & GOODRICH, P.C.

By: William F. Goodrich

William F. Goodrich

ATTORNEY FOR PLAINTIFF

VERIFICATION

I, Charles Matthes, have read the foregoing COMPLAINT IN CIVIL ACTION. The statements of fact contained therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 PA. C.S. § 4904 relating to unsworn falsification to authorities which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Date: 1-20-00


Charles Matthes

EXHIBIT "B"

001120-07
COMMONWEALTH OF PENNSYLVANIA
POLICE ACCIDENT REPORT

REFER TO OVERLAY SHEETS

REPORTABLE NON-REPORTABLE

PENNDOT USE ONLY

POLICE INFORMATION				PRINCIPAL ROADWAY INFORMATION			
1. INCIDENT NUMBER C3-0565427		4. PATROL ZONE 20		20. COUNTY CLEARFIELD		CODE 17	
2. AGENCY NAME PA STATE POLICE		BADGE NUMBER 6849		21. MUNICIPALITY PINE TWP		CODE 227	
3. STATION PRECINCT CLEARFIELD / 1330		BADGE NUMBER 4241		22. ROUTE NO. OR STREET NAME SR153			
5. INVESTIGATOR JR THOMAS E REED		8. ARRIVAL TIME 1217		23. SPEED LIMIT 55		24. TYPE HIGHWAY 0	
6. APPROVED BY [Signature]				25. ACCESS CONTROL 1			
7. INVESTIGATION DATE 08/10/98				28. ROUTE NO. OR STREET NAME T925			
9. ACCIDENT DATE 08/10/98				10. DAY OF WEEK MON			
11. TIME OF DAY 1135		12. NUMBER OF UNITS 4		27. SPEED LIMIT 35		28. TYPE HIGHWAY 0	
13. # KILLED 0		14. # INJURED 5		29. ACCESS CONTROL 1			
15. PRIV PROP ACCIDENT Y		16. N		30. CROSS STREET OR SEGMENT MARKER			
18. DID VEHICLE HAVE TO BE REMOVED FROM THE SCENE? UNIT 1 Y UNIT 2 Y		17. VEHICLE DAMAGE 0 - NONE UNIT 1 3 1 - LIGHT 2 - MODERATE 3 - SEVERE UNIT 2 3		31. DIRECTION FROM SITE N S E W		32. DISTANCE FROM SITE FT. M.	
19. HAZARDOUS MATERIALS Y		20. PENNDOT PROPERTY Y X N		33. DISTANCE WAS MEASURED <input type="checkbox"/> ESTIMATED <input type="checkbox"/>		34. CONSTRUCTION ZONE 0	
				35. TRAFFIC CONTROL DEVICE 0		36. PRINCIPAL INTERSECTING 3	
UNIT #1				UNIT #2			
30. LEGALLY PARKED? <input type="checkbox"/>		31. REG. PLATE 2J 37514		30. LEGALLY PARKED? <input type="checkbox"/>		31. REG. PLATE 94408	
32. PA TITLE OR OUT-OF-STATE VIN 31782340		33. STATE PA		32. PA TITLE OR OUT-OF-STATE VIN 1BC7394A2739426		33. STATE WI	
40. OWNER SAME AS OPER		41. OWNER ADDRESS " " "		40. OWNER Ecklund Carriers		41. OWNER ADDRESS Po Box 387	
42. CITY, STATE & ZIP CODE " " "		43. YEAR 79		42. CITY, STATE & ZIP CODE Necmah, WI 54957		43. YEAR 95	
44. MAKE INTERNATIONAL		45. MODEL (NOT BODY TYPE) S-MODEL		44. MAKE Freightliner		45. MODEL (NOT BODY TYPE) Conver	
46. INS. Y <input type="checkbox"/> N <input type="checkbox"/> UNK <input type="checkbox"/>		47. BODY TYPE 70		46. INS. Y <input checked="" type="checkbox"/> N <input type="checkbox"/> UNK <input type="checkbox"/>		47. BODY TYPE 74	
48. SPECIAL USAGE 0		49. VEHICLE OWNERSHIP 10		48. SPECIAL USAGE 0		49. VEHICLE OWNERSHIP 10	
50. INITIAL IMPACT POINT 12		51. VEHICLE STATUS 0		50. INITIAL IMPACT POINT 6		51. VEHICLE STATUS 0	
52. TRAVEL SPEED 50		53. DRIVER PRESENCE 1		52. TRAVEL SPEED 50		53. DRIVER PRESENCE 1	
54. DRIVER CONDITION 1		55. DRIVER CONDITION 1		54. DRIVER PRESENCE 1		55. DRIVER CONDITION 1	
56. DRIVER NUMBER 21601695		57. STATE PA		56. DRIVER NUMBER P3625195535006		57. STATE WI	
58. DRIVER NAME WADE SCOTT BUCKETT		59. DRIVER ADDRESS Rd1 Bx 145 A		58. DRIVER NAME Keith W. Peters		59. DRIVER ADDRESS 193 N. Kossuth St.	
60. CITY, STATE & ZIP CODE Alexandria, PA 16611		61. SEX M		60. CITY, STATE & ZIP CODE Berlin, WI 54923		61. SEX M	
62. DATE OF BIRTH 07/07/68		63. PHONE (814)669-4052		62. DATE OF BIRTH 09/30/55		63. PHONE (920)561-4760	
64. COMM. VEH. CLASS A		65. DRIVER CLASS A		64. COMM. VEH. CLASS A		65. DRIVER CLASS A	
66. CARRIER S+S Trunking		67. CARRIER Ecklund Carriers		66. CARRIER S+S Trunking		67. CARRIER Ecklund Carriers	
68. CARRIER ADDRESS Rd1 Bx 145 A		69. CARRIER ADDRESS Po Box 387		68. CARRIER ADDRESS Alexandria, Pa 16611		69. CARRIER ADDRESS Necmah, WI 54957	
70. US DOT # 889065		71. US DOT # 889065		70. US DOT # 700934		71. US DOT # 179020	
72. VEH CONFIG 3		73. CARGO BODY TYPE S		72. VEH CONFIG 6		73. CARGO BODY TYPE 2	
74. GWR 73280		75. NO OF AXLES 3		74. GWR 80,000		75. NO OF AXLES 5	
76. HAZ ARDOUS MATERIALS 00		77. RELEASE OF HAZMAT Y		76. HAZ ARDOUS MATERIALS 00		77. RELEASE OF HAZMAT Y	

N/A

001121
COMMONWEALTH OF PENNSYLVANIA
POLICE ACCIDENT REPORT



REFER TO OVERLAY SHEETS

REPORTABLE NON-REPORTABLE

PENNDOT USE ONLY

POLICE INFORMATION				ACCIDENT INFORMATION			
1. INCIDENT NUMBER C3-0565427				20. COUNTY CODE			
2. AGENCY NAME				21. MUNICIPALITY CODE			
3. STATION PRECINCT		4. PATROL ZONE		22. ROUTE NO. OR STREET NAME			
5. INVESTIGATOR		BADGE NUMBER		23. SPEED LIMIT		24. TYPE HIGHWAY	
6. APPROVED BY		BADGE NUMBER		25. ACCESS CONTROL			
7. INVESTIGATION DATE		8. ARRIVAL TIME		26. ROUTE NO. OR STREET NAME			
9. ACCIDENT DATE				27. SPEED LIMIT			
10. DAY OF WEEK		11. TIME OF DAY		28. TYPE HIGHWAY		29. ACCESS CONTROL	
12. NUMBER OF UNITS		13. # KILLED		30. CROSS STREET OR SEGMENT MARKER			
14. # INJURED		15. PRIV. PROP. ACCIDENT		31. DIRECTION FROM SITE			
16. DID VEHICLE HAVE TO BE REMOVED FROM THE SCENE?		17. VEHICLE DAMAGE		32. DISTANCE FROM SITE		33. DISTANCE WAS	
UNIT #13		UNIT #14		MEASURED <input type="checkbox"/>		ESTIMATED <input type="checkbox"/>	
18. HAZARDOUS MATERIALS		19. PENNDOT PROPERTY		34. CONSTRUCTION ZONE		35. TRAFFIC CONTROL DEVICE	
UNIT #13				UNIT #14			
36. LEGALLY PARKED?		37. REG. PLATE		38. STATE		39. PA TITLE OR OUT-OF-STATE VIN	
Y <input type="checkbox"/> N <input type="checkbox"/>		66A4781		IN		1G676AF592A32	
40. OWNER		41. OWNER ADDRESS		42. CITY, STATE & ZIPCODE		43. YEAR	
Rebecca + Charles Mattnes		2979 N. 800 W		N. NAMAC, IN 46996		89	
44. MAKE		45. MODEL - (NOT BODY TYPE)		46. INS.		47. BODY TYPE	
FORD		Mustang		Y <input checked="" type="checkbox"/> N <input type="checkbox"/> UNK <input type="checkbox"/>		02	
48. SPECIAL USAGE		49. VEHICLE OWNERSHIP		50. INITIAL IMPACT POINT		51. VEHICLE STATUS	
0		2		6		0	
52. TRAVEL SPEED		53. VEHICLE GRADIENT		54. DRIVER PRESENCE		55. DRIVER CONDITION	
0		3		1		1	
56. DRIVER NUMBER		57. STATE		58. DRIVER NUMBER		59. DRIVER NAME	
2198962210		IN		B24068129626		FL	
60. DRIVER ADDRESS		61. SEX		62. DATE OF BIRTH		63. PHONE	
RT 3 B1142 A		M		07/11/78		(917) 896-2210	
64. CITY, STATE & ZIPCODE		65. DRIVER CLASS		66. DRIVER ADDRESS		67. CITY, STATE & ZIPCODE	
N. NAMAC, IN		C		6401 Seminole Bl #30		Seminole, FL 33542	
68. CARRIER		69. CITY, STATE & ZIPCODE		70. USDOT #		71. ICG #	
72. VEH. CONFIG.		73. CARGO BODY TYPE		74. GVWR		75. VEH. CONFIG.	
76. NO. OF AXLES		77. RELEASE OF HAZMAT MATERIALS		78. VEH. CONFIG.		79. CARGO BODY TYPE	
		Y <input type="checkbox"/> N <input type="checkbox"/> UNK <input type="checkbox"/>					

AA-45 (11/95)

PAGE: 2

PennDOT - BH8E

2185512

NIP

001122

78. RESPONDING EMS AGENCY Clemfield VFD INCIDENT #: C3-0565427

79. MEDICAL FACILITY Clemfield Hosp ACCIDENT DATE: 08/14/98

80. PEOPLE INFORMATION							ADDRESS						
A	B	C	D	E	F	G	NAME	H	I	J	K	L	M
1	1	M	30	3	1	0	Oper #1	3	2	2	B	0	1
2	1	M	42	3	1	0	Oper #2	3	9	7	C	0	1
3	1	M	20	3	1	1	Oper #3	4	9	3	B	0	1
3	3	M	20	3	1	0	CHARLES MATTHEW WILSON - 2979 N 800th WINDYBEE, IN 46996 (317) 843-1016	3	9	3	B	0	1
4	1	F	69	3	1	0	Oper #4	4	9	3	B	0	1

81. ILLUMINATION 2 82. WEATHER 1
 83. ROAD SURFACE 2

84. PENNSYLVANIA SCHOOL DISTRICT (IF APPLICABLE) N/A

85. DESCRIPTION OF DAMAGED PROPERTY
Guide Rails
 OWNER Penn DOT
 ADDRESS PO Box 285
HYDE, PA
 PHONE (814) 765-0524

86. DIAGRAM

87. NARRATIVE - IDENTIFY PRECIPITATING EVENTS, CAUSATION FACTORS, SEQUENCE OF EVENTS, WITNESS STATEMENTS, AND PROVIDE ADDITIONAL DETAILS LIKE INSURANCE INFORMATION AND LOCATION OF TOWED VEHICLES, IF KNOWN.

This accident occurred as UNIT #3 was stopped on SR153 waiting to make a left turn onto T925. UNIT #2 was stopped behind unit #3. Unit #1 which was heading north on SR153 approached units #2 & 3. Oper #1 didn't realize the two units were stopped. When oper #1 realized that unit #2 was stopped, oper #1 applied his brakes in an attempt to avoid unit #2. Oper #1 was unsuccessful and the front of unit #1 struck the rear of unit #2. This impact pushed unit #2 into the rear of unit #3. After the initial impact units #1 & 2 traveled across SR153 in a north westerly direction and came to rest on the guide rails on the west side.

INSURANCE INFORMATION UNIT 1	COMPANY <u>Centre State Ins.</u>	INSURANCE INFORMATION UNIT 2	COMPANY <u>Liberty Mutual</u>
POLICY NO. <u>CL 534 375</u>		POLICY NO. <u>442 141 0061 020 38</u>	
NAME <u>Clenic FIGARO</u>	ADDRESS <u>1511 15th Ave ALTOONA, PA 16601</u>	PHONE <u>(814) 941-3718</u>	
NAME <u>Kenneth LEE LITTLE</u>	ADDRESS <u>RR Box 74</u>	PHONE <u>Morrisdale Pa 16858 (814) 342-2281</u>	

88. VIOLATIONS INDICATED	89. SECTION NUMBERS (ONLY IF CHARGED)	TC	NTC
UNIT 1 <u>Driving Veh at Safe Speed</u>	<u>3361</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
UNIT 2 <u>None</u>		<input type="checkbox"/>	<input type="checkbox"/>

91. PROBABLE USE	92. TYPE TEST	93. RESULTS	94. INVESTIGATION COMPLETE ?
UNIT 1 <u>0</u>	<u>0</u>	<u>0.00%</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
UNIT 2 <u>0</u>	<u>0</u>	<u>0.00%</u>	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO

2832659

AKA

001126



COMMONWEALTH OF PENNSYLVANIA
POLICE ACCIDENT SUPPLEMENTAL

REFER TO OVERLAY SHEETS

REPORTABLE NON-REPORTABLE

PENNDOT USE ONLY

POLICE INFORMATION		ACCIDENT TIME & LOCATION	
1. INCIDENT NUMBER C3-0565427	8. ACCIDENT DATE 08/10/98	10. DAY OF WEEK Mon	
2. AGENCY NAME PA STATE POLICE	11. TIME OF DAY 1135	12. NUMBER OF UNITS 4	
3. STATION PRECINCT DUBOIS 11430	4. PATROL ZONE 20	13. # KILLED 0	14. # INJURED 3
5. INVESTIGATOR TR KETH ALLEN	BADGE NUMBER 6275	16. PRIV. PROP. ACCIDENT Y <input type="checkbox"/> N <input checked="" type="checkbox"/>	17. COUNTY CLEARFIELD
6. APPROVED BY <i>[Signature]</i>	BADGE NUMBER 4241	18. MUNICIPALITY PINE TWP	19. COUNTY CODE 17
UNIT #:		21. MUNICIPALITY CODE 227	

COMPLETE ONLY THE INFORMATION THAT HAS CHANGED SINCE ORIGINAL REPORT

38. LEGALLY PARKED Y <input type="checkbox"/> N <input type="checkbox"/>	37. REG. PLATE	39. STATE	58. DRIVER NAME
39. PARTIAL OR OUT-OF-STATE VIN	40. OWNER	59. DRIVER ADDRESS	60. CITY, STATE & ZIP CODE
41. OWNER ADDRESS	42. CITY, STATE & ZIP CODE	61. SEX	62. DATE OF BIRTH
43. YEAR	44. MAKE	63. PHONE	64. COMB VEH Y <input type="checkbox"/> N <input type="checkbox"/>
45. MODEL (NOT BODY TYPE)	46. SPECIAL USAGE	65. DRIVER CLASS	66. DRIVER S. S. #
47. BODY TYPE	48. INSURANCE Y <input type="checkbox"/> N <input type="checkbox"/> UNK <input type="checkbox"/>	67. CARRIER	68. CARRIER ADDRESS
49. INITIAL IMPACT POINT	50. VEHICLE STATUS	69. CITY, STATE & ZIP CODE	70. USDOT #
51. DRIVER PRESENCE <input type="checkbox"/>	52. TRAVEL SPEED	71. ICC #	72. PUG #
53. DRIVER NUMBER	54. DRIVER CONDITION	73. VEHICLE CONFIG.	74. CARGO BODY TYPE
55. STATE	56. STATE	75. HAZARDOUS MATERIALS	76. GVVW
77. RELEASE OF HAZ MAT Y <input type="checkbox"/> N <input type="checkbox"/> UNK <input type="checkbox"/>			

78. NARRATIVE - IDENTIFY PRECIPITATING EVENTS, CAUSATION FACTORS, SEQUENCE OF EVENTS, WITNESS STATEMENTS, AND PROVIDE ADDITIONAL DETAILS

SUPPLEMENTAL DATES 08/10/98

KENNETH LEE LYLE W-N/A-59 03/25/59 OF RR BOX 76 MORRISDALE, PA 16858 (814) 342-2281, WITNESS, INTERVIEWED 08/10/98 AT 1232 HRS AT THE ACCIDENT SCENE. LYLE RELATED THE CAR WAS STOPPED WITH THE TURN SIGNAL ON TO TURN LEFT. HE WAS WAITING FOR TRAFFIC. THE TRACTOR TRAILER WAS STOPPED BEHIND HIM WITH HIS FLASHERS ON. THE TRACTOR TRAILER GOT HIT FROM THE REAR BY THE ONUP TRUCK. IT WAS GOING SOUTH.

INSURANCE INFORMATION	COMPANY	84. INVESTIGATION COMPLETE?
UNIT NO	POLICY NO	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

EXHIBIT "C"

- - -

1 commercial driver's license?

2 A. I have no idea, no.

3 Q. The passenger window of the Mustang prior to
4 impact was that up or down?

5 A. I don't remember.

6 MR. TRANKOCY: Vicki, can I just
7 look at the Complaint real quick?

8 MS. MORTIMER: Yes.

9 BY MR. TRANKOCY:

10 Q. Mr. Matthes, did you receive any information
11 after the accident that the driver of the
12 tractor-trailer, Mr. Peters, was inattentive and
13 failed to maintain a sharp lookout of the road
14 and the condition of the traffic surrounding him?

15 A. I really don't understand. I don't know why I
16 would have gotten anything like that. The lawyer
17 was doing that, handling all of that.

18 Q. Did you have any information that you provided to
19 the lawyer that Mr. Peters, the driver of the
20 tractor-trailer, was not paying attention at the
21 time of the accident?

22 A. No.

23 Q. You agree that Mr. Peters was stopped at the time
24 of the accident?

25 A. Yes.

- - -

1 Q. And you agree that his four-way flashers were
2 activated on the tractor at the time of the
3 accident?

4 A. The side that I could see they were, yes.

5 Q. Did you hear a sound of a diesel horn at any time
6 prior to impact?

7 A. No.

8 Q. Mr. Matthes, did you receive any information,
9 after the accident, that Ecklund trucking company
10 dispatched the tractor-trailer to Mr. Peters at
11 the -- the tractor-trailer he was driving at the
12 time of the accident, when they knew that he
13 shouldn't be driving the tractor-trailer?

14 A. No, I had no idea about that.

15 Q. Do you have any information or did you obtain any
16 information after the accident that Ecklund Motor
17 Carriers dispatched the tractor-trailer to Mr.
18 Peters knowing that Mr. Peters had a poor driving
19 record?

20 A. No, I did not know that.

21 Q. Did you receive any information or did you become
22 aware of any facts after the accident that would
23 indicate to you that Ecklund Motor Carriers
24 dispatched the tractor-trailer to Mr. Peters
25 knowing that he was unfit to operate the vehicle

- - -

1 MR. GOODRICH: Yes, that's what I
2 had sent to Vicki --
3 MS. MORTIMER: Right, that's what I
4 showed you.
5 MR. TRANKOCY: All right.
6 BY MR. TRANKOCY:
7 Q. Mr. Matthes, as you sit here today, do you have
8 any evidence or any knowledge whatsoever to
9 implicate the driver of the tractor-trailer in
10 causing this accident?
11 A. Do I possess any knowledge?
12 Q. Yes, sir.
13 A. No, I wouldn't say.
14 Q. As you sit here today do you have any knowledge,
15 do you possess any knowledge or any information
16 that would establish that Ecklund Trucking
17 Company did anything wrong or contributed to
18 causing this accident?
19 A. I have no idea.
20 Q. Did you ever speak to any representative of
21 Ecklund Motor Carriers?
22 A. No.
23 Q. After you exited the Mustang, you remained
24 positioned against the rear passenger quarter
25 panel until the paramedics arrived?

EXHIBIT “D”

1 K. Peters - by Mr. Goodrich

2 a certain time?

3 A. Yeah.

4 Q. And you expected the steel plant to be
5 closed down in terms of getting your load
6 unloaded when you got there?

7 A. Yes.

8 Q. So they unloaded it at, what, 8 o'clock
9 in the morning that day?

10 A. Yes.

11 Q. And do you remember what time you would
12 have left Ellwood City for St. Mary's that day?

13 A. That would have been at 8 o'clock.

14 Q. So you left at 8 o'clock?

15 A. Left at 8.

16 Q. Now, before you would go back out on
17 the road, would you do inspections of your
18 vehicle?

19 A. Yes.

20 Q. Tell me what kind of inspections you
21 would do on your vehicle after, in this case,
22 you would have unloaded? What would you do
23 before you'd go back out on the road?

24 A. In the morning before we pull out, we
25 do a walk-around and check all the lights,

1 K. Peters - by Mr. Goodrich

2 check for any leaks, make sure everything is
3 ready to go.

4 Q. Would you put your flashers on to make
5 sure all your flashers are on?

6 A. Yes.

7 Q. Did you check your vehicle that day?

8 A. Yes.

9 Q. Did you check your vehicle for its
10 flashers?

11 A. Yes.

12 Q. Where are the flashers located on the
13 trailer?

14 A. On the bottom above the ICC bumper just
15 below the doors.

16 Q. Are there any flashers on the top of
17 the trailer?

18 A. There is marker lights up there.

19 Q. When we say marker lights, what are we
20 referring to?

21 A. Little square lights on the corners.

22 Q. Would you have checked those lights to
23 see if they were operational that morning?

24 A. Yes.

25 Q. Do you have a checkoff list that you

1 K. Peters - by Mr. Goodrich

2 down.

3 So would you have called at that point
4 in time, or would you have called when you left
5 Ellwood to ask some people up at St. Mary's how
6 to get to their place?

7 A. I called them from Ellwood City.

8 Q. So you knew to get off at 153 from what
9 they had told you when you had called at St.
10 Mary's?

11 A. Yes.

12 Q. So you got off at 153, and is there a
13 long ramp off of 80 on to 153?

14 A. Yes.

15 Q. Were you able to pull over off the
16 ramp, or did you just stop on the ramp?

17 A. Pulled off to the side.

18 Q. Would other traffic have been able to
19 pass you as you pulled off?

20 A. Yes.

21 Q. Did you get out of your vehicle at that
22 point?

23 A. Yes.

24 Q. Do you remember how long that would
25 have been before the accident occurred?

1 K. Peters - by Mr. Goodrich

2 A. Five minutes, yeah. Well, I was there
3 about five minutes.

4 Q. So you were at the site for about five
5 minutes. Did you walk around your vehicle?

6 A. Yes.

7 Q. Did you have your flashers on?

8 A. Yes.

9 Q. Did you check your flashers?

10 A. Yes.

11 Q. Were they all working?

12 A. Yes.

13 Q. Did you have your lights on on the
14 tractor?

15 A. Yes.

16 Q. Did you have your lights on on the
17 trailer?

18 A. Yes.

19 Q. And were the lights on on the corners
20 of the trailer up at the top?

21 A. Yes.

22 Q. Were there any lights on your vehicle
23 that were not operative at that point in time
24 when you inspected your vehicle?

25 A. No.

1 K. Peters - by Mr. Goodrich

2 Q. Did you have any difficulty with any of
3 the operational equipment of the tractor on
4 your trip from Ellwood City to the ramp at 153?

5 A. No.

6 Q. Did you have any difficulty on any of
7 the operational equipment, brakes, lights,
8 anything at all from when you drove from
9 Wisconsin out to Ellwood City?

10 A. No.

11 Q. How many times would you have checked
12 your vehicle from the time you left your yard
13 out in Wisconsin to when this accident would
14 have occurred?

15 A. Altogether it would have been four
16 times.

17 Q. One would have been before you left the
18 yard?

19 A. Yes.

20 Q. When would the next time have been?

21 A. When I stopped for the night from when
22 I left the yard the next morning.

23 Q. Would that have been at Ellwood, or did
24 you drive --

25 A. It would have been by Akron, Ohio.

1 K. Peters - by Mr. Goodrich

2 this hill, was the Mustang stopped?

3 A. Not yet.

4 Q. When did you first see him put his turn
5 signal on?

6 A. Before we got to the top of the hill
7 when he was in front of me, he was putting his
8 signal lights on and stepping on the brakes.
9 So I figured they were going to do something.
10 So I had slowed down, and when we got coming
11 down the hill then he turned his left signal
12 on.

13 Q. He would have been about five car
14 lengths in front of you when he did that?

15 A. Yes.

16 Q. Did you have any difficulty at all
17 slowing your vehicle down behind that Mustang
18 when you saw him put his left turn signal on?

19 A. No.

20 Q. Did you bring your vehicle to a stop?

21 A. Yes.

22 Q. How far from the Mustang did you bring
23 your vehicle to a stop?

24 A. Around 25 feet.

25 Q. So you were about 25 feet stopped

1 K. Peters - by Mr. Goodrich

2 behind him?

3 A. Yes.

4 Q. The front end of your tractor would
5 have been how far from the stopped Mustang?

6 A. About 25 feet would have been where the
7 front of my truck had stopped.

8 Q. What's that; about two car lengths,
9 less?

10 A. Yeah, two car lengths.

11 Q. I'm just assuming a car is about 12 to
12 14 feet long.

13 A. Uh-huh.

14 Q. Mr. Peters, do you have any type of
15 physical problems, health problems, that you're
16 being treated for presently?

17 A. Not treated for right now.

18 Q. Were you treated for in the past?

19 A. Just stuff from this accident.

20 Q. Other than this accident, prior to this
21 accident, did you have any kind of health
22 problems that you were receiving any kind of
23 treatment for?

24 A. No.

25 Q. Were your taking any kind of medication

1 K. Peters - by Mr. Goodrich

2 prior to this accident for any condition; blood
3 pressure, anything at all?

4 A. No.

5 Q. Was there any difficulty with
6 visibility as you're following that Mustang
7 down 153 from the point where you got on at the
8 ramp to where the accident occurred that
9 precluded you from seeing that vehicle?

10 A. No.

11 Q. Was that vehicle pretty much in your
12 site the entire way down 153?

13 A. Yes.

14 Q. And was this kind of like a rolling
15 road in terms of up and down, up and down?

16 A. Little bit up to this point.

17 Q. Now, when you came down, was there a
18 point in time -- when you were stopped, did you
19 have your lights on, your four-ways?

20 A. Yes. I had them on before we came down
21 the hill.

22 Q. Did you put them on before you got to
23 the crest of that hill?

24 A. Yes.

25 Q. Did you put them on when you saw --

1 K. Peters - by Mr. Goodrich

2 what indication to you from that Mustang was
3 there that they were going to stop or do
4 something?

5 A. They were turning their signal lights
6 or left and right and then stepping on the
7 brakes.

8 Q. It appeared that they weren't sure
9 whether they were going to turn right or left?

10 A. It appeared they didn't know where they
11 were.

12 Q. There was some indication to you of
13 turning the signals left or right and hitting
14 the brakes that there was going to be some type
15 of action on their part?

16 A. Yes.

17 Q. Is that when you put your four-ways on?

18 A. Yes.

19 Q. When you put your four-ways on, were
20 they on the entire way coming down the hill?

21 A. Yes.

22 Q. Did you have any difficulty with
23 traction as you're coming down that hill?

24 A. No.

25 Q. Can you estimate for me what the

1 K. Peters - by Ms. Mortimer

2 A. My brother said something about that.

3 Q. So your brother thought there may not
4 have been enough tread, and that's why your
5 wife took pictures of the tires?

6 A. Yes.

7 Q. Can you tell me if there are any other
8 pictures in this stack that you produced
9 through counsel with us today that were taken
10 because your brother thought there wasn't
11 something right with the dump truck or
12 something like that to that effect?

13 A. No.

14 Q. Did your brother have an opinion as to
15 whether or not there might have been anything
16 wrong with your tractor or trailer?

17 A. No.

18 Q. Did you have any opinion that day as to
19 whether there might have been a problem with
20 your tractor or trailer that may have
21 contributed to the accident?

22 A. No.

23 Q. From the pictures that I saw of the ICC
24 bumper on your truck, I don't believe there was
25 any tape on it, is that correct, any reflective

1 K. Peters - by Ms. Mortimer

2 tape on the ICC bumper?

3 A. I don't believe there was on that one.

4 Q. And to the best of your knowledge, the
5 entire time that you drove that trailer there
6 was no tape on the ICC bumper; is that correct?

7 A. Yes.

8 Q. Do you know what the purpose is for an
9 ICC bumper?

10 A. It's supposed to keep the cars from
11 going underneath the trailers.

12 Q. Do you know whether or not the dump
13 truck went underneath your trailer the day of
14 this accident?

15 A. I don't know.

16 MS. MORTIMER: I don't think I
17 have any other questions.

18 -----

19 EXAMINATION

20 -----

21 BY MR. GOODRICH:

22 Q. How far from the crest of the hill
23 immediately prior to the accident did you put
24 your four-ways on?

25 A. Probably 500 feet before the crest.

1 K. Peters - by Mr. Trankocy

2 Q. Did you ever see the person that was in
3 there?

4 A. No.

5 Q. Is there any question in your mind that
6 your tractor-trailer was completely stopped
7 prior to the coal truck impacting the rear of
8 the trailer?

9 A. No.

10 Q. Is there any question in your mind that
11 your four-way flashers were activated prior to
12 the coal truck impacting the rear of the
13 trailer?

14 A. Yes, they were.

15 Q. Could you describe how many flashers
16 would have been activated on the tractor?

17 A. There would have been six on the
18 tractor.

19 Q. How many on the trailer?

20 A. Two on the back.

21 Q. What color would the tractor flashers
22 be flashing?

23 A. There would be two yellow ones on the
24 front, two yellow ones on the wings on the
25 sleeper and then two taillights on the tractor.

1 K. Peters - by Mr. Trankocy

2 Q. What color would the trailer lights be
3 flashing?

4 A. Red.

5 MR. TRANKOCY: That's all I have.

6 MS. MORTIMER: Can I ask one
7 more?

8 -----

9 EXAMINATION

10 -----

11 BY MS. MORTIMER:

12 Q. I believe you told Mr. Goodrich that
13 you never spoke to the dump truck driver --

14 A. No, I didn't.

15 Q. -- after the accident; is that correct?

16 A. Yes.

17 Q. How about after you got to the
18 hospital, did you ever speak to the driver of
19 the Mustang at the hospital?

20 A. No.

21 Q. How about the passenger in the Mustang,
22 ever speak to him at the hospital?

23 A. No.

24 Q. How about anyone who may have been
25 identified as the driver of the dump truck?

EXHIBIT "E"

1 if there was a car directly in front
2 of me that had taillights on. I
3 would have seen them.

4 Q. Do you recall seeing any
5 traffic on 153 from the 80 exit at 18
6 when you got on 153?

7 A. There was no traffic when we
8 had got off 80. Because you can see
9 a long distance on the off ramp and I
10 knew that there was nothing.

11 Q. Do you recall seeing any
12 vehicles in front of you from the
13 time you left Route 80 to when the
14 accident occurred other than the
15 vehicles immediately before the
16 accident?

17 A. No.

18 Q. When was the first time you
19 saw the trailer truck that your
20 vehicle was involved in the accident
21 with?

22 A. When I come out over the third
23 downgrade or what you want to call a
24 recess in the side of the ridge
25 there, when I come out over the top

1 of it, I had just made out three
2 marker lights on the top of the box
3 trailer.

4 Q. There were lights on the top
5 of the box trailer?

6 A. Clean at the top I remember
7 seeing three lights. They're the
8 only three lights that I had seen at
9 all.

10 Q. Up to that point in time.

11 A. Up to that point in time.

12 Q. When you saw the three lights
13 on the top of the box trailer, would
14 you have been at the crest of that
15 last --- the third hill?

16 A. I actually probably crested it
17 and started over the crest of it.

18 Q. Now, can you estimate for me
19 the distance you were from that
20 vehicle when you saw those three
21 lights?

22 A. 100, 150 yards at the most.

23 Q. Now, could you see any other
24 lights on that vehicle?

25 A. I did not see any other lights

1 any other state?

2 A. No, I did not.

3 Q. Do you have an endorsement of
4 --- I think your endorsement is N?

5 A. There's a motorcycle
6 endorsement on there and I had a tank
7 vehicle but I let the tank drop off
8 for hazardous material. I can tell
9 you what N is.

10 Q. N is for tank?

11 A. Yeah. I got the tank
12 endorsement but I don't have the
13 hazardous material. I left it fall
14 off.

15 Q. Now, your testimony is, and
16 just correct me if I misstate
17 anything here, when you came onto the
18 crest of the last hill prior to the
19 accident, you're absolutely sure that
20 you were able to see the trailer
21 lights on the top of the trailer; is
22 that correct?

23 A. That's what I remember seeing,
24 the top three lights in the middle of
25 the top of the trailer.

1 Q. Do you remember what color
2 they were?

3 A. Red.

4 Q. Do you remember the size?

5 A. They were just small. Within
6 I would say three inches by one inch.

7 Q. Do you know the shape of the
8 lights?

9 A. They would have been kind of
10 egg-shaped, the older style sealed
11 beam.

12 Q. And the location of the three
13 lights were on the top of the
14 trailer?

15 A. Yeah. There was three lights,
16 one dead center of the trailer and
17 one on each side of it.

18 Q. These were actually lights as
19 opposed to reflectors?

20 A. As far as what I remember
21 seeing they were lights.

22 Q. Did you see any amber or red
23 flashing lights on any portion of the
24 trailer or tractor?

25 A. I did not see anything except

1 for those three marker lights.

2 Q. When you crested the last hill
3 prior to the impact, what speed did
4 you have your windshield wipers on?

5 A. I had them as fast as they go.

6 Q. You have the speed levels on
7 your control for the windshield
8 wipers? In other words, you could
9 have them slow?

10 A. Slow, medium and fast, they
11 were on fast.

12 Q. Had they been on fast from the
13 time you exited I-80 and proceeded on
14 to Pennsylvania Route 153 northbound?

15 A. I think one time on the way up
16 when I turned them up because we had
17 hit a harder spot of rain. But being
18 to say that they were on high, I
19 cannot say that they were on a medium
20 or a high speed.

21 Q. When you crested the third
22 hill prior to the impact, how would
23 you describe the rain at that point?

24 A. Can you repeat that?

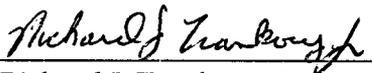
25 COURT REPORTER READS BACK PREVIOUS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within **MOTION FOR SUMMARY JUDGMENT** was served upon counsel all counsel of record, via first-class mail, postage prepaid, on the 21 day of February, 2001.

William F. Goodrich, Esquire
GOODRICH, GOODRICH & LAZARRA, P.C.
1400 Law & Finance Building
Pittsburgh, PA 15219
(Counsel for Plaintiffs)

Vicki Hunt Mortimer, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219
(Counsel for Defendants Burkett and S&S Trucking)



Richard J. Trankocy, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,	) CIVIL DIVISION
)
Plaintiff,)
	) COURT NUMBER: 00-88-CD
vs.)
)
KEITH W. PETERS, ECKLUND)
CARRIERS, WADE SCOTT)
BURKETT, S&S TRUCKING,)
)
Defendants.)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2001, upon consideration of Defendants Keith W. Peters and Ecklund Carriers' Motion for Summary Judgment, it is hereby ORDERED, ADJUDGED and DECREED that a judgement is entered in Defendants Keith w. Peters and Ecklund Carriers' favor and Plaintiff's case is dismissed with prejudice.

BY THE COURT:

_____, J.

33
CA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

**SCHEDULING ORDER PERTAINING
TO DEFENDANTS KEITH W. PETERS
AND ECKLUND CARRIERS' MOTION
FOR SUMMARY JUDGMENT**

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

JURY TRIAL DEMANDED

BASHLINE & HUTTON
FIRM I.D. #150
ONE PPG PLACE, SUITE 1650
PITTSBURGH, PA 15222
(412) 391-7005

FILED

FEB 27 2001

**William A. Shaw
Prothonotary**

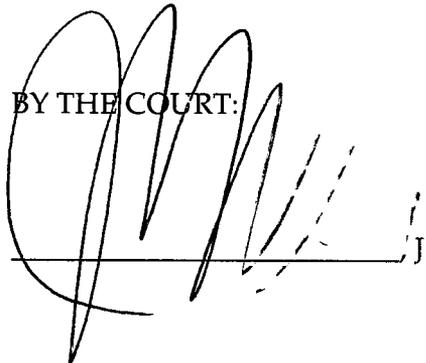
IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,	)	CIVIL DIVISION
)	
PLAINTIFF,	)	NO.: 00/88-CD
)	
vs.)	
)	
KEITH W. PETERS, ECKLUND)	
CARRIERS, WADE SCOTT)	
BURKETT, S&S TRUCKING,)	
)	
DEFENDANTS.)	

SCHEDULING ORDER

Defendants Keith W. Peters and Ecklund Carriers' Motion for Summary Judgment is hereby scheduled for argument on the 14th day of *March, 2001*, at 9:30 a.m. and will be argued via telephone with Richard J. Trankocy, Jr., Esquire, initiating the call between all counsel and the Honorable John K. Reilly, Jr. This argument via telephone has been agreed to by all counsel of record.

BY THE COURT:



A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the court official.

2-27-01

34 JY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**REPLY TO DEFENDANTS KEITH W.
PETERS AND ECKLUND CARRIERS
MOTION FOR SUMMARY JUDGMENT**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
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(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

FILED

MAR 13 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT)
 BURKETT, S & S TRUCKING,)
)
 Defendants.)

**REPLY TO DEFENDANTS', KEITH W. PETERS & ECKLUND
CARRIERS MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, by and through his attorneys, GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE and FRANK E. TOLBERT, ESQUIRE and respectfully replies to the Motion for Summary Judgment averring and in support thereof as follows:

1. Admitted.
2. Admitted.
3. Denied in that the same is a question of fact. Strict proof is demanded. To the contrary, testimony of Defendant Wade Scott Burkett indicates that there were no four-way flashers activated that he saw on the back of the vehicle being driven by Defendant Keith W. Peters and

Ecklund Carriers. Strict proof is demanded.

4. Admitted.

5. Admitted.

6. Paragraph 6 of Defendant's Motion appears to be an attempt to give triple hearsay statements the weight of un-controverted facts. The same is denied in that the same had consisted of statements of un-deposed witnesses, not under oath, and do not confirm that the four-ways on the rear of the tractor trailer were on. In fact, the statement only indicates that the front flashers were on which the Plaintiff has indicated he saw through the rear view mirror. Strict proof is demanded of any and all statements contained within said police report in that the same are triple hearsay.

7. Paragraph 7 of the Motion is agreed that the statements reflected in the deposition are true and correct. As to Charles Matthes himself having personal information as to the facts of the case and that he was rear-ended and suffered a brain injury as a result of the accident, the same is a question of fact and strict proof is demanded herein.

8. Paragraph 8 of the Defendants' Motion is admitted as to the content of the depositions. It is denied that this deposition supports Defendant Peters and Ecklund's position that the flashing lights were on on the back of the trailer. To the contrary, no evidence has been produced to support that contention and, in fact, evidence to the contrary has been produced by the deposition testimony of Wade Scott Burkett. Strict proof is demanded.

9. Paragraph 9 of Defendants' Motion is admitted in that the same are fair and accurate excerpts from the deposition of Defendant Wade Scott Burkett. However, it is denied that said deposition supports the position of the Defendant Keith W. Peters and Ecklund Carriers that the flashers on the Defendant's trailer were working at the time of the accident. To the contrary, Wade Scott Burkett's testimony is that he could only remember seeing three lights at the top of the box trailer. There was no testimony of any flashing lights throughout his deposition and, as such, it becomes a question of fact as to whether or not the Defendant Peters and Ecklund Carriers had their warning lights on at the time they were stopped during inclement weather. Strict proof is demanded.

10. Paragraph 10 of Defendants' Motion is admitted in that the same is a deposition relative to the treatment of the Plaintiff and has nothing to do with liability.

11. Paragraph 11 of Defendants' Motion is admitted in that the same has nothing to do with liability.

12. Paragraph 12 is denied as stated in that the same is a question of fact for the jury

13. Paragraph 13 is a true correct statement of the law.

14. Paragraph 14 is denied as stated. To the contrary, the testimony of Wade Scott Burkett that there were no flashing lights, or any brake lights on the back of the trailer which was stopped during inclement weather is sufficient evidence to present to the jury to support the claim that Keith W. Peters and Ecklund Carriers were negligent stopping their vehicle on a traveled

portion of the highway without warning and that there were no brake lights on the Peters/Ecklund vehicle at the time of the accident. Burkett's testimony was that the only lights he saw were on the top of the trailer.

15. Summary Judgment is permitted only in the "clearest of cases" where the review of the record shows that the moving party is entitled to judgment as a matter of law. Consumer Party of Pennsylvania v. Commonwealth, 510 Pa. 159, 507 A.2d 323 (1986).

16. In reviewing a Motion for Summary Judgment, the Court must view the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Ertel v. Patriot - News Co., 544 Pa. 93, 674 A2d 1038, 1041 (1996).

17. The issue as to whether the Defendant Peters/Ecklund Carriers had his flashing lights and brake lights working on the back of the trailer to warn that he was stopped is a question of fact for the jury to determine if this failure was a contributory cause of the accident. (Burkett Deposition pages 93, 94, 95.)

18. 75 CPS § 4305(a) requires that a motor vehicle when stopped or disabled on a highway shall use its hazard signals (front and back) to indicate a vehicular trailer hazard. The only eyewitness testimony as to the rear of the vehicle having its hazard lights on was that of Defendant Burkett who said there were no hazard lights on. (Burkett Deposition pages 93, 94, 95.) As such a jury may find that Defendant Peters/Ecklund lack of lighting could have contributed to Burkett not

recognizing the danger of a stopped vehicle sooner that he did.

19. Further, because of the lack of flashing lights and/or brake lights, Defendant Burkett was unable to tell whether or not the Defendant Peters/Ecklund was stopped or moving when he first saw it so as to result in a delay in applying his brakes. (Burkett deposition pages 140-141.)

20. The jury would be free to determine whether the lack of warning and/or brake lights on the back of Defendant Peters/Ecklund's trailer contributed to the Defendant Burkett's actions in striking the Defendant Peters/Ecklund's trailer.

21. Accordingly, Defendant, Peters/Ecklund's Motion for Summary Judgment should be denied.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA, P.C.,

BY:



WILLIAM F. GOODRICH, ESQ.
Attorney for Plaintiff,
Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of **March, 2001**, a true and correct copy of the within Reply to Defendants Keith W. Peters & Ecklund Carriers Motion for Summary Judgment was served upon Defendants by **hand delivering** same to their counsels of record as follows:

**RICHARD J. TRANKOCY, JR., ESQUIRE
BASHLINE & HUTTON
Suite 1650, One PPG Place
Pittsburgh, PA 15222**

**VICKY HUNT MORTIMER, ESQUIRE
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**

GOODRICH, GOODRICH & LAZZARA, P.C.,

BY: 

WILLIAM F. GOODRICH, ESQ.
Attorney for Plaintiff,
Charles Matthes

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES

-vs-

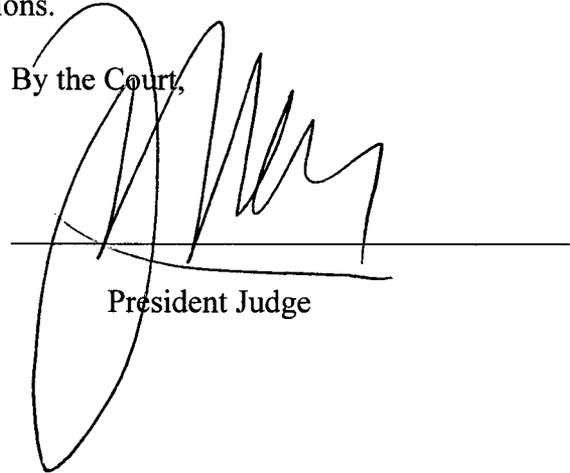
No. 00 – 88 – CD

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING

ORDER

NOW, this 14th day of March, 2001, following argument into Motion for Summary Judgment filed on behalf of Defendants Keith W. Peters and Ecklund Carriers, it is the ORDER of this Court that said matter be and is hereby continued to provide an opportunity for counsel to complete depositions.

By the Court,



President Judge

FILED

MAR 14 2001

William A. Shaw
Prothonotary

FILED

MAR 14 2001

of 2:31 PM
William A. Shaw
Prothonotary

-gr

cc atty Woodrich

cc atty Trankoy, Jr.

cc atty Motzner.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

Defendants.

CIVIL DIVISION

COURT NUMBER: 00-88-CD

ISSUE NUMBER:

TYPE OF PLEADING: NOTICE TO
TAKE ORAL DEPOSITION

CODE AND CLASSIFICATION:

FILED ON BEHALF OF: KEITH W.
PETERS and ECKLUND CARRIERS

(Name of party, indicate Plaintiff or
Defendant).

NAME, ADDRESS AND TELEPHONE
OF:

X Counsel of Record

 Individual, if Pro Se

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

BASHLINE & HUTTON
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's Firm I.D. #150

FILED

MAR 21 2001

William A. Shaw
Prothonotary

NOTICE TO TAKE ORAL DEPOSITION

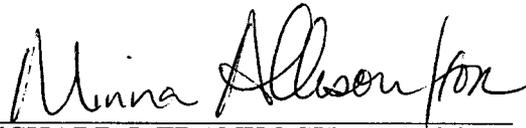
TO: Glen Figaro
1511 - 18th Avenue
Altoona, PA 16601

Vicki Hunt Mortimer, Esq.
2100 Lawyers Building
Pittsburgh, PA 15219

William Goodrich, Esq.
1400 Law & Finance Building
Pittsburgh, PA 15219

Please take notice that on **April 3, 2001**, beginning at **11:30 a.m.** in the offices of Attorney Joseph Colavecchi, 221 E. Market Street, Clearfield, PA 16830 the defendant in the above case will take the deposition of **GLEN FIGARO**, upon oral examination, before an official Court Stenographer, pursuant to the Rules of Civil Procedure. The scope of the within deposition will include all matters relevant to the issues in this case. You are invited to attend and cross-examine if you wish to do so.

BASHLINE & HUTTON

BY 
RICHARD J. TRANKOCY, JR., ESQ.,
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and ECKLUND
CARRIERS

cc: Sargent's Court Reporting

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within NOTICE TO TAKE ORAL DEPOSITION was served on counsel of record, as set forth below, by first class mail, postage pre-paid, on the 19th day of March, 2001:

William Goodrich, Esq.
1400 Law & Finance Building
Pittsburgh, PA 15219

Vicki Hunt Mortimer, Esq.
2100 Lawyers Building
Pittsburgh, PA 15219

BASHLINE & HUTTON

BY

A handwritten signature in black ink, appearing to read "Richard J. Trankocy, Jr.", written over a horizontal line.

RICHARD J. TRANKOCY, JR., ESQ.,
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and ECKLUND
CARRIERS

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

Defendants.

CIVIL DIVISION

COURT NUMBER: 00-88-CD

ISSUE NUMBER:

TYPE OF PLEADING: NOTICE TO
TAKE ORAL DEPOSITION

CODE AND CLASSIFICATION:

FILED ON BEHALF OF: KEITH W.
PETERS and ECKLUND CARRIERS

(Name of party, indicate Plaintiff or
Defendant).

NAME, ADDRESS AND TELEPHONE
OF:

X Counsel of Record

_____ Individual, if Pro Se

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

BASHLINE & HUTTON
Suite 1650
One PPG Place
Pittsburgh, PA 15222

(412) 391-7005

Attorney's Firm I.D. #150

FILED

MAR 21 2001

William A. Shaw
Prothonotary

NOTICE TO TAKE ORAL DEPOSITION

TO: Kenneth Lytle
R.D. 2, Box 74
Morrisdale, PA 16858

Vicki Hunt Mortimer, Esq.
2100 Lawyers Building
Pittsburgh, PA 15219

William Goodrich, Esq.
1400 Law & Finance Building
Pittsburgh, PA 15219

Please take notice that on **April 3, 2001**, beginning at **12:00 noon** in the offices of Attorney Joseph Colavecchi, 221 E. Market Street, Clearfield, PA 16830 the defendant in the above case will take the deposition of **KENNETH LYTLE**, upon oral examination, before an official Court Stenographer, pursuant to the Rules of Civil Procedure. The scope of the within deposition will include all matters relevant to the issues in this case. You are invited to attend and cross-examine if you wish to do so.

BASHLINE & HUTTON

BY  /for
RICHARD J. TRANKOCY, JR., ESQ.,
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and ECKLUND
CARRIERS

cc: Sargent's Court Reporting

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within NOTICE TO TAKE ORAL DEPOSITION was served on counsel of record, as set forth below, by first class mail, postage pre-paid, on the 19th day of March, 2001:

William Goodrich, Esq.
1400 Law & Finance Building
Pittsburgh, PA 15219

Vicki Hunt Mortimer, Esq.
2100 Lawyers Building
Pittsburgh, PA 15219

BASHLINE & HUTTON

BY 
RICHARD J. TRANKOCY, JR., ESQ.,
ATTORNEY FOR DEFENDANTS,
KEITH W. PETERS and ECKLUND
CARRIERS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

SUBSTITUTION OF COUNSEL

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Edward L. Russakoff, Esquire
Pa. I.D. #29684

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

MAR 22 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

No. 00-88-CD

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

Defendants.

SUBSTITUTION OF COUNSEL

Kindly substitute Edward L. Russakoff, Esquire, as counsel for defendants, Wade Scott Burkett d/b/a S & S Trucking, for Vicki Hunt Mortimer, Esquire with regard to the above-captioned matter.

EGLER, GARRETT & EGLER

BY:


ATTORNEYS FOR DEFENDANTS,
WADE SCOTT BURKETT dba
S & S TRUCKING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **SUBSTITUTION OF COUNSEL** has been served on the following by first class mail, postage prepaid on this 20th day of March, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANT,
WADE SCOTT BURKETT d/b/a S &
S TRUCKING

F:\WPFILES\GENERAL\16525\PLEADING\SUBSTITU.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES

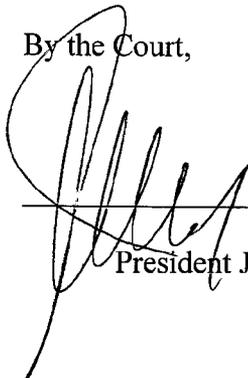
-vs-

No. 00 – 88 – CD

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
d/b/a S & S TRUCKING

PRE-TRIAL ORDER

NOW, this 10th day of April, 2001, following pre-trial conference into the above-captioned matter, it is the ORDER of this Court that jury selection shall be had on Friday, April 20, 2001, at 9:00 a.m. with trial by jury commencing Monday, August, 6, 2001, at 9:00 a.m. and continuing through Friday, August 10, 2001.

By the Court,


President Judge

FILED

APR 11 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

**NOTICE TO ATTEND DIRECTED
DEFENDANT, WADE SCOTT BURKETT**

Filed on behalf of CHARLES MATTHES,
Plaintiff

Counsel of Record for this Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

Frank E. Tolbert, Esquire
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

FILED

APR 18 2001

William A. Shaw
Prothonotary

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

NOTICE TO ATTEND

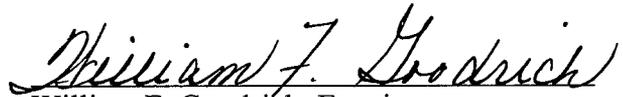
NOTICE TO ATTEND

**TO: WADE SCOTT BURKETT
c/o Edward L. Russakoff, Esq.
EGLER, GARRETT & EGLER
2100 The Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219**

- (1) You are directed to come to the Honorable Judge John K. Reilly, Jr.'s courtroom in Clearfield County, Pennsylvania, on August 6, 2001 at 9:00 o'clock A.M.. to testify on behalf of Charles Matthes in the above captioned case, and to remain until excused.
- (2) And bring with you the following: any and all information which you may possess regarding the accident of August 10, 1998.

If you fail to attend or to produce the documents or things required by this notice to attend, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Date: 4-16-01


William F. Goodrich, Esquire
GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

**NOTICE TO ATTEND DIRECTED
DEFENDANT, KEITH W. PETERS**

Filed on behalf of CHARLES MATTHES,
Plaintiff

Counsel of Record for this Party:

William F. Goodrich, Esquire
Pa. I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

Frank E. Tolbert, Esquire
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

FILED

APR 18 2001

William A. Shaw
Prothonotary

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

No.: 00-88-CD

vs.

NOTICE TO ATTEND

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

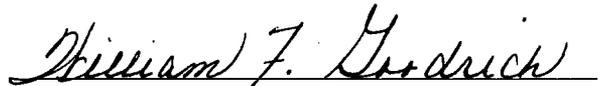
NOTICE TO ATTEND

TO: KEITH W. PETERS
c/o Richard J. Trankocy, Jr., Esquire
BASHLINE & HUTTON
Suite 1650, One PPG Place
Pittsburgh, PA 15222

- (1) You are directed to come to the Honorable Judge John K. Reilly, Jr.'s courtroom in Clearfield County, Pennsylvania, on August 6, 2001 at 9:00 o'clock A.M.. to testify on behalf of Charles Matthes in the above captioned case, and to remain until excused.
- (2) And bring with you the following: any and all information which you may possess regarding the accident of August 10, 1998.

If you fail to attend or to produce the documents or things required by this notice to attend, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Date: 4-16-01


William F. Goodrich, Esquire
GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES

:
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-vs-

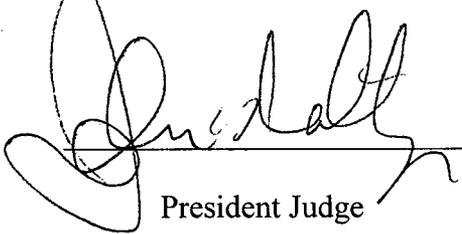
No. 00 – 88 – CD

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
d/b/a S & S TRUCKING

ORDER

NOW, this 18th day of April, 2001, this matter coming before the Court on Defendants Keith W. Peters and Ecklund Carriers Motion for Summary Judgment, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby dismissed without prejudice in said Defendants to raise the issue again upon completion of Plaintiff's case in chief or post trial.

By the Court,



President Judge

FILED

APR 19 2001

William A. Shaw
Prothonotary

FILED

APR 19 2001

William A. Shaw
Prothonotary

8/8:50/1cc atty, Kuehry

cc. atty, Frankacy

cc atty Woodruff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

No.: 00-88-CD

v.

Issue No.:

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

**RESPONSES AND OBJECTIONS
TO PLAINTIFF'S PROPOSED
VOIR DIRE**

Defendants.

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Edward L. Russakoff, Esquire
Pa. I.D. #29684

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

APR 19 2001

William A. Shaw
Prothonotary

**RESPONSES AND OBJECTIONS TO
PLAINTIFF'S PROPOSED VOIR DIRE**

AND NOW, come defendants, Wade Scott Burkett and S&S Trucking, (hereinafter collectively "Burkett"), by their attorneys, Egler, Garrett and Egler, and file the following Responses and Objections to Plaintiff's Proposed Voir Dire:

1. No objection.

2. No objection.

3. Objection. The phrase "caused by defendants", and the characterization of plaintiff's alleged injuries as "severe and serious" are highly prejudicial to the defendants and the proposed question is therefore improper.

4. No objection.

5. No objection.

6. No objection.

7. Objection. This proposed question is unduly vague, overly broad and otherwise irrelevant to the task of selecting a competent, fair and impartial jury.

8. No objection.

9. No objection.

10. Objection. This proposed question is unduly vague, overly broad and otherwise irrelevant to the task of selecting a competent, fair and impartial jury.

11. Objection. This proposed question is unduly vague, overly broad and otherwise irrelevant to the task of selecting a competent, fair and impartial jury.

12. Objection. The terms “litigation explosion” and “frivolous lawsuits” are vague, overly broad and inflammatory and, therefore, the entire proposed question is irrelevant to the task of selecting a competent, fair and impartial jury.

13. No objection.

14. Objection. This proposed question is unduly vague and overly broad, and otherwise prejudicial to the defendants.

15. Objection. This is an improper area of inquiry. Furthermore, the function of addressing any “problems” a prospective juror may have with regard to videotape testimony belongs to the Court, and can only be undertaken in cautionary instructions to the jury that is ultimately impaneled.

16. No objection.

17. Objection. To the extent that the premise of this proposed question is even valid, it is adequately covered in question 9, to which Burkett has not objected.

18. Objection. This proposed question is overly broad, unduly vague and irrelevant to the task of selecting a competent, fair and impartial jury. To the extent that the question may be valid, it is adequately covered in question 9, to which Burkett has not objected.

EGLER, GARRETT AND EGLER

BY: 

ATTORNEYS FOR
DEFENDANT, WADE
SCOTT BURKETT, d/b/a
S & S TRUCKING

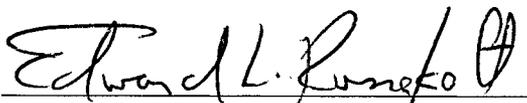
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **RESPONSES AND OBJECTIONS TO PLAINTIFF'S PROPOSED VOIR DIRE** has been served on the following by first class mail, postage pre-paid on this the 18th day of April, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANT,
WADE SCOTT BURKETT
d/b/a S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**PROPOSED VOIR DIRE OF
DEFENDANTS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Edward L. Russakoff, Esquire
Pa. I.D. #29684

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

FILED

APR 19 2001

William A. Shaw
Prothonotary

**PROPOSED VOIR DIRE OF DEFENDANTS
WADE SCOTT BURKETT AND S&S TRUCKING**

AND NOW, come defendants, Wade Scott Burkett and S&S Trucking, by their attorneys, Egler, Garrett and Egler, and files the following Proposed Voir Dire:

1. The two individual defendants in this case were driving large trucks at the time of the accident. Defendant, Keith W. Peters, was driving a semi tractor-trailer. Defendant, Wade Scott Burkett, was driving a tri-axle dump truck. Is there any reason why you could not be a fair and impartial juror knowing that these kinds of trucks were involved in the accident?

EGLER, GARRETT AND EGLER

By: 

ATTORNEYS FOR
DEFENDANT, WADE
SCOTT BURKETT, d/b/a
S & S TRUCKING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PROPOSED VOIR DIRE OF DEFENDANTS, WADE SCOTT BURKETT d/b/a S & S TRUCKING** has been served on the following by first class mail, postage pre-paid on this the 18th day of April, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANT,
WADE SCOTT BURKETT
d/b/a S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**PLAINTIFF'S REPLY TO DEFENDANTS
KEITH W. PETERS and ECKLUND CARRIERS'
MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947

(219) 722-4343

FILED

APR 19 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
) Case No. 00-88-CD
 vs.)
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT)
 and S& S TRUCKING,)
)
 Defendants.)

**PLAINTIFF'S REPLY TO DEFENDANTS KEITH W. PETERS
and ECKLUND CARRIERS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, CHARLES MATTHES, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C., WILLIAM F. GOODRICH, ESQUIRE;
MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., and
FRANK E. TOLBERT, ESQUIRE and submit the following Reply to the Memorandum of Law
filed by Defendants Keith W. Peters and Ecklund Carriers, and in reply, sets forth the following:

Counsel for the Defendants, Keith W. Peters and Ecklund Carriers, cleverly refers only to
one section of Title 75 Pa.C.S.A. §4305 relative to the Defendants argument. The Defendants fail
to reference §4305(b)(1) and §4305(c) relative to the use of a vehicle able to maintain a speed of
25 mph because of weather, grade or other similar factors, and as such, is unable to maintain a
speed consistent with the normal flow of traffic.

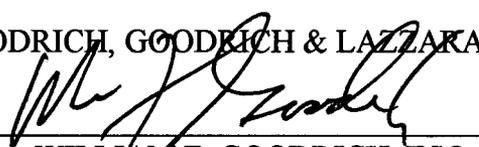
Counsel for the Defendants fails to address the issue of the fact that Defendants, Keith W. Peters and Ecklund Carriers' tractor trailer, was unable to maintain a speed of at least 25 mph and was not maintaining at least a minimum speed established in accordance with the provisions of §3364 which requires that a vehicle shall not be driven at such a slow speed as would be less than the normal reasonable movement of traffic.

Defendants' argument fails to address the issue that the vehicle was blocking the lane of traffic, for whatever reason, and was impeding the movement of traffic.

§4305(b)(1) indicates that when a vehicle is unable to maintain a speed of at least 25 mph because of weather grade or other similar factors (similar factors not defined) or is unable to maintain a speed consistent with the flow of traffic, there is a duty to put the simultaneous flashing signal lamps on. The testimony of the Defendant, Wade Scott Burkett, was that he saw no flashing lights or any brake lights on the back of the tractor trailer as he crested the hill prior to the accident occurring. This Plaintiff's position is that a duty was owed to all on a roadway by Defendants, Keith W. Peters and Ecklund Carriers. This is a question of fact for the jury to determine whether or not that duty was breached. Accordingly, Plaintiff, Charles Matthes respectfully submits that the Defendants are not entitled to a judgment in their favor and that the matters are a question of fact for the jury to decide.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA

BY: 

WILLIAM F. GOODRICH, ESQ.
FRANK E. TOLBERT, ESQ.
Attorney for Plaintiff,
Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Reply to Defendants Keith W. Peters and Ecklund Carriers' Memorandum of Law in Support of Motion for Summary Judgment was served upon the following by mailing same by regular first class mail, postage prepaid to the following:

THE HONORABLE JOHN K. REILLY, JR.
CLEARFIELD COUNTY COURTHOUSE
230 E. Market Street
Clearfield, PA 16830

RICHARD J. TRANKOCY, JR., ESQUIRE
BAGINSKI & HUTTON
One PPG Place, Suite 1650
Pittsburgh, PA 15222
(Counsel for Defendants, Keith W. Peters and Ecklund Carriers)

EDWARD L. RUSSAKOFF, ESQUIRE
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219
(Counsel for Defendants, Wade Scott Burkett and S&S Trucking)

GOODRICH, GOODRICH & LAZZARA

4/17/01
DATE

BY: 
WILLIAM F. GOODRICH, ESQ.
FRANK E. TOLBERT, ESQ.
Attorneys for Plaintiff,
Charles Matthes

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS' DELAY DAMAGE
LETTER

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

JURY TRIAL DEMANDED

BASHLINE & HUTTON
FIRM I.D. #150
ONE PPG PLACE, SUITE 1650
PITTSBURGH, PA 15222
(412) 391-7005

FILED BY:
Richard J. Trankocy Jr.

FILED

JUN 27 2001
0/1:04/04
William A. Shaw
Prothonotary

NO C/C
[Signature]

LAW OFFICES
OF
BASHLINE & HUTTON*
SUITE 1650
ONE PPG PLACE
PITTSBURGH, PA 15222

TERRY L.M. BASHLINE
GERALD J. HUTTON
JAMES R. ZEIS
LINDA L. PRETZ
MARY ANN C. ACTON**
JAMES E. KENNEDY††**
JOHN B. HAYES
LETA V. PITTMAN
KAREN L. HUGHES

TELEPHONE: (412) 391-7005
FAX: (412) 391-0568
*Not a partnership

RICHARD J. TRANKOCY, JR.
J. ERIC BARCHIESI†
JILL H. NOLAN
BERNARD J. KELLY
WILLIAM C. GALLISHEN
MINNA J. ALLISON
JOHN A. GOODMAN
**Also admitted in Ohio
†Also admitted in West Va.
†† Also admitted in Maryland

June 26, 2001

William Goodrich, Esquire
GOODRICH, GOODRICH & LAZARRA, P.C.
1400 Law & Finance Building
Pittsburgh, PA 15219

**RE: CHARLES MATTHES v. KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT AND S&S TRUCKING
Court of Common Pleas of Clearfield County, Pennsylvania
Docket No.: 00-88-CD
Claim No.: AB303-078343-01**

Dear Mr. Goodrich:

Please be advised that Defendants Ecklund Carriers and Keith W. Peters tender a settlement offer in the amount of \$5,000.00 for release of all claims regarding this litigation. This \$5,000.00 settlement offer will remain available to you up until the jury trial commences on August 6, 2001.

Very truly yours,


Richard J. Trankocy, Jr.

RJT,jr/kag

cc: Edward L. Russakoff, Esquire

EXHIBIT 7

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**NOTICE OF TELEPHONE
DEPOSITION**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

(412) 281-1455

FILED

JUL 02 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
Plaintiff,)
)
vs.) Case No. 00-88-CD
)
KEITH W. PETERS, ECKLUND)
CARRIERS, WADE SCOTT BURKETT,)
and S & S TRUCKING,)
)
Defendants.)

NOTICE OF TELEPHONE DEPOSITION

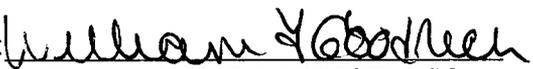
TO: CHARLES HEINSEN, M.D.
P.O. Box 338
121 East Pearl Street
Winamac, IN 46996

PLEASE TAKE NOTICE that the deposition of Dr. Charles Heinsen will be taken via telephone for the purpose of discovery and for the use at trial and in accordance with the Pennsylvania Rules of Civil Procedure before a notary public duly authorized to administer oaths on Friday, July 13, 2001 at 1:00 p.m. at the offices of Attorney William F. Goodrich, located at Suite 1400, Law & Finance Building, 429 Fourth Avenue, Pittsburgh, PA 15219, at which time and place you are invited to appear and take such part as shall be fitting and proper.

The scope and purpose of this deposition is to inquire into all of the fact of which you may have knowledge surrounding the happening of the incident in the above captioned case; and to inquire into all of the facts and circumstances of which you may have knowledge which relate to the injuries and damages which Plaintiff has suffered as a result of the incident out of which the above captioned case arises.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA,

BY: 
WILLIAM F. GOODRICH, ESQ.
Attorney for Plaintiff,
Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of June, 2001, a true and correct copy of the within Notice of Telephone Deposition has been served upon Defendants by mailing same by regular first class mail, postage prepaid to their counsels of record as follows:

RICHARD J. TRANKOCY, JR., ESQUIER
BAGINSKI & BASHLINE
One PPG Place, Suite 1650
Pittsburgh, PA 15222

EDWARD RUSSAKOFF, ESQUIRE
EGLER, GARRETT & EGLER
2100 The Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

STEFFAN & STAUFFER, LTD.
Chambers of Commerce Building
Suite 1140
411 Seventh Avenue
Pittsburgh, PA 15219-1905

GOODRICH, GOODRICH & LAZZARA,

BY: William F. Goodrich
WILLIAM F. GOODRICH, ESQ.
Attorney for Plaintiff,
Charles Matthes

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S&S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**SUBPOENA and RETURN OF
SERVICE**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

(412) 281-1455

FILED

JUL 23 2001

William A. Shaw
Prothonotary

COMMONWEALTH OF PENNSYLVANIA
CLEARFIELD COUNTY

Charles Matthes
Plaintiff(s)
Vs.

No. 2000-00088-CD

Keith W. Peters
Ecklund Carriers
Wade Scott Burkett
S & S Trucking
Defendant(s)

SUBPOENA TO ATTEND AND TESTIFY

TO: BENNETTS VALLEY AMBULANCE SERVICE
P.O. Box 48
Penfield, PA 15849

814-637-5725

1. You are ordered by the Court to come to Courtroom #1, Clearfield County
Courthouse, 230 E. Market Street, Clearfield (Honorable John K. Reilly, Jr.)
(Specify Courtroom or other place)
at Clearfield County, Pennsylvania, on August 6, 2001 at 9:00
o'clock, A.M., to testify on behalf of Plaintiff, Charles Matthes
_____ in the above case,
and to remain until excused.

2. And bring with you the following: any and all investigative reports, photographs and documents of every kind relating to the incident
of August 10, 1998.

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a)

NAME: WILLIAM F. GOODRICH, ESQUIRE
ADDRESS: Suite 1400, 429 Fourth Avenue
Pittsburgh, PA 15219
TELEPHONE: (412) 281-1455
SUPREME COURT ID # 30235

BY THE COURT:



Prothonotary/Clerk, Civil Division

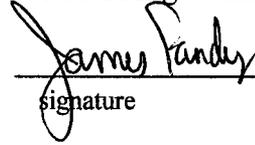
Deputy

DATE: Wednesday, February 21, 2001
Seal of the Court

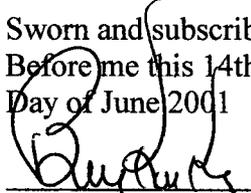
OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with PA.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2.

Return of Service

On the 14th day of June 2001 at 10:40 AM I James Fandray personally served a subpoena on Don Logan of the Bennetts Valley Ambulance Service. I verify that the statements in the return of service are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.


signature

Sworn and subscribed
Before me this 14th
Day of June 2001


Notary Public

Faint, illegible text at the top of the page, possibly a header or title.

Faint, illegible text on the right side of the page.

FILED
JUL 23 2001
W. A. Shaw
Notary
cc
[Handwritten initials]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS, WADE
SCOTT BURKETT, S & S TRUCKING

Defendants.

CIVIL DIVISION

NO. 00-88-CD

SUBSTITUTION OF APPEARANCE

Filed on behalf of Defendant,
WADE SCOTT BURKETT,

Counsel of record for this Party:
EDWARD L. RUSSAKOFF, ESQUIRE
PA ID NO. 29684

DiBELLA & GEER, P.C.
FIRM ID NO. 099

312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

(412) 261-2900
FAX: (412) 261-3222

FILED

JUL 3 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

Plaintiff,

NO. 00-88-CD

vs.

KEITH W. PETERS,
ECKLUND CARRIERS, WADE
SCOTT BURKETT, S & S TRUCKING,

Defendants.

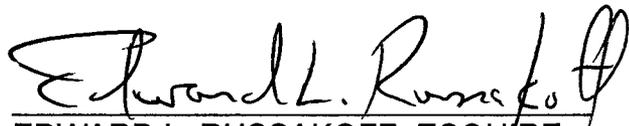
SUBSTITUTION OF APPEARANCE

Kindly note our appearance on behalf of the Defendants, WADE SCOTT BURKETT and S & S TRUCKING, with regard to the above-captioned matter. The undersigned was formerly with EGLER, GARRETT & EGLER. Please note our new firm and address.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY:



EDWARD L. RUSSAKOFF, ESQUIRE

Attorney for Defendants,
WADE SCOTT BURKETT, and
S & S TRUCKING

DiBELLA & GEER, P.C.
Firm ID No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

412-261-2900
FAX: 412-261-3222

CERTIFICATE OF SERVICE

I, EDWARD L. RUSSAKOFF, ESQUIRE, hereby certify that a true and correct copy of the foregoing SUBSTITUTION OF APPEARANCE has been forwarded to the following counsel of record, via First Class U.S. Mail, this 27th day of July, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222



EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendant,
WADE SCOTT BURKETT

50
[Signature]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS, WADE
SCOTT BURKETT, S & S TRUCKING

Defendants.

CIVIL DIVISION

NO. 00-88-CD

*Permanent
injunction*

MOTION IN LIMINE

Filed on behalf of Defendant,
WADE SCOTT BURKETT,

Counsel of record for this Party:
EDWARD L. RUSSAKOFF, ESQUIRE
PA ID NO. 29684

DIBELLA & GEER, P.C.
FIRM ID NO. 099

312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

(412) 261-2900
FAX: (412) 261-3222

FILED

JUL 3 11 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Charles MATTHES,

CIVIL DIVISION

Plaintiff,

No.: 00-88-CD

v.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT, S & S TRUCKING,

Defendants.

MOTION IN LIMINE

AND NOW, comes the Defendant, WADE SCOTT BURKETT, by and through his attorneys, EDWARD L. RUSSAKOFF, ESQUIRE and DIBELLA & GEER, P.C., and presents the following Motion in Limine:

1. Plaintiff, Charles Matthes ("Plaintiff"), presented John P. Tierney for a videotaped pretrial deposition on March 28, 2001. Mr. Burkett anticipates that Plaintiff will seek to admit Mr. Tierney's videotaped deposition, in its entirety, at trial in lieu of live testimony. A true and correct copy of the transcript is attached hereto and marked Exhibit "A".

2. Mr. Tierney has been presented by Plaintiff as a purported expert witness in the area of Plaintiff's alleged loss of future income.

3. Mr. Tierney testified at his deposition that he is a "vocational economic analyst." Tierney Depo (hereinafter, "Depo"), p. 5. However, Mr. Tierney's educational background includes only the following degrees: a bachelor's degree in theology, 1962, Gregorian University, Rome, Italy; and a master's degree in guidance and counseling, 1971, from Spalding University,

Louisville, Kentucky. Depo, p. 14; see also Depo Exhibit 1 (Curriculum Vitae of John P. Tierney).

4. Mr. Tierney does not have any degree in the field of economics. Depo, p. 15. In addition, Mr. Tierney does not have any medical education. See Depo Exhibit 1.

5. At the Depo, Plaintiff's counsel elicited the following opinion testimony from Mr. Tierney:

a. Plaintiff has a "brain injury." Depo, p. 30.

b. Plaintiff is "clearly disabled." Depo, p. 86. However, he is not "severely work disabled." Depo, p. 34, 57.

c. The disability Plaintiff suffered in this case limited his ability to perform "work." Depo, p. 23. "[T]he definition for a work-disabled person is a person who has a health problem or disability which either prevents that person from working or which limits that person in terms of the amount of work that person can perform on a job, the kind of work that person can perform on a job or both." Depo, p. 32-33.

d. Because, during his interview, Plaintiff told Mr. Tierney that he could not do "physically-demanding" work, Mr. Tierney found that "it's reasonable to conclude that he's probably not going to be able to do work that's physically demanding." Depo, p. 30. Based on this, Mr. Tierney also concluded

that Plaintiff's future earning capacity was limited to "sedentary"¹ work. Depo, p. 48.

(1) However, Mr. Tierney also testified that there was no medical report that he reviewed in this case that concluded that such a limitation was appropriate for Plaintiff. Depo, p. 69. Moreover, Mr. Tierney did not review the functional capacity evaluation completed by Rodney Chou, M.D., in reaching his opinion. Depo, p. 47.²

e. Had Plaintiff had "no work-related limitations," he "could perform work that would be defined by the United States Department of Labor as requiring above average to average general learning ability." Depo, p. 23, 24-25.

f. Plaintiff "is in what you'd call the average to above range. That's where he is in terms of his general learning ability." Depo, p. 24.

g. "[A] reasonable estimate of this man's earning capacity were he not impaired, were he not injured, is the average for men in Indiana who do the kind of work that you could reasonably expect he'd be able to do. And that figure, interestingly enough, is \$46,678." Depo, p. 25.

h. When asked about fringe benefits, "you have to add to [\$46,678] 23% in fringe benefits because 23% is the average for people in this country . . . which would give you \$57,414." Depo, p. 26.

i. The average income for a "work-disabled man" in Indiana, "if they can perform work requiring average general learning ability that's sedentary

¹ Mr. Tierney explained that work is defined as "sedentary, light, medium, heavy and very heavy." Depo, p. 48. The "sedentary classification" Tierney placed Plaintiff in is the most restrictive job classification. *Id.*

² Dr. Chou concluded that Plaintiff met the profile of an individual with a "5% whole person impairment." See Exhibit "B" attached to the instant Motion.

. . . and what they earn is \$33,851.” Depo, p. 31. “If you add your 23% for fringe benefits you’re going to get a base wage of \$41,636.” Depo, p. 32.

j. The length of time Plaintiff could have been expected to work, had he not been “work-disabled,” from the age of 22 is “35.4 years,” depo, p. 27, or “35.403 years,” depo, p. 28.

k. The average worklife expectancy for a “disabled person” is 13 ½ years. Depo, p. 35. The average worklife expectancy for a “disabled,” but not “severely” disabled person is 27.4 years. Depo, p. 38-39.

l. Plaintiff’s lifetime earnings, without a disability, are \$ 2,032,628. Depo, p. 28.

m. Plaintiff’s “potential earning capacity” over the rest of his life, based on the average disabled person’s earning capacity, is \$560,462. Depo, p. 38. Plaintiff’s potential earning capacity over the rest of his life, assuming he is work-disabled, but not severely work-disabled, is \$ 1,141,784. Depo, p. 39.

n. The difference between Plaintiff’s pre-injury lifetime earnings and the average disabled person’s lifetime earnings is \$1,472,166. Depo, p. 38. The difference between Plaintiff’s pre-injury lifetime earnings and the average disabled, but not severely disabled, person’s lifetime earnings is \$890,844. Depo, p. 39.

o. Plaintiff’s lifetime earnings in Pennsylvania would be greater than this figure. Depo, p. 29.

6. At the Depo, Mr. Tierney also testified as follows:

a. In defining Plaintiff's "earning capacity," "there's about three or four ways you could do it." Depo, p. 23.

b. In determining the Plaintiff's worklife expectancy, there were two ways that it could be determined. Depo, p. 27.

7. The most recent medical record that Mr. Tierney reviewed in reaching his opinions was dated May 25, 1999. Depo, p. 81. Additionally, Mr. Tierney did not speak to medical caregivers involved in Plaintiff's diagnosis and treatment in this case; he only reviewed medical reports provided by Plaintiff's counsel. *Id.*

8. Mr. Tierney's testimony is suspect in many regards including:

- a. Insertion of medical opinions and conclusions;
- b. Lack of qualifications;
- c. Insufficient foundation, causing the testimony to be impermissibly speculative;
- d. Methodology utilized, causing it to be impermissibly speculative;
- e. Use of information that is not supported by the record in rendering his opinions and conclusions; and
- f. Use of irrelevant statistics, figures and conclusions based thereon to the prejudice of Defendant.

WHEREFORE, Defendant, Wade Scott Burkett, respectfully requests:

(i) that the deposition of John P. Tierney be excluded in its entirety. In the alternative to (i), Defendant respectfully requests:

(i)(a) that a Daubert hearing be conducted;

(i)(b) any ruling on the admissibility of the Tierney Deposition be reserved pending the admission of medical evidence;

(ii) all medical opinions expressed by Mr. Tierney be excluded;

(iii) regardless of the court's decision on any of the above-requests, that only the averages for "disabled, but not severely disabled," which Tierney concedes is the proper classification for Plaintiff, be presented to the jury.

Respectfully submitted,
DiBELLA & GEER, P.C.

BY:


EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendant,
WADE SCOTT BURKETT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

COPY

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT, S & S TRUCKING,

Defendants.

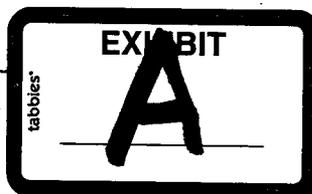
)
) CIVIL DIVISION
)
)
)
) NO.: 00-88-CD

The videotape deposition of JOHN P. TIERNEY, having been called as a witness by the Plaintiff, pursuant to Notice of Deposition, at the office of Vocational Economics, Inc., Three First National Plaza, 70 West Madison Street, Suite 1400, Chicago, Illinois, on Wednesday, March 28, 2001, and commencing at the hour of 10:40 a.m.

This deposition was reported by PAMELA J. BEAUVAIS, CSR, RPR, and duly commissioned officer of the State of Indiana.

KAREN M. PRICE & ASSOCIATES

Computer-Assisted Reporters
7863 Broadway, Suite 118
Merrillville, IN 46410
(219) 756-0702



A P P E A R A N C E S:

1
2
3 FRANK E. TOLBERT, ESQ.
4 Miller, Tolbert, Muehlhausen,
5 Muehlhausen, Groff & Damm
6 Caller Box 7010
7 216 Fourth Street
8 Logansport, IN 46947-7010

9 Appearing on Behalf of the Plaintiff

10 VICKI HUNT MORTIMER, ESQ.
11 Egler, Garrett & Egler
12 2100 Lawyers Building
13 428 Forbes Avenue
14 Pittsburgh, PA 15219

15 Appearing on Behalf Defendants Wade
16 Scott Burkett and S & S Trucking

17 RICHARD J. TRANKOCY, JR., ESQ.
18 Law Offices of Bashline & Hutton
19 Suite 1650, One PPG Place
20 Pittsburgh, PA 15222

21 Appearing on Behalf of Defendants
22 Keith W. Peters and Ecklund Carriers

23 ALSO PRESENT: Joseph Carlin, videographer
24 Lisa Carlin, videographer
25

I N D E X

DEPOSITION OF:

JOHN P. TIERNEY

1 DIRECT EXAMINATION
 2 BY MR. TOLBERT Page 5, 17
 3 VOIR DIRE EXAMINATION
 4 BY MS. MORTIMER Page 13
 5 VOIR DIRE EXAMINATION
 6 BY MR. TRANKOCY Page 15
 7 CROSS-EXAMINATION
 8 BY MS. MORTIMER Page 44
 9 CROSS-EXAMINATION
 10 BY MR. TRANKOCY Page 76
 11 REDIRECT EXAMINATION
 12 BY MR. TOLBERT Page 85, 87
 13 RECROSS-EXAMINATION
 14 BY MR. TRANKOCY Page 86

E X H I B I T I N D E X

<u>Number</u>	<u>Description</u>	<u>Identified</u>
13	Plaintiff's 1 Curriculum Vitae	Page 6
14	Plaintiff's 1A Tierney Evidence Report	Page 10
15	Plaintiff's 2A Tax Documents	Page 20
16	Plaintiff's 2B Neuropsychological Evaluation, Paul J. Roberts, Ph.D., ABPS	Page 21
17	Plaintiff's 2C Neurology Report, Patrick D. Reibold, M.D.	Page 21
18	Plaintiff's 2D School Records and Standardized Test	Page 21
19	Plaintiff's 2E Neurology Report, Lonnie L. Amico, M.D.	Page 21
20	Plaintiff's 2F Radiology Report, Jeffrey Huth, M.D.	Page 21
21	Plaintiff's 2G Report of Thomas J. Curfman, M.D.	Page 21
22	Plaintiff's 2H Clearfield Hospital Emergency Department Record, David A. Brett, D.O.	Page 21
23	Plaintiff's 3 Vocational Economics, Inc. Report	Page 39
24	Plaintiff's 5 Vocational Economics, Inc. Invoices	Page 40

1 THE VIDEOGRAPHER: Okay, let the record reflect we're
2 here to take the videotape deposition of John Tierney in
3 the matter of Charles Matthes, plaintiff versus Keith W.
4 Peters, Ecklund Carriers, Wade Scott Burkett and S & S
5 Trucking, defendant, case number 00-88-CD. Today is March
6 28th, 2001. The time is 10:39:42. We are located at 70
7 West Madison, Chicago, Illinois.

8 Would counsel please identify themselves for the
9 record?

10 MR. TOLBERT: My name is Frank Tolbert. I represent
11 the plaintiff, Charles Matthes, in this case.

12 MR. TRANKOCY: My name is Richard J. Trankocy, Junior
13 and I represent the defendants Mr. Keith W. Peters and
14 Ecklund Carriers, Incorporated.

15 MS. MORTIMER: I'm Vicki Hunt Mortimer. I represent
16 Wade Scott Burkett doing business as S & S Trucking.

17 THE VIDEOGRAPHER: Would the court reporter please
18 swear in the deponent?

19 THE COURT REPORTER: Would you raise your right hand
20 for me please, sir, I'll swear you in? Do you solemnly
21 swear the testimony you are about to give today will be the
22 truth, the whole truth and nothing but the truth, so help
23 you God?

24 THE WITNESS: I do.

25 J O H N P. T I E R N E Y,

1 having been called as a witness by the Plaintiff, being first
2 duly sworn upon his oath, to tell the truth, the whole truth,
3 and nothing but the truth, was examined and deposed as follows:

4 D I R E C T E X A M I N A T I O N

5 BY MR. TOLBERT:

6 Q. Would you state your name, Mr. Tierney, for the Court and
7 for the jury?

8 A. Sure. My name is John P. Tierney.

9 Q. What is your profession?

10 A. I'm a vocational economic analyst.

11 Q. What is that?

12 A. That's a person who assesses an individual's power or
13 capacity to work and to earn money. So typically what I'm
14 looking at as an individual looking at a person as that
15 person is after an injury as opposed to before an injury.
16 It's a person who understands the world of work; in other
17 words, what jobs are out there? What do those jobs require
18 in terms of skill, in terms of background, education? How
19 much of a particular type of work exists in a particular
20 labor market and what's that work likely to pay.

21 A vocational economic analyst is the person who
22 understands the concept of a work disability; in other
23 words, what do you mean when you say that a person is work
24 disabled and how does the fact of being work disabled
25 affect not only what you can earn, but how long you're

1 likely to work over a lifetime.

2 And finally, it's an individual who understands the
3 relationship between wages and interest rates over time.

4 Q. Did you, at my request, prepare a Curriculum Vitae?

5 A. Yes.

6 Q. I'm going to hand you what's been marked for identification
7 as Plaintiff's Exhibit Number 1 to your deposition
8 (handling) and ask you if that is what you prepared for me.

9 A. Yes, it is.

10 Q. And is that current?

11 A. Yes.

12 Q. Would you tell the Court and the jury what training that
13 you did receive in preparation for your profession?

14 A. Well, educationally I have a Bachelor's Degree in
15 Philosophy and Theology from the Gregorian University in
16 Rome, Italy; a Master's Degree in Counseling and Guidance
17 with an emphasis in Vocational Counseling from Spalding
18 University in Louisville, Kentucky.

19 After my Master's Degree I went back to school and got
20 additional graduate credit and took additional course work
21 in Vocational Counseling, Vocational Rehabilitation
22 Counseling, Economics and Finance. I did that work at the
23 University of Louisville, the University of Cincinnati,
24 University of Nevada at Las Vegas and Purdue University.

25 Q. Have you had some work experience after having received

1 this training and would you explain to us what that was?

2 A. Sure. I was the Director of Personnel for the Catholic
3 Archdiocese in Louisville, Kentucky; a Vocational
4 Rehabilitation Counselor with Community Mental Health
5 System in, in Southern Indiana; and then at Louisville,
6 Kentucky where I developed and was in charge of Employee
7 Assistance Programs, those are programs that work with
8 people who have health problems or disabilities which
9 affect their performance on the job. We started some of
10 the first Employee Assistance Programs in the midwest.

11 For 11 years I was the Director of Rehabilitation for
12 the Metropolitan Sewer District in Louisville, Kentucky.
13 As part of that work my job was to work with people who had
14 been injured, tried to get them back to their usual and
15 customary work when that was possible. When it wasn't I
16 tried to find those individuals work in some other type of
17 work that would be compatible with the injuries that they
18 had. But if that wasn't possible I tried to find them work
19 outside of the MSD organization.

20 In addition, from nineteen hundred and eighty-six
21 until nineteen hundred and ninety-two when I no longer had
22 time to devote to it I was under contract with the United
23 States Government as a vocational expert. I would be asked
24 to respond to questions put to me by an administrative law
25 judge regarding injured people. Typically the judge wanted

1 to know whether or not these people could work in my
2 opinion and if so what type of work they could perform.

3 Q. How long would you say you'd practiced your profession in
4 these various positions altogether?

5 A. I'm getting a little age on me now 'cause I've been at it a
6 while. I started probably around nineteen hundred and
7 sixty-five doing vocational rehabilitation kinds of
8 counseling and I did that all the way through nineteen
9 hundred and eighty-eight.

10 Since nineteen hundred and eighty-eight I've been in
11 business for myself with a partner basically doing
12 litigation-related work, the type of work I'll be
13 discussing today.

14 Q. What is that business called?

15 A. It's called Vocational Economics, Incorporated. We started
16 in Louisville, Kentucky. Actually, the business started a
17 long time ago. I bought half of it in nineteen hundred and
18 eighty-seven in December and then we've tried to expand the
19 business, my partner and I, we have offices in about 16
20 cities throughout the country.

21 Q. Have you published either alone or with others as coauthors
22 various works that may be related to what you're to testify
23 about today?

24 A. Yes, I have.

25 Q. Are those all pretty much set forth in your Curriculum

1 Vitae which we have provided?

2 A. Yes, they have -- they are.

3 Q. One of the things that you have authored is Demonstrating
4 Damages in Brain Injury; is that correct?

5 A. Yes.

6 Q. Another is Assessing Work-Related Economic Damages After a
7 Head Injury?

8 A. Right.

9 Q. In addition to your -- the various papers, and there are
10 many, I won't describe them all, you've done -- have you
11 done consulting and teaching?

12 A. Sure. I was on the Associate Faculty at Spalding
13 University in Louisville, Kentucky, at Indiana University
14 Southeast and at the University of Louisville.

15 Q. Was that associated with the field of vocational economics?

16 A. It was counseling and vocational counseling, yes.

17 Q. Okay. And I think you may have previously described that
18 you were a vocational expert with the United States
19 Department of Health and Human Services?

20 A. That's correct.

21 Q. That's the Social Security Administration, Bureau of
22 Hearings and Appeals?

23 A. That's correct.

24 Q. Did you, at my request, prepare what we call an Evidence --
25 what you call an Evidence Report (handing)?

1 A. Yes, at least my office did.

2 Q. Right.

3 A. Okay.

4 Q. I'm going to hand you what's been marked as your Deposition
5 Exhibit 1A and ask you what, what that is (handing).

6 A. It looks like the Evidence Report which is, as I understand
7 it, it's a compilation of either the depositions or the
8 court trials that I've been involved in over about the last
9 five or six years I guess.

10 Q. All right. And would those have included Kentucky,
11 Indiana, Illinois, Tennessee, Louisiana, Florida, West
12 Virginia, Missouri, Colorado, Arizona and Michigan, if
13 that's reported in the reports?

14 A. Yes, I guess they would, yeah.

15 Q. Would the analysis of an occupational disability for an
16 occupationally-disabled person be similar for pre- and
17 post-earning capacity in Pennsylvania to the work that you
18 have done elsewhere?

19 A. Sure. Essentially you're doing the same thing, yeah.

20 Q. Okay.

21 A. And no matter where you do an analysis of earning capacity
22 you're essentially looking at the same things.

23 Q. You have reviewed other matters for me prior to today, I
24 believe?

25 A. Yes.

1 Q. Are you retained by both plaintiff's and defendant firms?

2 A. Yes. We're always retained, or I'm always retained by an
3 attorney. I'd say in 75 to 80 percent of the cases that I
4 do I'd be retained by the attorney representing the
5 plaintiff. In about 20 to 25 percent of the cases I do I'd
6 be retained by the attorney representing the defendant.

7 Q. Mr. Tierney what percent of your time is spent assessing
8 earnings losses?

9 A. Probably about half. I'm a little more, little less, it's
10 tough to say. I have -- as we've discussed I own a
11 business called Vocational Economics. I spend a good bit
12 of my time trying to run that business and then the rest of
13 my time I spend actually providing the service, which is
14 assessing earning capacity.

15 Q. Thank you. Are you deposed frequently?

16 A. Yes, I am.

17 Q. How often would you say that you are requested to render
18 depositions?

19 A. Deposition? Two to three times a week probably.

20 Q. Okay. Have you qualified to express opinions in different
21 locations?

22 A. Yes. Excuse me. I've qualified as both a vocational and
23 economic expert I think in about 15 states and in about
24 five or seven federal jurisdictions. I've always qualified
25 as both a vocational and an economic expert, never failed

1 to qualify as such.

2 Q. You're asked to appear frequently then to discuss your
3 findings in courts?

4 A. Yes.

5 Q. How are you compensated for your services?

6 A. We bill on a flat-fee basis for a report and then we bill
7 on a hourly basis for anything other than the report. That
8 would typically be for any consultation time after the
9 report, for deposition time and for court time. Deposition
10 and court time we bill at \$350 an hour and the other
11 consultation time we bill at a hundred and seventy-five
12 dollars an hour and for a report between I think 2,000 and
13 twenty-five hundred dollars.

14 Q. Do you hold any special certifications?

15 A. I'm certified as employee assistance program counselor
16 which, a certification I got based on my background, my
17 education, my experience and the fact that I've
18 successfully passed a five-hour written examination. As
19 discussed before, I was also under contract with the United
20 States Government as a vocational expert.

21 Q. Did you at my request interview Mr. Charles Matthes in this
22 case?

23 A. Yes.

24 Q. What was --

25 MR. TRANKOCY: Excuse me, we'd like an opportunity to

1 voir dire the witness on his qualifications, if that's okay
2 with you.

3 MR. TOLBERT: Sure.

4 MR. TRANKOCY: Vic, you want to go first?

5 MS. MORTIMER: That's fine.

6 V O I R D I R E E X A M I N A T I O N

7 BY MS. MORTIMER:

8 Q. Mr., Mr. Tierney, I see from your C.V. that -- and as you
9 testified you have graduate study in various areas in
10 your -- such as vocational counseling, research in
11 vocational rehabilitation. I just wanted to know, your
12 C.V. says from September, '74 to December, '76 you were at
13 the University of Louisville doing graduate study in
14 vocational counseling, group dynamics and research; is that
15 correct?

16 A. Right.

17 Q. Did you receive any kind of degree from that program?

18 A. No.

19 Q. Okay. Could you -- do you remember about how many classes
20 you took?

21 A. Lots of 'em. In those days those classes were two,
22 two-credit courses rather than three so I think I had about
23 23 hours over that period of time so you do the math.
24 Those -- I had about 10 or 12 classes, something like
25 that. There was a couple of 'em that were three-credit,

1 most of 'em were two.

2 Q. Okay. And when you were at the University of Cincinnati
3 from September, '81 to December of '81, --

4 A. Right.

5 Q. -- in that three-month period, about how many classes did
6 you take there?

7 A. We took -- I took two three-credit courses over that period
8 of time so it was six graduate hours and both of those were
9 in vocational rehabilitation courses.

10 Q. Okay. And did you receive any kind of a degree from that
11 program?

12 A. No. In fact the last degree I received was my Master's
13 Degree at Spalding University and then everything after
14 that was just simply graduate study after a Master's
15 Degree.

16 Q. Okay. Then I see various education that you have is like
17 spring '93, summer '92. Were those basically summer,
18 summer classes that you took?

19 A. Yeah, they were three-credit courses, but in, in some of
20 them in the summertime what they, what they did was they
21 would take a three-credit course and instead of going for a
22 couple of hours over a semester you went for, I think it
23 was almost like nine to five for five full days and they
24 gave you three credits for the course.

25 Q. Okay. And did you -- so you didn't receive any degrees

1 from any of these other programs?

2 A. No.

3 Q. Okay. You have no degrees in economics; is that correct?

4 A. Correct.

5 Q. Are you a certified rehabilitation counselor?

6 A. No. No.

7 Q. Are you, are you a certified case manager?

8 A. No.

9 MS. MORTIMER: I have no other questions.

10 V O I R D I R E E X A M I N A T I O N

11 BY MR. TRANKOCY:

12 Q. Mr. Tierney, you had testified that you perform
13 approximately 80 percent of your work for plaintiffs
14 presently and 20 percent for defendants?

15 A. Seventy-five to eighty, right.

16 Q. Oh, okay. And has that been consistent since you opened --
17 opened up for business in 1988?

18 A. I'd say so, yeah, um . . .

19 Q. And you testified that at some point you were under
20 contract with the United States Government do Social
21 Security disability work?

22 A. Right.

23 Q. Are you presently under contract with the U.S. Government
24 to do that?

25 A. No, I gave it up about 1992. I just really didn't have

1 time. They were calling me and I wasn't able to, to be
2 there so I resigned.

3 Q. Do you work for any county agencies or state agencies
4 presently to help place, actually place people with
5 disabilities?

6 A. No. I haven't done that type of work probably since 1988.

7 Q. And that's when you started the -- or became associated
8 with Vocational Economics, Incorporated?

9 A. Well, no. I had done some work -- Vocational Economics was
10 started by my partner probably back in the seventies and he
11 was a university professor at the time and, and I did some
12 work for him in the early eighties. At that time
13 Vocational Economics was doing rehabilitation counseling,
14 job placement, we ran job clubs for about three years and
15 did some, and some, just some basic rehabilitation
16 counseling and placements kind of work.

17 And then gradually in the mid eighties I started doing
18 some litigation-related work and then began doing that full
19 time at the end of the eighties.

20 Q. So would it be a fair statement that since about 1989 you
21 have worked exclusively in Vocational Economics, Inc. in
22 terms of litigation?

23 A. That's correct, yeah, 100 percent.

24 Q. That's where you show up in court and testify for the
25 plaintiff or the defendant?

1 A. Right.

2 Q. More times for the plaintiff than for the defendant?

3 A. Correct.

4 Q. And have you testified in the Court of Common Pleas of
5 Clearfield County, Pennsylvania at any point in your
6 tenure?

7 A. I don't know. If you could tell me where Clearfield is --
8 I've testified in Pennsylvania two or three times over the
9 years or more, but --

10 Q. In the central part of Pennsylvania?

11 A. I don't know. I know I've testified in Pennsylvania, but I
12 don't know if I've testified in Clearfield.

13 Q. Do you have any teaching positions at any universities or
14 colleges?

15 A. Not now, no.

16 Q. Have you taught at any colleges or university since 1988?

17 A. No.

18 MR. TRANKOCY: All right, that's all I have. Thank
19 you, sir.

20 THE WITNESS: Sure.

21 FURTHER DIRECT EXAMINATION

22 BY MR. TOLBERT:

23 Q. Earlier I think I started the question to you about your
24 interview of Charles Matthes --

25 A. Right.

1 Q. -- and I don't remember whether you answered that or were
2 able to or not. No, you didn't answer.

3 A. Sure, I did an interview of Charles Matthes.

4 Q. What was the purpose of your seeing him?

5 A. I interviewed him on July the 14th and I was asked to
6 assess whether or not he had --

7 Q. Would you tell us the year?

8 A. On, of nineteen hundred and ninety-nine.

9 Q. Okay, thank you.

10 A. I was asked to assess whether or not he had sustained a
11 loss of earning capacity as a result of an injury that he
12 sustained on August the 10th, nineteen hundred and
13 ninety-eight.

14 Q. Okay, what pertinent information did you review?

15 A. Well, if you're going to assess a person's earning capacity
16 there are certain things that you need to know. What's the
17 person's age, level of education, previous work experience?
18 That's important if you have what I would call a mature
19 worker. For a younger person it's not particularly
20 relevant.

21 If there's an injury you need to know the work-related
22 effects of the injury; in other words, can the person
23 stand? Can the person bend? Can the person torque? Can
24 they climb, balance, twist? How much weight can they lift.

25 If it's a brain injury you need to know, does it

1 affect focus or concentration, ability to process
2 information, memory, those types of things.

3 So that's essentially what you're looking for. If the
4 person's on any kind of medication; for example, you might
5 want to know that, especially if the person's structural
6 steel worker or driving a school bus, those kinds of
7 things, okay.

8 Q. Okay.

9 A. So that's essentially what you're looking at. In terms of
10 Charles Matthes I found out that he graduated from high
11 school, had --

12 (The deposition was interrupted.)

13 THE WITNESS: Sorry. With regard to Charles Matthes
14 when I saw him he was in college at St. Joe's, Rensselaer.
15 It's Rensselaer, Kentucky -- I mean Rensselaer, Indiana,
16 excuse me, and it's a small Liberal Arts college in
17 northern Indiana and there he was studying Communications,
18 hoping to work in radio and television. He had graduated
19 from high school.

20 On August the 10th, nineteen hundred and ninety-eight
21 he was injured. The injuries were primarily to his head,
22 to his neck and to his back.

23 I discussed with him the kinds of problems that he was
24 having as a result of his injuries. He said that he
25 couldn't stand or sit for prolonged periods of time,

1 couldn't bend repetitively, couldn't lift anything; in
2 other words, he was saying that he would have difficulty
3 doing any kind of physically-demanding work.

4 Talked about the fact that he had been very athletic
5 when he was -- before his accident, wasn't able to do any
6 of that type of thing.

7 He also talked about frequent headaches, difficulty
8 with concentration, focus, difficulty with memory, problems
9 with word finding; in other words, the words on the tip of
10 his tongue, he can't get it out. Said that studying was
11 more difficult for him, he was having problems with Math
12 and he was also having problems with learning things, had
13 to focus and concentrate a lot harder than what he used to
14 have to do.

15 And so that was essentially the, the interview. Took
16 about an hour maybe to an hour and a half.

17 BY MR. TOLBERT: (Continuing)

18 Q. Okay, did you review other information?

19 A. Yes.

20 Q. I'm going to hand you what's been marked for purposes of
21 identification as Exhibits 2A, 2B, 2C, 2D, 2E if I didn't
22 say that, 2F and 2G and 2H and ask you what those are
23 (handling).

24 A. Well, these are his tax records. He had -- he's worked in
25 the past as a fast foods worker and he also worked as an

1 assembler. And so these are some taxes based on some
2 earnings. He has not been employed since his injury and
3 these were jobs that he held as a young man before his
4 injury.

5 This is an neuropsychological evaluation from Dr.
6 Roberts who evaluated him I think three different
7 occasions. At the time I saw Mr. Matthes he was also being
8 seen by Dr. Roberts on a fairly regular basis for
9 counseling.

10 This is a report from a physician Patrick D. Reibold
11 defining his impressions after examining Mr. Matthes.

12 These are school records for Charles Matthes.
13 There's also school records and a, looks like a
14 standardized test that he took in the eighth grade.

15 Have a report from Dr. Amico, A-m-i-c-o, a physician,
16 giving his clinical impressions based -- this report is
17 dated December 9th, nineteen hundred and ninety-eight.

18 A radiology report from Jeffrey Huth, a physician.

19 THE COURT REPORTER: Can you spell that last name for
20 me?

21 THE WITNESS: Sure, that's H-u-t-h.

22 Let's see, a report from Thomas J. Curfman,
23 C-u-r-f-m-a-n, a physician stating his impressions based on
24 an examination.

25 And a report from Dr. David A. Brett, B-r-e-t-t, dated

1 8/10/98.

2 BY MR. TOLBERT: (Continuing)

3 Q. Okay, and would those exhibits, and I think in the order in
4 which you reviewed them, they are 2A, B, C, D, E, F, G and
5 H, --

6 A. Right.

7 Q. -- are those the records that you received and information
8 you reviewed in connection with the assessment that you
9 made?

10 A. That's correct, they are.

11 Q. Okay, thank you. Why would you review this information?
12 How does it assist you in, in connection with the
13 assessment which you were to make?

14 A. The taxes aren't relevant at all because he's a young man
15 and what he earned at 19 or 20 years old is not
16 particularly relevant in terms of defining his lifetime
17 earning capacity.

18 The medical records just tell you the kind of injury
19 that he has and the problems that he's experiencing and
20 they're fairly consistent with, with what he's saying about
21 himself.

22 The neuropsychological evaluation, the psychologist's
23 report, neuropsychologist's report will tell you the, the
24 problems that he's experiencing as a result of his brain
25 injury, there's a diagnosis in there and the kinds of

1 problems that he's having as a result of his -- the injury
2 to his head.

3 Q. Are these injuries related to his ability to perform work?

4 A. Oh sure.

5 Q. That's why they're relevant to you --

6 A. That's correct.

7 Q. -- in your connection? Taking into consideration his
8 stated age, I think you said his date of birth was January
9 10th of '78, and his education prior to the time you saw
10 him and his work experience, tell the jury what type of
11 work Charles Matthes would be capable of performing had he
12 had no work-related limitations.

13 A. He could perform work that would be defined by the United
14 States Department of Labor as requiring above average to
15 average general learning ability. Yeah, that sounds like a
16 very --

17 Q. Very generic.

18 A. -- very, very, broad way of, of defining his earning
19 capacity so let me explain a little bit, if I may. This is
20 a young man and you're trying to define his earning
21 capacity. There's about three or four ways you could do
22 it. You could just simply say hey, he's young enough that
23 you can just look at the average for men in the United
24 States, what do they typically earn, that's one way of
25 doing it.

1 The other way would be to say, well, he's in college.
2 Let's assume that he graduated from college. What do male
3 college graduates typically earn when they work.

4 Or you could say, well, let's look at jobs. Now this
5 kid had a SAT scores of ten fifty. I've got lots of kids,
6 if I had one that had ten fifty I'd be happy as a clam.
7 Ten fifty is in the average range, okay, but it's in the
8 average range for college-bound kids, okay. If you look at
9 his grade school and, and his high school grades they're up
10 and down and he didn't cover himself with glory in grade
11 school. It wasn't bad, but it wasn't great. But if you
12 look at his standardized test scores then you see that like
13 when they, when they're talking about total battery he's in
14 about the 70th or 80th percentile, okay, which means that
15 he's in the upper third at least, (indicating) okay.

16 So you have a young man who is in what you'd call the
17 average to above average range. That's where he is in
18 terms of his general learning ability. Now why is that
19 important? Because the government classifies work in terms
20 of general learning ability. Some jobs require a general
21 learning ability in the top 10 percent (indicating). Some
22 jobs top third, but not the top 10 percent (indicating).
23 Some in the middle third, some in the bottom third, okay
24 (indicating). This kid, you know, if you look at him and
25 if you were to assess what kind of work could he do, it

1 would be work that required average to above average, that
2 pool of jobs, okay (indicating).

3 Q. Okay.

4 A. So if you go through and you select those jobs out of
5 twelve thousand, I think, eight hundred and forty that are
6 defined by the government, so you just go through and you
7 take out all the ones that require above average to average
8 general learning ability, don't look at any of the ones
9 that require below average general learning ability and
10 don't look at any that are in the top 10 percent, okay.

11 So you're taking the average to above average, take
12 that group, select all those jobs and then see what men who
13 are not work disabled (indicating) in Indiana typically
14 earn. So what you're really saying is a reasonable
15 estimate of this man's earning capacity were he not
16 impaired, were he not injured, is the average for men in
17 Indiana who do the kind of work that you could reasonably
18 expect he'd be able to do. And that figure, interestingly
19 enough, is \$46,678. So that men in Indiana who perform
20 work requiring average to above average general learning
21 ability, those men, that group, the average for that group
22 is \$46,678. So that's a reasonable estimate of his earning
23 capacity had he not been hurt.

24 Q. Are fringe benefits useful?

25 A. Yeah, you need to consider those because you're talking

1 about earning capacity and you're compensated for your
2 earning capacity. That compensation typically takes two
3 forms, it takes your salary and then it takes the fringe
4 benefits that you get. In fact, over the years many groups
5 of people have sacrificed wages to get the fringe benefits.
6 So that the \$46,678 is the average wage and then you have
7 to add to that 23 percent in fringe benefits because 23
8 percent is the average for people in this country; in other
9 words, the average person walking on the street, for every
10 dollar he or she earns in wages you get an additional
11 twenty-three cents in fringe benefits.

12 Q. Okay. And so what would be your pre-injury earning
13 capacity then based upon his earnings as you've described
14 and the fringe benefits that you've described?

15 A. It would be \$46,678 plus 23 percent in fringe benefits
16 which would give you \$57,414.

17 Q. And do you work -- are you concerned with his worklife
18 expectancy?

19 A. Well, yes because what you're trying to define is his
20 earning capacity. If you think about it earning capacity
21 is a concept that asks two questions. It asks, what can a
22 person earn when that person works? But it also asks, how
23 long is a person likely to work over a lifetime? Okay.
24 Now when you're looking at the issue of earning capacity
25 you're looking into the future and you're trying to say,

1 how long will a person work in the future? Well, there are
2 only two ways you can do it. You can look at or you can
3 make an assumption, say that he would have stopped working
4 at a certain age and worked until he got Social Security
5 retirement. For him he'd have to be, to get full benefits
6 under the new regulations, he'd have to be 67. So he
7 starts work let's say at 22 years old, he works to age
8 sixty -- 67. That's one way to do it, okay.

9 The other way to do it would be just to look at the
10 average, how long people who are not work disabled, how
11 long men who are not work disabled typically work. Now
12 that's what I did. I took the average. And I took an
13 average -- usually you take a, a, an education-specific
14 average; in other words, you can look at the average by
15 education, less than high school, high school, some
16 college, 16 or more years of college, okay. I took the
17 average for all men because I don't know how far he's gonna
18 go in school. Now if I took a college estimate it would be
19 greater, but I took the average for all men. And the
20 average for all men who are not work disabled is 35.4
21 years. Okay, so the best estimate of how long he's going
22 to work is how long men typically work if they're not work
23 disabled from age 22.

24 Q. Okay. And with that assumption of pre-injury worklife
25 expectancy of 35.4 years --

1 A. Right.

2 Q. -- can you arrive at a figure for his lifetime earning
3 capacity?

4 A. And there's two ways to do that, you can do it
5 statistically or you can just do it real simply, age --
6 wages rather plus fringe benefits, multiply by how long
7 he's gonna work. Okay, so if you take his wages, \$46,678,
8 add the fringe benefits you get to \$57,414 and multiply
9 that by the statistical worklife expectancy, which is
10 35.403, if you want to get real technical, the lifetime
11 earnings are two million thirty-two thousand six hundred
12 and twenty-eight dollars.

13 Q. Now the first year out of school or in his work had he not
14 been injured he might not have made \$46,678.

15 A. That's an average, okay. There's something that they call
16 an age earning cycle where you can plot earnings by age all
17 the way out (indicating). If you think about that, if you
18 take all those earnings and you compress them into one
19 number what you have is an average so that obviously when
20 he starts out he's gonna be below the average and then as
21 he gets more productive he'll exceed the average, okay
22 (indicating). But the average earnings for men who do the
23 kind of work that you could expect him to do is
24 reasonable.

25 Q. Is that based on Indiana data that you've made this

1 calculation?

2 A. It's based on, it's based on Department of Commerce data
3 and which is adjusted for the State of Indiana.

4 Q. Okay. If you were to do that same calculation for
5 Pennsylvania would it be more or less?

6 A. It would be more because the --

7 MR. TRANKOCY: Let me object to the question because
8 the state of -- or rather the Commonwealth of Pennsylvania
9 is not the proper situs that the calculation should be
10 made, there's no evidence that he will work in Pennsylvania
11 so I'm just gonna ask that the objection be placed on the
12 record and move to strike any response to questioning about
13 the Commonwealth of Pennsylvania.

14 You can go ahead.

15 MS. MORTIMER: I join in the objection.

16 MR. TOLBERT: You may answer.

17 THE WITNESS: The ratio of Pennsylvania earnings to
18 the national is greater than Indiana so the numbers would
19 be higher.

20 MR. TOLBERT: Thank you.

21 BY MR. TOLBERT: (Continuing)

22 Q. I didn't ask you to make that calculation, did I?

23 A. That's correct, you did not.

24 Q. Okay. Now I would like for you to consider Charles' age
25 and education and prior work experience and the

1 work-related vocational limitations that exist for him and
2 state to the jury the type of work that Charles Matthes is
3 capable of performing post-injury presently.

4 A. Okay. First of all, he has problems with his neck and his
5 back. In my interview with him he talked about an
6 inability to do physically-demanding work. He talked about
7 problems with prolonged standing, bending, all those types
8 of things. And so over his lifetime it's reasonable to
9 conclude that he's probably not going to be able to do work
10 that's physically demanding. If you look at the medical
11 information, if you look at just about everything that's
12 there he's probably not gonna be able to do
13 physically-demanding work.

14 The other thing that's important is that he has brain
15 injury and he has the -- some problems as a result of that
16 injury. Doesn't mean that, that he can't; for example, do
17 college work, that he can't process information, that he
18 can't remember things. It's, it's like the computer works,
19 but it's just not as quick, it's just not as accurate, it's
20 just not as fast and its memory isn't quite as good, okay.

21 MS. MORTIMER: Let me just object to any opinion of
22 Mr. Tierney as to medical conclusions as to brain damage or
23 that sort of diagnosis on his part. That calls for a
24 medical opinion.

25 MR. TRANKOCY: Absolutely, Judge Reilly. I would also

1 note that the gentleman is not qualified as a medical
2 doctor nor was he -- nor does his credentials support any
3 opinions in that area so I would ask the Court to strike
4 any testimony relative to this line of questioning.

5 THE WITNESS: Okay. If you look at the
6 neuropsychological evaluations they talked about certain
7 kinds of problems that he has and those problems would
8 place him in the average range in terms of general learning
9 ability.

10 BY MR. TOLBERT: (Continuing)

11 Q. As opposed to his pre-injury condition?

12 A. Above average to average, okay.

13 Q. Mm-hmm.

14 A. So that if he's in the average range in terms of general
15 learning ability, but he's restricted to sedentary work
16 then what you want to look at is what do work-disabled men
17 typically earn when they work year-round in the State of
18 Indiana, if they can perform work requiring average general
19 learning ability that's sedentary, okay, because that's a
20 reasonable estimate of his earning capacity now and what
21 they earn is \$33,851.

22 Q. And how did you arrive at that figure?

23 A. Simply the same way, went through, looked at all those jobs
24 that require average general learning ability that are
25 sedentary and then looked at what those men make in the

1 State of Indiana and the average for that group is 33,851.
2 If you add your 23 percent for fringe benefits you're going
3 to get a base wage of \$41,636.

4 Now for clarification, if you look at data that's been
5 collected by, by the Department of Commerce since 1980 the
6 Department of Commerce looks at the earnings of people who
7 work full time. They look at those earnings in terms of
8 men and women and they look at all persons and then they
9 break them out according to your level of education. What
10 they find is that if you're work disabled, even if you work
11 year-round, full time and if they compare you with people
12 like you who don't meet the definition of work disability
13 the work-disabled group typically earns less. And when you
14 look at the numbers, when you just break out the numbers
15 that's what's happened in this case, okay.

16 Q. That's a statistic that is based upon published data?

17 A. That's, that's a statistic that's based on published data.
18 That's also, at least it's something that intuitively I was
19 aware of before I started lookin at that data because I had
20 been in rehabilitation counseling for 25 years. But if you
21 look at the data the data's very, very clear. If you're
22 work disabled -- and by the way, the definition for a
23 work-disabled person is a person who has a health problem
24 or disability which either prevents that person from
25 working or which limits that person in terms of the amount

1 of work that person can perform on a job, the kind of work
2 that person can perform on a job or both. If that person
3 meets that definition that person would be classified as
4 work disabled.

5 Q. Does Charles meet that definition?

6 A. Clearly he does, okay, from -- clearly he does. The, the
7 issue then becomes if he, he's -- meets that definition
8 then when you look at groups to see what's -- if you're
9 giving testimony in the future, especially for a young
10 person, only God knows what's gonna happen to that person.
11 What you're left with is trying to look at what happens to
12 the group that's most like that person, what typically
13 happens to those people 'cause that's what's most likely to
14 happen to him, okay. Before, had he not been hurt, he
15 would have been like a nonwork-disabled person. Now he's
16 like a work-disabled person. And one of the things that
17 happens to work-disabled people is when they work they
18 typically earn less than people like them who are not work
19 disabled even though they're working full time.

20 Q. Were those people in the group that you've just described
21 likely to work as many years?

22 A. No.

23 Q. Is there published data with respect to that?

24 A. Same data looks at the likelihood of work, what are the
25 odds that you're gonna work, okay. What are the odds that

1 you're gonna work? And the government looks at people who
2 are not work disabled. They look at people who are work
3 disabled, everybody who's work disabled. Then they break
4 that out, they look at people who are severely work
5 disabled and they look at people who are not severely work
6 disabled.

7 And so you can get an average for nonwork-disabled
8 people which is what we used, 35.4 years is the average for
9 ncnwork-disabled persons, okay.

10 You can get an average for severely work-disabled
11 people, but Charles isn't severely work disabled because
12 most of those people have catastrophic injuries.

13 MR. TRANKOCY: What was that? I didn't hear that, Mr.
14 Tierney.

15 THE WITNESS: The government classifies work-disabled
16 people in three ways, those who are severely disabled,
17 those who are not severely disabled and the average for the
18 group as a whole, okay.

19 MS. MORTIMER: Can I just make an objection on the
20 record? We've had a lot of discussion regarding published
21 government statistics and I'll just object to that as
22 hearsay and without proper foundation for this witness to,
23 to base his opinion on.

24 BY MR. TOLBERT: (Continuing)

25 Q. Is that the type of, of published data which you commonly

1 rely in your profession?

2 A. Yes. The data is taken from the current population
3 surveys, the March supplement of the current population
4 surveys. The data I used is a six-year, weighted average
5 taken from the current population surveys, the March
6 supplement where the government looks at both the earnings
7 of work-disabled persons and looks at what they call the
8 probability of work, the participation in employment rates
9 of work-disabled persons.

10 Those participation in employment rates are in fact
11 the building blocks, if you will, by which you calculate in
12 years how long a person will work (indicating) so that in
13 the back of the report that I sent you you'll see some
14 statistics and those statistics with the sources cited,
15 okay, are the statistics that I used. Those statistics are
16 from the United States Department of Commerce, Bureau of
17 the Census and they're six-year, weighted averages.

18 Q. Okay.

19 A. And what the government is looking at is how likely are you
20 to work if you're work disabled as opposed to if you were
21 not. That's, that's really the issue.

22 Q. And assuming that Charles was an average disabled person
23 what is the worklife expectancy which he would have for,
24 for average disabled person?

25 A. Thirteen and a half years.

1 Q. And that, again, is published data in the Department of
2 Commerce?

3 A. Well, the participation in employment rates are published
4 okay. The calculation of the number of years, that's a,
5 that's a calculation that you have to make, (indicating)
6 it's a, a -- it's called a worklife expectancy. The model
7 that I used is called the LPE model which is the Life
8 Participation Employment model. There's another model
9 that's often used, it's called the Markhoff Process model.
10 Both are, are commonly-used models for calculating a
11 worklife expectancy.

12 Q. There is some risk that even a, say, a 22-year-old will not
13 live another year. Is that true?

14 A. That's correct.

15 Q. So part of your calculation is done as the probabilities of
16 life?

17 A. That's right.

18 Q. It's possible statistically 22-year-olds, that some small
19 percentage won't live another year.

20 A. That's right, that's right. So if you look at this data,
21 for example, a person who's 22 years old has a 99.7 chance
22 of living to his 23rd birthday. A person who is 22 years
23 old has a 54 percent chance of living to age 74 -- through
24 age 74, to his 75th birthday, and that's what these
25 statistics allow you to do.

1 Q. Okay, and then the, then the second column that you just
2 described in the probabilities of life is problem, problems
3 of --

4 A. A probability of, of being employed. There's a probability
5 of being in the labor force as opposed to out of it and the
6 probability that you actually have a job, okay.

7 Q. Okay.

8 A. So what that tells you, at 22 years old the average male
9 at -- if he's not work disabled has a 57.9 percent chance
10 of having a job.

11 Q. But if he is work disabled?

12 A. If he's not severely work disabled he has a 53.8 percent
13 chance of having a job.

14 THE COURT REPORTER: I'm sorry, if he's not severely
15 work disabled --

16 THE WITNESS: He has a 53.8 percent chance of not
17 having a job and if he's like the average disabled person
18 he has a 32.1 percent chance of having a job.

19 BY MR. TOLBERT: (Continuing)

20 Q. And then with those calculations you, you obtain a
21 probability of work life?

22 A. Which is just the probability that he'll be alive and
23 employed. And so the likelihood that he'd be working at
24 age 22 as a nondisabled person would be . -- 57.7 percent
25 and 32 percent if he's like the average disabled person, 53

1 percent if he's like the average not-severely-disabled
2 person.

3 And what you do is you take those probabilities and
4 you simply add 'em up and that's how you get a worklife
5 expectancy. Parenthetically, if you took these
6 probabilities of life, ran the numbers all the way through
7 age 99 and added 'em up that would be his life expectancy
8 from age 22.

9 Q. So if, in this case if he was -- fell in the category of
10 average disabled what would be his potential earning
11 capacity --

12 A. Over the rest of his life --

13 Q. -- over the rest of his life?

14 A. -- the earnings would be \$560,462 and that's just simply,
15 again, simple formula, wages plus fringe benefits times
16 worklife and if you take his wages of \$33,851, add to them
17 fringe benefits -- excuse me -- at 23 percent you got a
18 basic package, wages and fringe benefits, of \$41,636. If
19 you multiply that by the 13.461 worklife expectancy, or
20 13.5 years, you're gonna get \$560,462.

21 Q. And the difference between his pre-injury, lifetime
22 earnings and his post average would be one million four
23 seventy-two one six six; is that it?

24 A. That's right, that's correct.

25 Q. And if you assume that he is in the category of disabled

1 but not severely . . .

2 A. You go through the same process except now the worklife
3 expectancy is not thirteen and a half years, it's 27,
4 almost 27 and a half, 27.4. And so if you do the same
5 calculation you're going to come up with an earnings
6 estimate after injury as a work-disabled person of -- let
7 me get it here. Oh, come to papa. Here we go. Here we
8 go -- of one million one hundred and forty-one thousand
9 seven hundred and eighty-four dollars.

10 Q. That would be his earning capacity if he came within that
11 category?

12 A. If he's, if he's defined as not severely disabled. And the
13 loss of earnings as a result under that assumption is \$890,
14 844. Excuse me.

15 Q. Is the methodology you used in arriving at your opinions
16 the methodology which is commonly accepted in your field,
17 in the vocational economic community?

18 A. Yes.

19 Q. And it's relied upon by your peers?

20 A. Sure.

21 Q. Your Deposition Exhibit 3 is the report which you've been
22 talking about that you've made as a result of your
23 interview and the information upon which you relied
24 (handing).

25 A. That's right.

1 Q. Mr. Tierney, I'm going to hand you what's been marked for
2 purposes of identification as Plaintiff's Exhibit Number 5
3 (handing) and ask you if -- what that is.

4 A. It's my bill.

5 Q. All right. Okay, and all right, my office --

6 A. Or bills plurally.

7 Q. Bills plurally, and my office has run a tape on those.

8 MS. MORTIMER: Okay, let me just object to the, to the
9 bills as hearsay and to the admissibility of the amount of
10 money that was paid to Mr. Tierney if this is being
11 introduced to -- as some kind of reimbursable cost by the
12 plaintiff.

13 MR. TRANKOCY: Right. Judge Reilly, I would join in
14 the objection. Litigation costs were experts in the
15 commonwealth of Pennsylvania should not be boardable to the
16 jury and I would move to strike Exhibit 5 if it's going to
17 be offered.

18 MS. MORTIMER: I join.

19 BY MR. TOLBERT: (Continuing)

20 Q. Are you familiar with the customary charges for the
21 performance of vocational economic assessments in the
22 Chicago community?

23 A. Reasonably, yes.

24 Q. In your opinion are the charges which you have identified
25 as -- what is the total?

1 A. Twenty-eight hundred and six dollars and twenty-five
2 cents.

3 Q. Are the charges which you have identified, are they
4 reasonable and appropriate for the services which you have
5 rendered?

6 A. Yes.

7 MR. TOLBERT: Cross-examination.

8 MS. MORTIMER: Can we go off the record and take a
9 look at his file?

10 MR. TOLBERT: Sure.

11 THE VIDEOGRAPHER: The time is 11:28:10 and we are now
12 off the record.

13 (A short break was taken.)

14 THE VIDEOGRAPHER: 11:47:41, we're back on the
15 record.

16 MR. TOLBERT: Charles Matthes offers Plaintiff's
17 Deposition Exhibits 1 through -- 1, 2, 3 and 5 and all of
18 the subdivisions of 2A, through H or whatever I've
19 identified.

20 MS. MORTIMER: Okay, I object to the exhibits as
21 hearsay and I think we've already made the objections
22 regarding the admissibility of the bills, whatever exhibit
23 that was.

24 MR. TRANKOCY: On behalf of defendant Ecklund and Mr.
25 Peters I would object to Tierney Deposition Exhibit 2B as

1 this is an attempt to submit inadmissible medical hearsay
2 to the jury and I would move to strike Tierney Deposition
3 Exhibit 2B based on the attempt to present inadmissible
4 hearsay to the jury based on Dr. Paul J. Roberts' 11-page
5 report.

6 I also object to Tierney deposition --

7 MR. TOLBERT: Five, the bill?

8 MR. TRANKOCY: May I just see this, please?

9 MR. TOLBERT: No problem (handing).

10 MR. TRANKOCY: Okay, thank you. Judge Reilly, I also
11 would object to Tierney Exhibit 2C, again, on the basis
12 that it is an attempt to put in inadmissible medical
13 hearsay in front of the Court and jury. Dr. Patrick D.
14 Reibold's [sic] deposition was not taken and the witness
15 today is not qualified in the medical field. Based on
16 those reasons I would move to strike Tierney Deposition
17 Exhibit 2C.

18 I also object to Tierney Exhibit 2E. This is, again,
19 an attempt to place inadmissible hearsay in front of the
20 Court and jury. Dr. Lonnie, L-o-n-n-i-e, middle initial L.
21 Amico, A-m-i-c-o's deposition was never taken and the
22 doctor's two-page report is hearsay and I would move to
23 strike based on that objection.

24 I also object to Tierney Deposition Exhibit 2F and 2G
25 based on the reason that this is, again, medical evidence

1 that is inadmissible hearsay since Dr. Jeffrey H-u-t-h of
2 the Pulaski Memorial Hospital was not deposed and the
3 radiology report was not authenticated and it is hearsay.

4 MS. MORTIMER: For the record that's Dr. Huth,
5 H-u-t-h.

6 MR. TRANKOCY: Right. And as to Deposition Exhibit 2G
7 I would make the objection that this is an attempt, again,
8 to have inadmissible hearsay admitted since Dr. Thomas J.
9 Curfman, C-u-r-f-m-a-n-'s deposition was not taken and his
10 report is therefore inadmissible hearsay.

11 Regarding Deposition Exhibit 2H, the Clearfield
12 Hospital record, I would object to that as being
13 inadmissible hearsay, the grounds being the emergency room
14 doctor or the hospital custodian was not deposed to
15 authenticate the hospital records. I would move to strike
16 on those grounds. And that should be all of the objections
17 I have as to the reports. Judge Reilly, I do object to
18 finally, Tierney Deposition Exhibit --

19 MR. TOLBERT: 5.

20 MR. TRANKOCY: -- 5 based on the fact that the
21 litigation expenses are not boardable and this is clearly
22 an expense that was solicited by the plaintiff's counsel
23 for the case and I would move to strike Tierney Deposition
24 Exhibit 5 based on that line of case law.

25 That would, that would be all of my objections at this

1 point to the exhibits.

2 MS. MORTIMER: And I join in Mr. Trankocy's objections
3 and motions to strike.

4 Okay, Mr. Tierney --

5 THE WITNESS: Yes, ma'am.

6 MS. MORTIMER: -- we've met. I'm Vicki Mortimer. I
7 have some questions for you today.

8 C R O S S - E X A M I N A T I O N

9 BY MS. MORTIMER:

10 Q. First of all, I wanted to ask you, I have a copy of the
11 letter that you and a Mr. Hunton --

12 A. Right.

13 Q. -- wrote to Mr. Tolbert transmitting your report. And I
14 just wanted to ask you, who is Mr. Hunton?

15 A. Stan Hunton is a vocational economic analyst who works out
16 of our Chicago office. He read the report and signed it.
17 We have two people sign every report. Were I
18 incapacitated, or unable to give the testimony he would be
19 available, but the report represents my opinions and
20 conclusions.

21 Q. Okay. It was your opinions and conclusions. Did you
22 prepare the entire report?

23 A. Yes -- well, yes, I did. I had a secretary type it, I'm
24 not much at a keyboard, but it's my report.

25 Q. I wanted to take a look for a minute at, at the -- at your

1 interview with Mr. Matthes and the items that you reviewed
2 in preparation for rendering your opinion in this case.

3 A. Okay.

4 Q. I want to take a look at your interview form --

5 A. Right.

6 Q. -- that was in your file and just ask you, on Page 2 of
7 your interview form it looks to me as though you were
8 writing down his prior work history; is that correct?

9 A. That's right.

10 Q. Okay, and you indicate on this form you have four columns
11 here, one for the job title; is that correct?

12 A. Right.

13 Q. One for the description; is that correct?

14 A. Yes.

15 Q. One for dates; is that correct?

16 A. And one for earnings, right.

17 Q. And one for earnings okay. And you have filled in here
18 restaurant worker, description, the Indiana --

19 A. Indiana Beach.

20 Q. -- Indiana Beach. Okay, there's no dates indicated; is
21 that right?

22 A. Right.

23 Q. So no indication as to how long he worked in that position,
24 correct?

25 A. That's correct.

1 Q. And also there's no indication of earnings; is that right?

2 A. Right.

3 Q. Okay. Then you indicated he was a fast food worker at
4 McDonald's; is that correct?

5 A. Correct.

6 Q. Once again, you don't know the, the dates that he worked;
7 is that correct?

8 A. Right.

9 Q. They're not there, and you also have no indication of
10 earnings; is that correct?

11 A. Right.

12 Q. Then you have noted that he was an assembler at Eaton
13 (phonetic) Corporation; is that correct?

14 A. Yes.

15 Q. Okay, and once again, there was no indication of how long
16 he may have worked there and no indication of his earnings;
17 is that correct?

18 A. Yes.

19 Q. So your report was based on while you knew what prior job
20 titles he had held there was no indication that you had any
21 idea as to how long he actually did that sort of work; is
22 that correct?

23 A. Yes. I, I think so, at least I didn't write it down.

24 Yeah, that's correct, sure.

25 Q. Okay. And then you also listed reported problems, that he

1 can't sit or bend for prolonged periods; is that correct?

2 A. Right.

3 Q. Okay. Did anyone ever give to you a functional capacity
4 evaluation for Mr. Matthes?

5 A. I don't remember seeing a functional capacity evaluation so
6 I don't think so.

7 Q. Okay. And would you agree with me, a functional capacity
8 evaluation is usually filled out by a doctor; is that
9 correct?

10 A. Most of the ones I've seen are by physical therapists or
11 vocational evaluators actually, but whatever. They usually
12 use Cybex machines or some other type of apparatus to test
13 how long you can stand or sit or torque or that type of
14 thing.

15 Q. Okay. And you didn't have the advantage of that prior to
16 doing your report; is that correct?

17 A. Right.

18 Q. Okay. So you, you say in here that he can't sit or stand
19 for prolonged periods; is that correct?

20 A. Yeah, now those -- that's stated under Reported Problems.
21 That means what he told me he could or couldn't do.

22 Q. Okay. So that was his basic subjective complaints to, to
23 you?

24 A. Right.

25 Q. And so you didn't at any time quantify how much he could

1 stand or sit; is that correct?

2 A. No, I didn't do any type of a -- I'm not a physician so I
3 didn't do any type of a physical exam and I didn't do -- I
4 didn't have the functional capacity evaluation and I didn't
5 do anything like that. What I asked him -- what I
6 typically ask people is questions based on the Department
7 of Labor criteria for work; in other words, work is defined
8 as sedentary, light, medium, heavy and very heavy.
9 Basically what he was saying was that he couldn't stand for
10 prolonged periods of time. Light work requires that you're
11 able to stand for six hours out of an eight-hour day five
12 days a week, 50 weeks a year for the foreseeable future.
13 And my sense was that, at least based on what he was saying
14 about himself, he couldn't do that so that would put him in
15 a sedentary classification.

16 Q. Okay. Are -- have you ever seen the report of a Dr. Chou,
17 C-h-o-u?

18 A. Dr. Chou. Um, let me see.

19 MR. TOLBERT: It would have been after your report.

20 THE WITNESS: I think that's --

21 MS. MORTIMER: Okay well, let me just represent to you
22 that at one point Mr. Matthes was evaluated by a Dr. Chou.

23 THE WITNESS: Yeah, was he the one with the five
24 percent permanent impairment rating?

25 MS. MORTIMER: Right.

1 THE WITNESS: Yeah.

2 BY MS. MORTIMER: (Continuing)

3 Q. And Dr. Chou, do you recall that he said that he could lift
4 basically up to 20 pounds? Do you recall that from his
5 report?

6 A. Yeah, that would be consistent with light work

7 Q. Okay, but that would be consistent with light work; is that
8 correct?

9 A. But you have to understand, light work as defined by the
10 Department of Labor says that you have to be able to do a
11 lift, carry, push or pull of up to 10 pounds on a
12 repetitive basis with an occasional lift, carry, push or
13 pull of up to 20 pounds. It also says that light work, the
14 worker has to be able to stand for significant portions of
15 the workday. The Department of Health and Human Services
16 typically interprets that as, and the government typically
17 interprets it as six hours out of an eight-hour day so that
18 besides the lifting requirements, which is really not
19 particularly significant because sedentary work's up to 10
20 pounds, the real significance in the difference between
21 light and sedentary work is the standing requirement. And
22 you have to be able to stand for six hours out of an
23 eight-hour day to do light work.

24 Q. Okay. And it also indicates here that you, you reviewed
25 certain information that you -- that his tax records, the

1 neuropsychological evaluation from Dr. Roberts?

2 A. Right.

3 Q. And, and et cetera.

4 A. Right.

5 Q. It also said that you looked at his school records?

6 A. Correct.

7 Q. Okay.

8 MS. MORTIMER: If I could get your Exhibit 2D I think
9 was the school records.

10 (Mr. Tolbert handed a document to Ms. Mortimer.)

11 BY MS. MORTIMER: (Continuing)

12 Q. It looks to me as though you reviewed his -- you had
13 available to you his High School Attendance and Scholarship
14 Record; is that correct?

15 A. Yes, I had those.

16 Q. Okay. And you would agree with me that, you know, he's
17 taking various subjects like Algebra and year 1992 to 1993
18 he made a D plus and an F --

19 A. The rascal, he did.

20 Q. -- in Algebra; is that correct?

21 A. That's correct.

22 Q. Okay. He made Bs and Cs in Biology, Choral Choir, that
23 sort of thing?

24 A. Mm-hmm.

25 Q. Okay. In his next year he's basically making Fs in Algebra

1 and Chemistry, B minuses in German and then the second
2 semester he withdrew; is that correct? And that was due to
3 a death in the family; is that correct, to the best of your
4 knowledge?

5 A. Yes.

6 Q. Okay. During the next year, '94 to '95, he's making Cs and
7 Ds basically --

8 A. Right.

9 Q. -- with an occasional B; is that correct?

10 A. That's right.

11 Q. In his last year of school he's making basically Cs and Ds;
12 would you agree?

13 A. Yes.

14 Q. In fact he gets As in Nutrition slash Foods, --

15 A. Right.

16 Q. -- makes a B in Psychology/Sociology; is that correct?

17 A. Right.

18 Q. Okay. And apparently he took a summer class in English and
19 got a B in that; is that right?

20 A. Yes.

21 Q. Now his rank in class was, was what?

22 A. Seventy-six out of a hundred and one.

23 Q. So you would agree with me that he graduated in -- you say
24 a hundred, he graduated in the lowest 25 percent of his
25 class; that correct?

- 1 A. Yes.
- 2 Q. And in your report, if I'm not mistaken, on Page 4 --
- 3 A. Okay.
- 4 Q. -- part of your calculations are based on the general
5 learning ability --
- 6 A. Right.
- 7 Q. -- of the subjects; --
- 8 A. Right.
- 9 Q. -- is that correct?
- 10 A. That's correct.
- 11 Q. And on Page 4 of your report you will agree with me it said
12 that one of the, one of the aptitudes that you look at, as
13 we've discussed, is intellectual attributes which is his
14 potential or capacity to learn, correct?
- 15 A. Yes.
- 16 Q. Okay. And then you will agree with me the last sentence
17 says, "The aptitude is closely related to doing well in
18 school"; --
- 19 A. Right.
- 20 Q. -- is that correct? But you will agree with me that
21 graduating seventy-sixth out of a hundred and one is not
22 particularly doing well in school; is that correct?
- 23 A. Not at all, but in order to clarify that, because if you
24 just looked at his grades, you know, you'd probably
25 conclude he's in the bottom 25 percent as you did, okay.

1 But if you look at his standardized test scores which are
2 significant because they're measuring him on a percentile,
3 national percentile, this kid's coming out in the
4 seventieth or the eightieth percentile on the total
5 battery. And if you look at after high school he took the
6 SATs which are not easy and he scored in a ten fifty and if
7 you look at -- there's something I was just looking at here
8 just a second ago -- by the way, here is; for example, in
9 the, in the -- 9.6, he's a freshman -- he's a sophomore.
10 You look here total battery, national, percentile total
11 battery he's in the 82nd percentile, okay. So that means
12 he's in the top 18 percent.

13 Q. Right, but you will agree with me his, his grades are not
14 indicative --

15 A. His grades are not indicative of that, but his standardized
16 test scores are very indicative of his generally learning
17 ability because they're measuring him vis-a-vis the entire
18 population.

19 And secondly --

20 Q. Okay, but his, his SAT scores are not translating into his
21 grades; is that correct? His grades are not consistent
22 with his SAT scores; is that correct?

23 A. Yeah, but what you have is a kid that which is,
24 unfortunately, not atypical, a kid that's reasonably
25 bright, but he's probably not studying real hard in high

1 school or something's goin on in his life that he's not,
2 he's not performing up to his general learning ability, but
3 the general learning ability is there because if you look
4 at his standardized test scores or if you look at his SAT
5 scores what they're showin you is that he's right around
6 the fiftieth to sixtieth percentile for kids that are goin
7 to college. And the kids that are goin to college are
8 usually in the top third percent nationally, so that's
9 where he is, there's no question about that.

10 Q. Okay. So would you agree with me that that's a trait that
11 you -- is that a trait that you, that you would take into
12 consideration in doing this? Your summary of your report
13 says, if you will agree with me, "Each step in your
14 assessment pertaining to lifetime earning potential is
15 geared to the unique traits and characteristics of the
16 individual"? [sic]

17 A. Yeah, to the degree that you can. You're trying to define
18 the lifetime earning capacity of a 20-year-old or a 21- or
19 22-year-old, so, you know, given that there's a certain
20 amount of, you know, what you're looking at is, is, is
21 general indicators. One would be education. Now if you
22 didn't do it the way I did it look at the earnings for
23 college graduates or people with one to three years of
24 college, something like that, that will give you another
25 predictor.

1 Q. Okay.

2 A. But that, that predictor, general learning ability in the
3 average to above average range is, is right where he was.

4 Q. Okay. Were you ever provided by Mr. Tolbert with his
5 records from Ivy Tech or Purdue North Central?

6 A. I've seen those, yeah. He did -- he either flunked out or
7 I think he -- one of the two. He, he didn't continue there
8 because he wasn't doing very well. Best that he's ever
9 done is at St. Joe's. And the only time that he's ever
10 scored consistent with his -- what you'd say his
11 standardized test scores would be at St., at St. Joe,
12 Rensselaer. So for whatever reason he's, you know, they're
13 able to make him produce or he's just coming to a point in
14 his life where he's, you know, he's probably settling down
15 and getting serious about his grades.

16 Q. Were you -- and you were provided with various records by
17 Mr. Tolbert from St. Joseph's College with regard to his
18 education?

19 A. Right. They first of all, I think, gave him some type of a
20 partial scholarship, then they, then they rescinded that
21 when they saw his, probably what you just brought up, his
22 records from Purdue and Ivy Tech and they, they admitted
23 him on a part-time basis I think and then they said
24 that, that his --

25 Q. Okay, and your understanding of the reason why he was

1 admitted on a part-time basis was what?

2 A. His grades were -- his college course work at Purdue and
3 then Ivy Tech was such that they, they felt that he needed
4 to establish the ability to perform at the required level
5 before they'd admit him as a full-time student.

6 Q. Okay. And, and are you aware that he was put on probation
7 for a second semester at St. Joseph's?

8 A. I think so, yeah, it makes sense. They probably go a whole
9 year. But as far as I understand he's doing reasonably
10 well at St. Joe. He told me; for example, when I talked to
11 him -- let's see here.

12 Q. Okay, so he's -- so you will agree with me that now after
13 --

14 MR. TOLBERT: May he conclude his answer?

15 MS. MORTIMER: Sure.

16 THE WITNESS: Oh, I'm sorry, but yeah, he -- looks
17 like he, at least my notes say, six credits first semester,
18 six credits second semester, took a core course in English
19 and History. Looks like he had Bs, couple of As and a C.

20 BY MS. MORTIMER: (Continuing)

21 Q. Okay. And that was basically after the accident?

22 A. Oh right, yeah, sure.

23 Q. Okay. Now you gave the opinion that Mr. Matthes was
24 occupationally disabled; is that correct?

25 A. Yeah, he's work disabled.

- 1 Q. Or work disabled.
- 2 A. Yeah, it's the same thing.
- 3 Q. Okay. And the definition of that, according to your
4 report, is when a person is limited in terms of the amount
5 or kind of work he or she can do on a job because of a
6 physical or mental impairment?
- 7 A. Right, that's, that's the definition from the Department of
8 Commerce. They also define it as existing if a person has
9 a health problem or disability which either prevents the
10 person from working or limits the person in the amount or
11 kind of work. So the limited in the amount or kind of work
12 as a result of a disability or health problem you're work
13 disabled.
- 14 Q. Okay. So if you're limited to any degree you technically
15 would fit into that definition; is that correct?
- 16 A. If you answer yes to that question; in other words, they
17 survey 50,000 households, 120,000 people, sort of
18 macrosurvey, what they call, it's a large survey and so if
19 the answer to that question is yes then you meet the
20 definition of, of a work disability. There are six other
21 questions that are asked, four of which would classify you
22 as severely work disabled.
- 23 Q. Okay. And you've given the opinion that, that Mr. Matthes
24 is not severely work disabled; is that correct?
- 25 A. Right, correct.

1 Q. You discussed the calculations that were done in this
2 matter --

3 A. Right.

4 Q. -- with regard to, to Mr. Matthes. And I was just looking,
5 under your Vocational Economic Rationale you have a
6 paragraph that says, "When personal injury results in
7 permanent occupational disability, the issue is not whether
8 or not a loss of lifetime earning capacity exists, but
9 rather the question is the amount of reduced earning
10 capacity that will occur as a result of occupational
11 disability"; is that correct?

12 A. Right, yes.

13 Q. Would you agree with me that that -- that that assumes a
14 work disability? And you're only looking at how much the
15 loss is.

16 A. Yeah, what that says is if you meet the -- in other words,
17 there are different government surveys. The Americans with
18 Disabilities Act; for example, is a, is a questionnaire or
19 is a definition that people could answer and they could be
20 disabled, but they might not be work disabled. For
21 example, if any of us, since we're all sedentary workers,
22 were we to lose these three digits on, say, your
23 nondominant hand, okay (indicating) we'd have a permanent
24 impairment and under the Americans with Disabilities Act
25 we'd be disabled, but we wouldn't be work disabled, okay.

1 Now this court reporter would be.

2 So that the definition that I'm looking at, the
3 definition of disability is taken from the current
4 population surveys and they're looking at people who have a
5 work disability, not just a disability, but a work
6 disability. In other words, the disability that they have
7 affects the amount or the kind of work they can perform on
8 a job.

9 Q. Okay. So you would agree with me that if someone can --
10 like you said, we're sedentary workers. So if we would
11 sustain an injury we could still perform the requirements
12 of our jobs, we would not be work disabled; is that
13 correct?

14 A. Well, oh no, if you, if -- for example, he can work,
15 Charles Matthes. I mean, I'm saying he can work. In one
16 estimate I'm saying he can make, you know, thirty something
17 thousand dollars and that he's gonna be, he has lifetime
18 earnings of over a million. So I'm not saying he can't
19 work, I'm just simply saying that he's limited in terms of
20 the amount or kind of work he can perform on a job just as
21 if, you know, God forbid one of us were to sustain some
22 kind of a brain injury it's very high possibility we
23 continue with what we're doin, but we probably wouldn't be
24 as effective or last as long doing it.

25 Q. Okay. So what you're basically saying, if somebody meets

1 the definition of, of work, of work disabled or
2 occupationally disabled they're going to have a loss.

3 A. What you're saying is that if they meet that definition, if
4 the person meets that definition, okay, and if you have to
5 make a decision about what's gonna happen to that person in
6 the future, unless you have some type of divine revelation
7 or something like that you've got to look at what typically
8 happens to people like them. And if you look at
9 work-disabled persons what you find is that they typically
10 earn less when they work and they typically don't work as
11 long over a lifetime no matter how much education they have
12 or whether they're male or female.

13 And so if you're looking at someone like Charles all
14 you're saying is that, if I have to make the call today
15 what happens to work-disabled persons is probably what's
16 gonna happen to him.

17 Q. Okay. And this is based on, you would agree with me,
18 permanent occupational disability; is that correct?

19 A. Right.

20 Q. Okay. The time that you wrote this report based on the
21 records that you reviewed, no one at that particular time
22 had given Mr. Matthes any kind of permanent disability;
23 isn't that correct?

24 A. Right.

25 Q. I wanted to talk about your calculations.

1 A. Okay.

2 Q. Okay. These -- this is something called VALE, the
3 Vocational Assessment of Lost Earnings; --

4 A. Right.

5 Q. -- is that correct?

6 A. It is.

7 Q. Now that was developed by a gentleman by the name of Mr.
8 Gamboa; is that correct?

9 A. Right.

10 Q. Okay. And Mr. Gamboa was or is a partner of your firm; --

11 A. He is.

12 Q. -- is that correct?

13 A. Yes.

14 Q. Now is my understanding correct VALE is based on government
15 statistics; is that correct?

16 A. Yes.

17 Q. Okay. But the VALE program itself, the program that does
18 the calculations was developed by a partner in your firm?

19 A. Correct.

20 Q. Okay. And this is the program that you, you testified in
21 direct that you can go in and select certain jobs; is that
22 correct, out of the job market?

23 A. Well, no the -- it's, it's not particularly out of the job
24 market, it is and it isn't. You look at the -- the
25 Department of Labor has defined 12,840 jobs, specific jobs

1 in terms of the general learning ability, how physically
2 demanding they are, et cetera, okay. So this is simply a
3 spreadsheet which allows you to go in instead of going by
4 hand and going through 12,000 and trying to pull 'em out --

5 Q. Right.

6 A. -- you can kind of go through --

7 Q. The computer goes in --

8 A. -- the computer goes in and pulls them --

9 Q. -- and pulls them out.

10 A. Right.

11 Q. Based on the parameters that you put into the computer; --

12 A. Correct.

13 Q. -- is that correct?

14 A. That's correct.

15 Q. Okay. Now did you have a -- did you develop this system?

16 A. I've helped in some of the revisions of it, but I didn't
17 develop it initially, it's --

18 Q. Okay. So you did not develop it?

19 A. Not initially, no.

20 Q. So you're relying on a computer system, basically a
21 computer program devised by someone else?

22 A. Yeah, but I understand the databases in that system and I
23 know how it works and, I mean, it's simply a spreadsheet
24 that allows you to look at about three different sets of
25 government data.

1 Q. Right. I understand that.

2 A. Yeah.

3 Q. Okay. Let's look at your first calculation which is Mr.
4 Tolbert's pre-injury earning capacity; --

5 A. Okay.

6 Q. -- is that correct?

7 A. Right.

8 Q. Okay. In this scenario, okay, you have the labor market is
9 Indiana; is that correct?

10 A. Right.

11 Q. And his earnings as male?

12 A. Right.

13 Q. Now the labor force is nonspecific. Does that mean it
14 would consider males, females?

15 A. It's looking at all the jobs.

16 Q. Okay.

17 A. So it's not looking at the jobs that are traditionally done
18 by women or men, it's looking at all the jobs and what they
19 pay.

20 Q. And as you discussed previously, now you've, you've asked
21 this machine or you've given, you've given the program a
22 parameter that his general learning ability is equal to the
23 high - highest one third excluding the top 10 percent; is
24 that correct?

25 A. Right.

- 1 Q. And you and I have already discussed the fact that this is
2 for a gentleman who graduated basically in the lower 25
3 percent of his class.
- 4 A. That's correct.
- 5 Q. Now if you look at the figures that -- does the, does the
6 computer come up with the figures that are listed below the
7 parameters that you've put in?
- 8 A. Sure.
- 9 Q. It says, "Labor Market," the "Number Employed," "Percent
10 Employed" and then it says, "With Parameters."
- 11 A. Mm-hmm.
- 12 Q. So am I correct that this is the, the jobs that the
13 computer has selected based on the parameters that you've
14 put in; is that correct?
- 15 A. Yeah, what that tells you is that out of the, out of the
16 labor market that you're looking at 27.9 percent of those
17 jobs are what you call G2, okay?
- 18 Q. Okay.
- 19 A. That's what you're looking at.
- 20 Q. Okay. So would you agree with me then that you've excluded
21 70 percent of the labor market?
- 22 A. Oh sure.
- 23 Q. Okay. Because of, of that parameter?
- 24 A. Right.
- 25 Q. And if you look at how the categories of jobs are broken

1 down, the labor market itself you've got about 23 percent
2 of the population that's employed in managerial and
3 professional specialties?

4 A. Right.

5 Q. Okay. Twenty, about 29 percent in technical sales and
6 administrative support?

7 A. Correct.

8 Q. Okay. Then nine percent for service occupations, two
9 percent in farming and 15 percent in precision, then you've
10 got like 21 percent operators, fabricators and laborers; is
11 that correct?

12 A. Sure, right.

13 Q. Now based on the parameters that you've put into the
14 computer you're getting 16.9 percent of the jobs from the
15 managerial and professional specialty; is that correct?

16 A. Right.

17 Q. And you've got like eight percent in technical sales and
18 administrative support; is that correct?

19 A. Right.

20 Q. And there's one, 1.5 percent or less given to the other
21 occupations; is that correct?

22 A. Correct, sure.

23 Q. And the -- so the managerial and professional specialties,
24 that would include professions like Mr. Tolbert's and ours,
25 attorneys, doctors --

1 A. Lawyers, school teachers.

2 Q. -- lawyers, okay.

3 A. Some very skilled kinds of jobs, but basically
4 professional, basically professional people, yeah, sure.

5 Q. Okay.

6 A. Middle managers, that type of thing.

7 Q. Okay. And, and prior to the time that -- of this accident
8 Mr. Matthes had not had any kind of sustained college
9 education; is that correct? At that point he'd failed out
10 of two colleges and he had done poorly in high school; is
11 that correct?

12 A. Yeah. Well, when I met him, you know, he was at St. Joe's.
13 And so he was demonstrating the capacity, even at St.
14 Joe's, with the problems that he has, okay, to take college
15 courses and to pass them. So there's no question at all
16 about the fact that this kid, if he can, if he can go to
17 St. Joe's and pass those courses and take, you know, 12
18 hours, that he has the capacity to work at that level,
19 there's no question about that.

20 Q. Okay. But of course in the later scenarios, but you've
21 reduced his learning ability, haven't you?

22 A. Now, yeah. In other words, all I'm saying is, you know,
23 all I'm saying is he's not where he would have been had
24 this not happened in terms of his general learning
25 ability. For example, if you were to look at the earnings

1 of male college graduates -- let's assume he finishes
2 college which he very probably will. If you were to look
3 at the earnings of male college graduates to work
4 year-round, full time, okay, now most of those are doin not
5 physically-demanding work and if you would look at those
6 earnings and you're looking at -- and you're comparing male
7 college graduates who work year-round full time, male
8 college graduates who work year-round full time, one group
9 is work disabled, one group isn't, but they both have jobs,
10 they both have college graduates and all the rest of em
11 you're gonna find that the nondisabled group earns \$61,000
12 a year on average and the work-disabled group earns \$49,000
13 on average. So --

14 Q. But -- okay, but let -- but you'll agree with me, prior to
15 the accident you've got a gentleman who hadn't managed to
16 succeed in college --

17 A. Yeah.

18 Q. -- and you've got a parameter of general learning ability
19 equal to high to the highest one-third; is that correct?

20 A. Yeah, and that's, and that's appropriate. And that's what
21 I have, sure.

22 Q. Sure, okay. And so you have more jobs now in the
23 managerial and professional specialty which is gonna
24 include very high-paying jobs like doctors and lawyers --

25 A. But also have it because you've got an average there.

1 Although you have some high and some lows --

2 Q. Sure.

3 A. -- you've got an average there of \$45,000 so we're not
4 talking about orthopedic surgeons or anything.

5 Q. Right, but it's gonna be a higher average, isn't it?

6 A. Yeah, we're talking about \$45,000.

7 Q. But it's gonna be a higher average, isn't it?

8 A. It's gonna be higher than if you, than if you were to
9 select something else, sure, but it's \$45,779 so we're not
10 talking about, you know, people at the high range, the Jack
11 Welshes of the world and things like that.

12 Q. Okay. Then you do a second calculation, VALE calculation
13 which is for his post-injury earning capacity if he's not
14 severely disabled; is that correct?

15 A. Right. Yeah, I just -- well, if we're looking at, if we're
16 looking at earnings all I'm saying is now he's like the
17 average, but he's like the average who's sedentary. Well,
18 actually what I'm saying is --

19 Q. Right. What you've done is you've reduced his learning
20 ability into the medium to high to highest one-third.

21 A. Yeah. I'm taking -- what I'm really doin is I'm saying,
22 okay now -- he was in the top one-third. Now he's -- let's
23 look at the earnings of people in the top one-third, but
24 also in the average group. Let's look at both, okay.
25 Because that's saying general learning ability ranges from

1 medium, middle third to high - highest one-third.

2 Q. Right. You'll agree though that even though he's doing
3 better now you've reduced --

4 A. Oh sure.

5 Q. -- his learning ability; is that correct?

6 A. Right, yeah, did that based on what he said and based on
7 the neuropsychological evaluations.

8 Q. Okay. And I see that you gave him strength equal to
9 sedentary.

10 A. Right.

11 Q. Now would you agree with me that based on what you reviewed
12 that his doctor's report was prior to the time that you did
13 this report nobody had restricted him to sedentary work; is
14 that correct?

15 A. That's correct, that was based on what he's, what's he's
16 saying.

17 Q. That's based on what he told you.

18 A. Yeah. Now, now what I will tell you is had I made that
19 sedentary and light at least, okay --

20 Q. Yes.

21 A. -- then the earning capacity number would be less and the
22 reason is that sedentary jobs at that range typically pay
23 more than light. So if you said he can do sedentary and
24 light work the earning capacity dollar would be less than,
25 that what it is.

1 Q. Even though, you would agree with me, that when you exclude
2 light, light-duty jobs you've excluded a large number?

3 A. You've excluded -- yeah, you're saying the percentage of
4 jobs that he can compete for is less, but they pay more.

5 Q. And you did two post-injury calculations, right, one not
6 severely disabled, and that was assuming effective pain
7 relief on Mr. Matthes' part; --

8 A. Right.

9 Q. -- is that correct?

10 A. That's correct.

11 Q. And one and one average?

12 A. Right.

13 Q. Now average disabled would include people who are severely
14 disabled and would include people who aren't severely
15 disabled?

16 A. That's right, just the group as a whole.

17 Q. Okay. And then that's gonna be a little bit lower --

18 A. Oh sure.

19 Q. -- than if you -- is it gonna be a lot lower than if you
20 exclude the severely disabled?

21 A. Oh yeah. If you -- for example, the people in the severely
22 disabled group, most of those people would be totally
23 disabled. They would have maybe a five to seven percent
24 probability of working. Now if you look at --

25 Q. Okay. So let me ask you this.

1 A. Okay.

2 Q. Okay, so on your post-average disabled you have in your
3 parameters a disability status of disabled all, which means
4 you're including all disabled persons from severe to not
5 severe; is that correct? Okay? Now let me show you --

6 A. No, no, this is for earnings, this is not -- in other
7 words, you're looking at -- you're looking at disabled
8 persons in terms of -- these are all, but they're all
9 full-time, employed persons. These are not -- there's a
10 chance that sometimes you can get a little bit confused
11 with when you're talking about all disabled persons in
12 terms of worklife. This is talking about all disabled
13 persons, okay, but it's looking at full-time workers.
14 These are all year-round, full-time workers, okay.

15 Q. Okay.

16 A. That's what that means.

17 Q. Okay, I understand that.

18 A. Okay.

19 Q. Okay. Then you were gonna do a calculation basically if he
20 had pain relief and if he was not severely disabled; is
21 that correct?

22 A. Right.

23 Q. Okay, but your disability status here also was put in as
24 disabled all; is that correct?

25 A. Yeah, but just to -- here's where (indicating) -- see, if

1 you're saying on the worklife expectancy, --

2 Q. Right.

3 A. -- okay, that's where the difference shows up because if
4 the worklife expectancy is not severely disabled it's 27.4
5 years --

6 Q. Right. But you would agree with me that when you looked at
7 the earnings you did not look at persons who were not --
8 only at people who were not severely disabled, you were
9 looking at all disabled people?

10 A. Well, as opposed to nondisabled persons. You were looking
11 at work-disabled persons as opposed to nondisabled
12 persons, --

13 Q. Right.

14 A. -- not as opposed to -- but you're looking at work-disabled
15 persons who work year-round full time so this number would
16 be a lot less if we are looking at work-disabled persons
17 who are working part time. This is looking at only
18 full-time workers.

19 Q. I understand.

20 A. Okay. Okay.

21 Q. But as you pointed out, here what you're looking at is
22 you're looking at all disabled people in the worklife
23 expectancy; is that correct?

24 A. Yeah, you're looking at all disabled persons as a group
25 rather than not severely disabled.

- 1 Q. Right. Well, you're looking at all of them including
2 severely-disabled people.
- 3 A. Yeah, you're looking at, you're looking at severely
4 disabled and not severely disabled and if you take 'em all
5 together you got 'em, all of 'em.
- 6 Q. So you're getting a lesser worklife --
- 7 A. Oh sure.
- 8 Q. -- okay, than you do when you put in --
- 9 A. Not severely disabled.
- 10 Q. -- than you do when you put in not severely disabled?
- 11 A. Yeah, it's a big difference, it's --
- 12 Q. But when you calculated his wage loss you did not consider
13 the wages of those people who were not severely disabled --
- 14 A. They don't break, they don't break the wages out by not
15 severely disabled or disabled, they break the wages out --
- 16 Q. This program doesn't.
- 17 A. No, no, no, the government -- this survey here, Usual
18 Weekly Earnings of Workers Who Usually Work Full-Time by
19 Detailed digit code, this survey right here, that's where
20 this is from, okay. This survey looks at full-time
21 workers. It says, "Who Usually Work Full-Time," okay, so
22 that when you're talking about disabled persons here that's
23 in contradistinction to nondisabled persons and when they
24 break out the earnings they don't look at people who are
25 not severely disabled or severely disabled, what they're

1 looking at is year-round -- is full-time workers. Now
2 typically full-time workers are not severely disabled. You
3 see what I'm saying?

4 Q. I, I see what you're saying.

5 A. Typical -- you know, if you're workin full time you're
6 probably not not severely disabled.

7 Q. So the reason why you're using the same income, the same
8 income figures is because the government doesn't break it
9 down into, as far as wages go, they don't break it down
10 into all workers as opposed to all workers not including
11 those that are severely disabled?

12 A. Right, they look at full time and part time and then not
13 working, part-time workers, full-time workers in terms of
14 earnings.

15 Q. Okay. Then when you did his worklife expectancy figures --

16 A. Right.

17 Q. -- you used the parameter that he was of, of nonspecific.

18 A. Right.

19 Q. Okay. And you will agree with me that that would give
20 him -- that the worklife expectancy of someone, especially
21 who's disabled, is linked to his education; is that
22 correct?

23 A. Oh yeah, sure.

24 Q. So the more education he attains the more worklife
25 expectancy he would, --

- 1 A. Correct.
- 2 Q. --- he would have; is that correct?
- 3 A. That's correct.
- 4 Q. So however, you have not assumed a college degree for Mr.
5 Matthes in these figures; isn't that correct?
- 6 A. Right.
- 7 Q. You have used all workers and so basically his worklife is
8 less than what it would be if he attains a college degree;
9 is that correct?
- 10 A. That's correct both before and after. So that; in other
11 words, if you're looking at what's the result of that in
12 terms of the loss, if you would have -- you assumed a
13 college degree the loss would be greater because although
14 the post-injury worklife expectancy would be greater, so
15 would the pre-injury worklife expectancy be greater so --
16 and since you'd be dealing with greater numbers, higher
17 dollars the loss would be greater. You could do it that
18 way.
- 19 Q. Okay. So if you had someone who pre-accident looked as
20 though they were going to get a bachelor's degree, that
21 would be the number that you would use for the pre-injury
22 earning capacity earned worklife expectancy as well; is
23 that correct?
- 24 A. Sure. You'd have to use the same worklife expectancy pre
25 and post unless you said that before injury he could have

1 gotten a college education, but after injury he can't. I
2 wouldn't say that, I think he probably can. If you want
3 to, you know, you can run these numbers using college
4 education, you'll come up with a little larger loss if you
5 do that.

6 Q. Okay. And you testified that when you talked to Mr.
7 Matthes you were aware prior to the time that you did this
8 report that he was interested in mass communications; is
9 that correct?

10 A. That's what he said, yes.

11 Q. Were you aware that he was interested in writing in the
12 area of mass communications?

13 A. Yes, I think so.

14 Q. Okay. And you would agree that that is a sedentary
15 occupation; is that correct?

16 A. Oh sure.

17 Q. That he would be qualified for.

18 A. That's right.

19 MS. MORTIMER: I have no other questions.

20 C R O S S - E X A M I N A T I O N

21 BY MR. TRANKOCY:

22 Q. Sir, my name again is Richard Trankocy and I represent Mr.
23 Peters and Ecklund Trucking Company that's being sued by
24 Mr. Matthes in court today as part of these proceedings. I
25 have a, a series of questions that I'll be very brief with

1 you?

2 A. Okay. Take your time.

3 Q. Now you, you interviewed Mr. Matthes on one occasion; is
4 that correct, sir?

5 A. Yes.

6 Q. And that occasion was on July 14th of 1999?

7 A. That's correct.

8 Q. And that was approximately, what, eight months after the
9 motor vehicle accident?

10 A. Yes.

11 Q. And that interview was at the direction of his attorney
12 who's in court today, Mr. Tolbert; is that correct?

13 A. Yes.

14 Q. And you had no dealings with Mr. Matthes prior to the July
15 14th, 1999 interview?

16 A. Right.

17 Q. And you have not seen Mr. Matthes since that July 14th,
18 1999 interview?

19 A. Correct.

20 Q. That was a one-time interview here at your office in
21 downtown Chicago?

22 A. Correct.

23 Q. And you prepared a report based on that interview; is that
24 correct, sir?

25 A. Yes.

1 Q. And that report was mailed to Mr. Tolbert's attention based
2 on, on that interview; is that correct?

3 A. Yes.

4 Q. You submitted Mr. Tolbert a bill for your time?

5 A. Correct.

6 Q. And he paid the bill for your, for your time, you were
7 compensated by Mr. Tolbert for your time?

8 A. That's right.

9 Q. And has Mr. Tolbert in the past referred plaintiffs who
10 were suing people to your office for a similar interview?

11 A. Yes.

12 Q. And how many times has he done that, approximately? I
13 mean, you don't have to go get the bookkeeper, I mean, just
14 off the top of your head.

15 A. Over the last 10 years I'd say maybe two other times,
16 something like that.

17 Q. Okay. Do you send him a Christmas card at the end of the
18 year?

19 A. I don't know, I don't think so. I don't know, we have a
20 business office that does that.

21 Q. Okay. Now in any event, you were aware through a letter in
22 the file that Mr. Tolbert referred this gentleman here for
23 the purpose of litigation?

24 A. That's correct, sure.

25 Q. You knew there was a lawsuit, you knew that you were to

1 write a report and forward it to Mr. Tolbert?

2 A. That's right.

3 Q. You were not interviewing him for the purpose of helping
4 him locate a job within his vocational capabilities; is
5 that correct?

6 A. Yes, it is.

7 Q. And you did not assist him in any way or instruct him in
8 any way to help him find a job through the Indiana
9 Vocational Office of Rehabilitation; is that correct? I
10 mean, you didn't direct him on what he should do --

11 A. No, no.

12 Q. -- in terms of trying to locate work?

13 A. No, that's correct. He was actually -- in fact, he was in,
14 he was in school at the time, but no, I didn't do that.

15 Q. All right. Now the Data Summary Form that's in your file,
16 sir, that was a form that you completed simultaneous to the
17 initial and only time you interviewed Mr. Matthes?

18 A. Right.

19 Q. You have that form in front of you for the, for the jury?

20 A. I do.

21 Q. You can see that? There's a section on that, on that paper
22 it's titled Data Summary Form and you have listed on there
23 medical records that involved Mr. Matthes' treatment; is
24 that correct, Mr. Tierney?

25 A. I guess so. Data -- yes.

1 Q. Okay. And on, on that particular page that is a list of
2 medical records that you had in your possession at the time
3 of your interview on 14 July, 1999?

4 A. Yes.

5 Q. And you would agree that the last record indicated on that
6 ledger that you're reading in front of you for the Court
7 and jury's purpose, the, the last entry on there is a
8 record recorded with the date of May 23rd, 1999, I believe
9 a Dr., a certain Dr. Roberts?

10 A. Let's see now, here, (indicating) is that what you're
11 talkin about?

12 Q. Yes.

13 A. Last one I've got is Brett.

14 Q. Okay. That -- you're correct. The last, the last record
15 that you have on that medical record that you have on that,
16 on that ledger that you have as part of your file, would it
17 be dated December 9th -- or excuse me, January 22nd?

18 A. It looks like, it looks like August the 10th.

19 Q. I'm sorry, okay. Okay, that's the last record you had,
20 August the 10th of 1989?

21 A. Well, that's the last that I put on this form.

22 MR. TOLBERT: Wrong year. You meant '99, did you not?

23 BY MR. TRANKOCY: (Continuing)

24 Q. What date do you have reported on that form, Mr. Tierney?

25 A. For the last entry?

- 1 Q. Yes.
- 2 A. 8/10/98.
- 3 Q. You don't have any recordation on that summary list of any
4 medical records that were from 1999; is that correct?
- 5 A. No, it's -- this one here, 1/22/99, this one here, Reibold,
6 1/22/99.
- 7 Q. Okay. And that's the last record, medical record that you
8 have on that ledger, 1/22/99?
- 9 A. Medical record, yes. There's a neuropsychological
10 evaluation from Roberts 5/25/99.
- 11 Q. Okay. And after the 5/25/1999 there's no other medical
12 records or neuropsych records that are on, on the chart; is
13 that correct, sir?
- 14 A. Yes.
- 15 Q. And you saw him or you interviewed him July 14th, 1999?
- 16 A. Correct.
- 17 Q. So there's no records that you have on that ledger from
18 June or the 13 days in July, 1999 that would have been part
19 of the file prior to your interview?
- 20 A. That's right.
- 21 Q. Okay. Did you consult with any of Mr. Matthes' doctors at
22 any time before the interview or after the interview?
- 23 A. No, I didn't consult with them. I was sent information by
24 Mr. Tolbert.
- 25 Q. And that's, that's Mr. Matthes' attorney, right?

1 A. Right. In other words, I was sent medical information from
2 him.

3 Q. Okay, right. But did you pick up the phone and call any of
4 the doctors --

5 A. Oh no.

6 Q. -- or did you write any of the doctors for any information?

7 A. No, no, no, never do that.

8 Q. Okay, all right. Now again, this was a one-time
9 interview. Is Mr. Matthes scheduled to return to your
10 office for any follow-up interviews?

11 A. No.

12 Q. Okay. Is the file closed in his case as far as any work
13 you're going to do on it?

14 A. No, it would be open; in other words, if they send me
15 anything additional to read, typically what happens is
16 they'll send me medical reports and say, "Does this in any
17 way change your opinion?" And if it does I'll issue
18 another report, if it doesn't I won't.

19 Q. But you have not issued any supplemental reports other than
20 the one that's -- that you've testified to in court today?

21 A. Right.

22 Q. And you would agree throughout your testimony, I just want
23 to make sure my notes are correct and that the jury
24 understands this, you would agree that Mr. Matthes is not
25 severely disabled from your standpoint as a vocational

1 expert?

2 A. That's right, he doesn't meet the government's definition
3 for severe disability.

4 Q. And he was able to read and write and attend school when
5 you saw him; is that correct?

6 A. Oh sure, yeah.

7 Q. And he drove to your office and there's directions in the
8 file that, that gave him directions here from his home in
9 Indiana; is that correct?

10 A. Yeah, that's right. I don't know if he drove or what, but
11 I know there's directions in the file, I don't know who
12 drove.

13 Q. Okay, all right. And just so that the members of the jury
14 are clear on this point, there's nothing in your file
15 that's about four inches thick that indicates that Mr.
16 Matthes was limited to a certain type of work from a doctor
17 or a health care professional; is that correct?

18 A. To a certain type of work, yeah, that's correct, yeah,
19 that's correct.

20 Q. And throughout your testimony when you were talkin about
21 the numbers you refer to assume, assume, assume. It --
22 it's a fair statement that a lot of this calculating and
23 coming up with these figures, that's based on assumption;
24 is that correct?

25 A. It's based on assumptions that, that are reasonably

1 probable; in other words, I was asked to do something that
2 this jury's gonna be asked to do and that is to assess if
3 he's had a loss of earning capacity based on what they hear
4 and if so what it is. We're talking about, you know,
5 looking out, the next, you know, 50, 60 years so, you know,
6 since I can't do that I have to make some reasonable
7 assumptions, sure.

8 Q. And the assumptions were based on figures that you
9 testified to worked out to be averages?

10 A. Sure.

11 Q. So there's people that are below the average?

12 A. And above, right.

13 Q. Right. And there's college graduates that don't make
14 61,000 a year.

15 A. I've got him makin 46 as nondisabled.

16 Q. Okay. And some make 22 workin at Florsheim Shoes, right?

17 A. I guess. I don't know, they may.

18 Q. All right. Now -- so you would agree that as of the date
19 of your interview, July 14th, 1999, Mr. Matthes was not
20 severely disabled from your standpoint, correct?

21 A. Yeah, that's correct.

22 Q. All right. And did you factor, and I'm sure you did, you
23 factored in the probability that God forbid something
24 should happen to Mr. Matthes unrelated to the accident, I
25 mean, he could, he could pass away next year?

1 A. It's possible, it's not probable, but it's possible, sure.

2 Q. Right. And that -- did you factor in the probability of
3 that in your equation?

4 A. Yes.

5 MR. TRANKOCY: Okay. Okay, I don't have anything
6 further from you -- for you, sir. Thank you.

7 THE WITNESS: Thank you.

8 R E D I R E C T E X A M I N A T I O N

9 BY MR. TOLBERT:

10 Q. Mr. Tierney is it customary in your profession to rely upon
11 the data which you relied upon in this case?

12 A. Yes.

13 Q. That would include medical data furnished to you concerning
14 his care, the documents that you've referred to?

15 A. Yes.

16 Q. That assists you in arriving at your opinions in the case,
17 does it not?

18 A. Yes, it does.

19 Q. In the four inches of material which Mr. Trankocy referred
20 to which you've been supplied, most of which may have been
21 subsequent to the date of your interview, did that data all
22 confirm your opinions?

23 A. Yes.

24 Q. Is there anything in any of the questions that have been
25 propounded to you by either of counsel on cross-examination

1 render your opinion any different than that was expressed
2 on July 14th?

3 A. No.

4 Q. In summary would it be fair to say that the -- that Charles
5 is work disabled?

6 A. Clearly, in my opinion.

7 Q. And that his earnings after the accident will be less than
8 they were before the accident because of the injuries he
9 sustained?

10 A. You know, I was a philosophy major in college and, and what
11 you said is "will be." I don't know what they will be, but
12 the high likelihood is that they will be less than they
13 would have been had he not been injured.

14 Q. Bcth as to his income each year and to the length of time
15 that he will be employed?

16 A. Yes. That's right.

17 MR. TOLBERT: That's all.

18 MS. MORTIMER: I don't have any other questions.

19 R E C R O S S - E X A M I N A T I O N

20 BY MR. TRANKOCY:

21 Q. Mr. Tierney, you just testified under oath before the
22 Court and jury that the data that you have in front of you
23 confirmed your opinions. Did I state that correctly, sir?

24 A. Sure.

25 Q. And you would agree that for the Court and members of the

1 jury that nowhere in that data that you referred to that
2 you have in front of you, nowhere in those records is it
3 recorded by a physician or a doctor or a health care
4 provider that Mr. Matthes was restricted to sedentary or
5 light-duty work?

6 A. No, there's no question that I saw where he was asked,
7 where any physician was asked that, but there's no, there's
8 no restriction like that, that's correct, but there's, but
9 there's plenty in there about the back and neck injuries
10 that he has.

11 Q. But there's no doctor restricting him to a specific area of
12 work like light duty, sedentary, et cetera; is that
13 correct?

14 A. That is correct.

15 MR. TRANKOCY: That's all I have, sir.

16 FURTHER REDIRECT EXAMINATION

17 BY MR. TOLBERT:

18 Q. There is a difference between disability and work
19 disability?

20 A. Yes.

21 Q. Would you -- maybe you have explained that earlier.

22 A. I tried to in the sense that you can be disabled and not be
23 work disabled. I think the example I gave was if you -- if
24 I lost these three fingers I'd have a permanent disability,
25 but I wouldn't be work disabled. This court reporter would

1 (indicating). I'm talking here about work disability and
2 parenthetically this young man is in college. I said he
3 was gonna be doing work that requires average general
4 learning ability to above average general learning ability
5 as a disabled person and work that requires above average
6 general learning ability as a nondisabled person, he's in
7 college. Most of the people who do that, that kind of work
8 aren't doing physically-demanding work anyway. That's
9 really not a major issue. The issue is he does have
10 injuries to his neck and to his back, he has headaches and
11 he has brain injury and all of that combined --

12 MS. MORTIMER: I'll state an objection --

13 MR. TRANKOCY: Judge Reilly, I want to place --

14 MR. TOLBERT: Let him finish his response first.

15 MS. MORTIMER: Sorry.

16 THE WITNESS: -- and all of that combined in my
17 opinion, based on the interview with --

18 MR. TRANKOCY: I'm gonna object, okay, at this point.

19 MR. TOLBERT: Just a minute, I'd like for him to
20 finish his --

21 MR. TRANKOCY: I'm preserving a record, sir, okay.
22 I'm objecting to the questions -- or to his answer, that's
23 outside the scope of this man's expertise to make
24 statements like that and I'm moving to strike it before he
25 goes on.

1 Now the record's preserved, you can answer the
2 question.

3 THE WITNESS: Okay.

4 MS. MORTIMER: I join in the objection.

5 THE WITNESS: Okay. All I'm saying is that, that
6 given the totality of his injuries it's clear that he's
7 work disabled and that's why I arrived at the conclusions I
8 did.

9 MR. TOLBERT: That's all. Thank you very much.

10 MR. TRANKOCY: Nothing, I don't have anything. Thank
11 you.

12 THE WITNESS: Thank you.

13 THE VIDEOGRAPHER: Okay, the time is 12:46:02, this is
14 the end of tape one of one and we are now off the record.

15 (The deposition was concluded
16 at 12:45 p.m.)

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1 STATE OF INDIANA)
2 COUNTY OF LAKE) SS:
3)

REPORTER'S CERTIFICATE

4 I, PAMELA J. BEAUVAIS, a duly qualified stenotype reporter
5 and duly authorized to administer said oath, do hereby certify
6 that there appeared before me, JOHN P. TIERNEY, the deponent
7 herein, at the office of Vocational Economics, Inc., Three First
8 National Plaza, 70 West Madison Street, Suite 1400, Chicago,
9 Illinois, on Wednesday, March 28, 2001, and was first duly sworn
10 upon his oath to testify to the truth in response to questions
11 propounded to said witness relating to the aforementioned cause
12 now pending and undetermined in said court.

13 I further certify that I then and there reported in machine
14 shorthand the testimony of the witness so given at said time and
15 place, reduced the same to typewriting from my original
16 shorthand notes, and that the foregoing is a true, correct, and
17 complete transcript of said testimony.

18 I further certify that signature was waived to his
19 transcript.

20 IN WITNESS WHEREOF, I hereby affix my name and seal this
21 12th day of April, 2001.

22 SEAL

Pamela J. Beauvais
PAMELA J. BEAUVAIS, RPR, Notary Public

24 My commission expires May 20, 2007.

**PAMELA J BEAUVAIS
NOTARY PUBLIC STATE OF INDIANA
LAKE COUNTY
MY COMMISSION EXP. MAY 20, 2007**

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: Allen/Watson 5/18/1999 Court
Case Name: Lawrence Allen et al v. National Steel Corp. et al
Case Number: 64D02-9712-CT-2578
Court: Porter Superior Court, State of Indiana
Court State: IN

Bargione, Christopher

VEI File Name: Bargione/Saucedo 9/11/2000 Deposition
Case Name: Galdino Saucedo v. Materials Transportation Company
Case Number: 98 L 00722
Court: Circuit Court of Cook Co., IL
Court State: IL

Blackburn, Rhonda

VEI File Name: Blackburn / Kinder 10/8/1999 Deposition
Case Name: Christopher Kinder and Sandra Taylor vs. Tracey Reedy and American Fire and Indemnity Co.
Case Number: 98-CI-396
Court: Letcher Circuit Court
Court State: KY

VEI File Name: Blackburn/Bentley 5/3/1999 Video Deposition
Case Name: William Bentley et al v. Dolphus Bynum et al
Case Number: 98-266
Court: U.S. District Court, Eastern Division, Pikeville
Court State: KY

VEI File Name: Blackburn/Dotson 10/5/2000 Video Deposition
Case Name: Estate of Julius Dotson, Sr. v. John Davis et al
Case Number: 00-CI-00311
Court: Pike Circuit Court
Court State: KY

VEI File Name: Blackburn/Little 3/4/1999 Video Deposition
Case Name: Jerry Little et al v. Daniel Adams and Allstate Indemnity Company
Case Number: 98-CI-00579
Court: Pike County Court, Div. 1
Court State: KY

VEI File Name: Blackburn/Litz 9/4/1997 Video Deposition
Case Name: Ella Dean Litz v. Charles Luker and Continental Ins. Co
Case Number: 97-CI-00056
Court: Floyd Circuit Court
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: BLACKBURN/LITZ 9/5/1997 Video Deposition
Case Name: Ella Dean Litz vs Charles W. Luker and Continental Ins. CO.
Case Number: 97-CI-00056
Court: Floyd County Court, Div. II
Court State: KY

VEI File Name: Blackburn/Tamasi 6/24/1998 Video Deposition
Case Name: Tambra Tamasi vs. Pizza Hut of America, Inc.
Case Number: 96a5001-5
Court: State Cobb County
Court State: GA

VEI File Name: Blackburn/Tamasi 6/12/1998 Deposition
Case Name: Tambra Tamasi v Pizza Hut of America
Case Number: 96A5001-5
Court: State Court of Cobb County
Court State: GA

Blackburn, Rhonda Jenning

VEI File Name: Blackburn/Howell 2/10/1998 Video Deposition
Case Name: Patsy Howell vs Phillip R. Smith
Case Number: 97-CI-01286
Court: Pike Circuit Court Division II
Court State: KY

Bland, John W.

VEI File Name: Bland/White 3/1/1999 Deposition
Case Name: James E. White v. Susanne R. Baker, et al
Case Number: 97-CI-00851
Court: Hardin County Circuit Court, Div. II
Court State: KY

Bolus, James

VEI File Name: Bolus/Sublett 5/3/1999 Court
Case Name: Michael Sublett v. Robert Levine
Case Number: 96-CI-04899
Court: Jefferson Circuit Court
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Bolus, James M.

VEI File Name: Bolus/Hancock 9/4/1997 Deposition
Case Name: Hancock v. KY State Police
Case Number: 96-3
Court: Eastern Dis. Of KY, Frankfort Div.
Court State: KY

Bowman, William

VEI File Name: Bowman/Shepherd 6/3/1999 Deposition
Case Name: Kris Shepherd v. Mark Gleaves et al
Case Number: 98-CI-04459
Court: Jefferson Circuit Court
Court State: KY

VEI File Name: Bowman/Shepherd 2/9/2000 Court
Case Name: Kris Shepherd v. Mark T. Gleaves and State Farm
Case Number: 98-CI-04459
Court: Jefferson Circuit Court
Court State: KY

Breen, Mike

VEI File Name: Breen/Bunch-Wells 1/7/1998 Court
Case Name: Michelle Bunch-Wells v. The Kroger Co.; dba Country Oven Bakery
Case Number: 96CV-69-R
Court: U.S. Dist. Court, Western Div at Bowling Gree
Court State: KY

Breen, Richard

VEI File Name: Breen/Belton 9/14/1998 Court
Case Name:
Case Number:
Court:
Court State: KY

VEI File Name: Breen/Waters 10/19/1999 Court
Case Name: Estate of David Waters v. AIK Selective Self Insurance Fund, et al
Case Number: 97-CI-63610
Court: Fayette Circuit Court
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Brown, Penny

VEI File Name: Brown/Phillips 10/14/1997 Court

Case Name:

Case Number:

Court:

Court State: IL

VEI File Name: Brown/Shackleford 4/6/2000 Deposition

Case Name: Pierre Shackleford et al v. Maurice Goldenberg et al

Case Number: 96-L-05C31

Court: Circuit Court of Cook County, Law Division

Court State: IL

VEI File Name: Brown/Smith 12/1/1999 Deposition

Case Name: Willie Flemming and Darryl Smith et al v. American National bank & Trust et al

Case Number: 95 L 05191

Court: Circuit Court of Cook County, Law Division

Court State: IL

Butcher, Julie

VEI File Name: Butcher/Ferguson 4/26/1999 Video Deposition

Case Name: Shannon and Carrie Ferguson v Duane Martin and Motorists Mutual Ins. Co.

Case Number: 98 CI 90097

Court: Montgomery Co. KY Circuit Court

Court State: KY

VEI File Name: Butcher/Sizemore 7/9/1999 Video Deposition

Case Name: Della "Jenia" and Stephen Sizemore v. Henry Watson Jr. and Debra C. Major

Case Number: 98 CI 3976

Court: Fayette Circuit Court Division 2

Court State: KY

Callicotte, Harry D.

VEI File Name: CALLICOTTE/CHILDRE 7/25/1997 Court

Case Name: CHUN CHILDRESS V. STATE FARM INSURANCE

Case Number:

Court: Hardin County Courthouse

Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Cooper, Michael

VEI File Name: Cooper/Allen 10/22/1998 Court
Case Name: William V. Allen v Carey K. Girardi & USAA Property & Casualty Insurance
Case Number: 97-CI-05711
Court: Jefferson County Court
Court State: KY

Cooper, Mike

VEI File Name: Cooper/Allen 9/29/1998 Deposition
Case Name: William V. Allen, Jr. v. Carey K. Girardi and ASAA Property Insurance Co.
Case Number: 97-CI-05711
Court: Jefferson County Circuit Court, Div. 15
Court State: KY

Crawford, Tim

VEI File Name: Crawford/Carpenter 10/25/1999 Deposition
Case Name: Vergie Carpenter v. Baptist Regional Hospital
Case Number: 97-CI-00048
Court: Whitley Circuit Court
Court State: KY

VEI File Name: Crawford/Carpenter 10/28/1999 Court
Case Name: Virgie Carpenter v. Baptist Regional Hospital
Case Number: 97-CI-00048
Court: Whitley Circuit Court
Court State: KY

Darnall, Danny

VEI File Name: Darnall/Raley 12/3/1997 Court
Case Name: Estate of Anthony Raley v United States of America
Case Number: CV-390-S
Court: U.S. District Ct.-Gene Snyder Cthouse
Court State: KY

Davis, Stan

VEI File Name: Davis/Patterson 1/5/2001 Court
Case Name: Larry Patterson v. Premier Medical Group, PC and C N A Insurance Co
Case Number: 1258
Court: Circuit Ct., Houston Co., TN (Erin, TN)
Court State: TN

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: Davis/Patterson 12/29/2000 Deposition
Case Name: Larry Patterson v. Premier Medical Group, PC and C N A Insurance Co
Case Number: 1258
Court: Circuit Ct., Houston Co., TN (Erin, TN)
Court State: KY

Dickenson, Temple

VEI File Name: Dickenson/Kinslow 12/2/1999 Video Deposition
Case Name: Bobby Kinslow v. Richard Nunn dba Hilltop Carwash, et al
Case Number: 97-Ci-00207
Court: Barren Cournty Circuit
Court State: KY

Dickinson, Temple

VEI File Name: Dickenson/Yokley 2/2/1998 Video Deposition
Case Name: Mark Yokley vs State Auto Insurance Companies
Case Number: 95-CI-0C026
Court: Metcalfe Circuit Court
Court State: KY

VEI File Name: Dickinso n / Kinslow 12/2/1999 Video Deposition
Case Name: Bobby Kinslow vs Richard Nunn
Case Number: 97-CI-00207
Court: Barren Circuit Court
Court State: KY

Dodd, Allen

VEI File Name: Dodd/Tatum 1/25/1999 Court
Case Name: Sondra K. Tatum and Louis Tatum v. Hardin County Memorial Hospital et al
Case Number: 96-CI-00281
Court: Hardin Circuit Court, Div. 2
Court State: KY

Downey, Robert

VEI File Name: Downey/Tackett 3/2/1999 Video Deposition
Case Name: Betty Tackett v. Misty Dotson et al
Case Number: 98-CI-00340
Court: Pike Circuit Court, Div. II
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Fischer, Fred

VEI File Name: Fischer/Hornback 11/28/2000 Court
Case Name: Gladys Hornback v. Riter S. Koontz et al
Case Number: 99-CI-00375
Court: Hardin Co. Circuit Court, Div. II
Court State: KY

Franklin, Bryce

VEI File Name: Franklin/Case 12/21/1998 Deposition
Case Name: Robert Glen Case v. Reorganized Pettibone Corp., et al
Case Number: 96-CI-02990
Court: Jefferson Circuit Court, Div II
Court State: KY

VEI File Name: Franklin/Haymaker 2/9/1999 Deposition
Case Name: Matthew Haymaker v. Connecticut Valley Arms et al
Case Number: 97-28
Court: US Dist. Court, Eastern Div of Lexington
Court State: KY

VEI File Name: Franklin/Morgan 11/15/2000 Deposition
Case Name: Estate of Joel Morgan v. Johnston Acquisition Corp. et al
Case Number: 98-585
Court: Eastern District of KY, London Div.
Court State: KY

VEI File Name: Franklin/Morgan 4/19/2000 Deposition
Case Name: Estate of Joel Morgan, deceased v Eagle Trailers, Inc.
Case Number: 98-585
Court: Eastern District, London Division
Court State: KY

Frederickson, Kenneth

VEI File Name: Frederickson / Carter 10/20/1999 Court
Case Name: Scott and Tina Carter vs. Walt Disney World Co.
Case Number: CI97-10960
Court: Orange County Circuit Court, 9th Judicial Circu
Court State: FL

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Herrington, A. Neal

VEI File Name: Herrington/Cole 2/18/1998 Court
Case Name: Deborah Ann Cole vs State Auto Insurance
Case Number: 97-CI-04145
Court: Jefferson Cty Division 13
Court State: KY

Herrington, A. Neil

VEI File Name: Herrington/Morton 11/5/1998 Deposition
Case Name: Rose Morton & Integon Insurance Co. v. Ann Dempf
Case Number: 97-CI-05898
Court: Jefferson Circuit, Div 3
Court State: KY

Herrington, Neal

VEI File Name: Herrington/Hart 6/28/1999 Video Deposition
Case Name: Deanie Baker et al v. Achievor Tire Limited Partnership
Case Number: 3:96-CV-345-S
Court: U.S. District Court, Western Div., Louisville
Court State: KY

VEI File Name: Herrington/Mefford 6/28/1999 Video Deposition
Case Name: Deanie Baker et al v. Achievor Tire Limited Partnership
Case Number: 3:96CV-345-S
Court: U.S. District Court, Western Div., Louisville
Court State: KY

Herrington, Neil

VEI File Name: Herrington/Hart 1/9/1998 Deposition
Case Name: Susan Hart v. Acheivor Tire Limited Partnership
Case Number:
Court: U.S. Dist. Court, Western Div of KY at L'ville
Court State: KY

VEI File Name: Herrington/Mefford 1/9/1998 Deposition
Case Name: James Brian Mefford v. Achievor Tire Limited Partnership
Case Number: 96CV-345-S
Court: U.S. Dist. Court, Western Div of KY at L'ville
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Hopgood, J. Christopher

VEI File Name: Hopgood/Hines 9/27/2000 Court
Case Name: Mark Hines v. Foodcraft Equipment Co. & Fabco Equipment Co.
Case Number: 4:98-CV-2-M
Court: U.S. District Ct. Western District of KY
Court State: KY

Howland, Bixler

VEI File Name: Howland/Jones 3/5/1998 Deposition
Case Name: Terry D. Jones v. Cache Valley Electric Co., et al
Case Number: 96-43
Court: U.S. Dist., Eastern Div, at Covington
Court State: KY

VEI File Name: Howland/Smith 2/21/2000 Court
Case Name: Kimberly Smith v. James B. Holleman
Case Number: 98-CI-01556
Court: Jefferson Circuit Court
Court State: KY

Hughes, Thomas

VEI File Name: Hughes/Marino 10/22/1997 Deposition
Case Name: Fred Marino v. Jacob Levy & Bros., Inc.
Case Number: 94-CI-01241
Court: Jefferson Circuit Court, Div. 9
Court State: KY

VEI File Name: Hughes/Marino 10/22/1997 Deposition
Case Name: Fred Marino v Jacob Levy & Bros. Et al
Case Number: 94-CI-01241
Court: Jefferson Circuit Court, Div. Nine
Court State: KY

Jacobs, George

VEI File Name: Jacobs/Barczak 9/9/1998 Court
Case Name: Benita Barczak v. Edward L. Barczak
Case Number: 10D02-9701-DR-003
Court: Clark Superior Court No. 2, State of Indiana
Court State: IN

Attorney	Date of Testimony	Type of Testimony	Attorney Address
VEI File Name: Johnson/Young Case Name: Terry Young et al v. Garland Workman et al Case Number: 98-CI-00346 Court: Pike County Circuit Court, Div. 2 Court State: KY	1/6/1999	Video Deposition	
Johnson, Gary			
VEI File Name: Johnson / Boggs Case Name: Kimberly Boggs v. Ray Spicer, Jr., et al Case Number: 98-CI-01741 Court: Pike Circuit Court, Div. 1 Court State: KY	9/10/1999	Deposition	
VEI File Name: Johnson / Miller Case Name: Danny and Denise Miller vs Mountain Comprehensive Care Center Case Number: 99-CI-00377 Court: Floyd Circuit Court Court State: KY	12/29/1999	Video Deposition	
VEI File Name: Johnson / Young Case Name: Cinton Young v. Corey Baker, Belinda Baker, Hartford Ins, Allstate Ins Case Number: 99-CI-00241 Court: Pike Circuit Court, Div. 1 Court State: KY	9/2/1999	Video Deposition	
VEI File Name: Johnson/Adams Case Name: Adams vs. Taulbee Case Number: 98-271 Court: Pikeville District Court Court State: KY	12/15/1998	Deposition	
VEI File Name: Johnson/Biliter Case Name: Fred C. Biliter v. Expedited Transportation Systems et al Case Number: 98-89 Court: U.S. District Court, Eastern District Court State: KY	2/22/2000	Video Deposition	
VEI File Name: Johnson/Boyette Case Name: Chasity Boyette v. Gwendolyn E. Hall et al Case Number: 99-CI-00173 Court: Floyd Circuit Court, Division One Court State: KY	3/28/2000	Video Deposition	
VEI File Name: Johnson/Collins Case Name: Tania Renee Collins, et al v. KY Oil & Refining Co. & Tommy Rainey Case Number: 97-CI-01610 Court: Commonwealth of KY, Pike Co. Circuit Court, Div Court State: KY	9/2/1998	Video Deposition	

Attorney	Date of Testimony	Type of Testimony	Attorney Address
VEI File Name: Johnson/Crum Case Name: Judy Crum v. Ketherin Bays dba Bays Trucking, JH Nickles, Allstate Insurance Co. Case Number: 00 CI 479 Court: Floyd Co. Circuit Ct. Div 1 Court State: KY	12/8/2000	Video Deposition	
VEI File Name: Johnson/Kendrick Case Name: Helena Kendrick v. Phyllis Coal Co., N. Keathley, & KY Farm Bureau Ins. Co. Case Number: 97-CI-00601 Court: Pike Circuit Court, Div. No. I, KY Court State: KY	9/29/2000	Video Deposition	
VEI File Name: Johnson/Meade Case Name: Case Number: Court: Court State: KY	12/2/1998	Video Deposition	
VEI File Name: Johnson/Ramey Case Name: Phyllis Ramey v. Paul's Repair Shop Inc, Paul Elswick and State Farm Case Number: 7:99 CV 289 Court: Court State: KY	12/8/2000	Video Deposition	
VEI File Name: Johnson/Rollins Case Name: Frank Rollins et al v. North American Van Line et al Case Number: 99-CI-00969 Court: Pike Circuit Court, Div 1 Court State: KY	4/25/2000	Video Deposition	
VEI File Name: Johnson/Thacker Case Name: Ronnie Thacker v. Lawrence Bostic et al Case Number: 99-CI-01348 Court: Pike Circuit Court, Div. II Court State: KY	5/31/2000	Video Deposition	
VEI File Name: Johnson/Thornberry Case Name: Nadean Thornberry vs. Columbia Gas Transmission Corporations Case Number: 98-CV-25 Court: Pikeville District Court Court State: KY	12/7/1998	Video Deposition	
VEI File Name: Johnson/Wright Case Name: Teddy Wright v. James D. Burchette, Allstate Indemnity Co. Case Number: 97-CI-00118 Court: Pike Circuit Court, Diveision #2 Court State: KY	10/10/1997	Video Deposition	

Attorney	Date of Testimony	Type of Testimony	Attorney Address
VEI File Name: Johnson/Wright Case Name: Teddy Wright v. James D. Burchett et al Case Number: 97-CI-00118 Court: Pike Circuit Court, Div. Two Court State: KY	10/10/1997	Video Deposition	
Johnson, Gary C.			
VEI File Name: Childers/Little Case Name: Willie Little v Beers, Inc. and Zurich Insurance Company Case Number: 99-CI-518 Court: Pike Circuit Division II Court State: KY	3/23/2000	Deposition	
VEI File Name: Johnson/Adams Case Name: Danny Adams and Rebecca Adams v. Craig Taulbee et al Case Number: 98-271 Court: Pikeville Division of Eastern District Court of K Court State: KY	3/18/1999	Video Deposition	
VEI File Name: JOHNSON/CLEMONS Case Name: JESSICA DAWN CLEMONS AND MARLIN HANDSHOE V. CAROLYN HANDSHOE AND KNOTT CO. BOARD OF EDUCATION Case Number: 96 CI 00041 Court: Commonwealth of Kentucky, Knott Circuit Cou Court State: KY	5/16/1997	Video Deposition	
VEI File Name: Johnson/Hall Case Name: Saundra Hall, et al v. Energetic Solutions, Inc., et al Case Number: 99-CI-473 Court: Pike, Division II Court State: KY	3/16/2000	Court	
VEI File Name: JOHNSON/KEEN Case Name: ANNIS YVONNE KEEN V. CARL B. MAYNARD & ALLSTATE INS. CO. V. STATE FARM INS. CO. Case Number: 96-CI-00945 Court: Commonwealth of Ky. Pike Circuit Court, Div. Court State: KY	5/5/1997	Video Deposition	
VEI File Name: JOHNSON/NEWSOME, Case Name: JASON D. NEWSOME, EDWARD NEWSOME, INDIVIDUALLY, AND EDWARD NEWSOME, AS NEXT FRIEND OF ADAM NEWSOME, Case Number: 94-CI-00602 Court: Commonwealth of Kentucky, Floyd Circuit Cou Court State: KY	3/31/1997	Video Deposition	

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Johnson, William

VEI File Name: Johnson/Blackburn 10/19/2000 Video Deposition
Case Name: Tami Blackburn, et al v. City of Prestonsburg, et al
Case Number: 99-CI-00322
Court: Floyd Circuit Court, Division I
Court State: KY

VEI File Name: Johnson/Blackburn 9/20/2000 Video Deposition
Case Name: Tami & Timothy Blackburn et al. V. City of Prestonsburg
Case Number: 99-CI-00322
Court: Floyd Circuit Court, Div. I, KY
Court State: KY

VEI File Name: Johnson/Justice, A. 11/3/2000 Video Deposition
Case Name: Carmel R. Justice, as next friend of Alex Justice v. Gregory J. McKinney et al
Case Number: 99-CI-00152
Court: Commonwealth of KY, Floyd Co. Circuit, Div. II
Court State: KY

VEI File Name: Johnson/May 9/6/2000 Video Deposition
Case Name: Camellia May v. Randal Stevens & Worldwide Direct Auto
Case Number: 99-CI-01347
Court: Pike Circuit Court, Div. I, KY
Court State: KY

Jones, II., Ray S.

VEI File Name: JONES/DANIELS 8/21/1997 Video Deposition
Case Name: Doris A. Daniels vs Iretha Elliott and Barny Elliot vs Doris D. Daniels and Iretha Elliot
Case Number: 95-C-39€ & 96-C-051
Court: Mingo Co. Circ. Ct.
Court State: WV

Jones, Kathy

VEI File Name: Jones/Nix 6/28/2000 Video Deposition
Case Name: Jana L. Nix v. James Kern and Sandra Kern
Case Number: 99-CI-02348
Court: Jefferson Circuit Court
Court State: KY

Karpel, Alan

VEI File Name: Karpel/Ibarra 1/19/2001 Deposition
Case Name: Jose Ibarra et al v. Geneva Construction CO. et al
Case Number: 97WC68484
Court: Industrial Commision of the State of Illinois
Court State: IL

Kaufman, Marshall

VEI File Name: Kaufman/Branch 6/16/1998 Court
Case Name: Christopher J. Branch vs. The Young Men's Christian Association
Case Number: 96-CI-05184
Court: Jefferson Circuit Court Division 13
Court State: KY

VEI File Name: Kaufman/Branch 6/23/1998 Video Deposition
Case Name: Christopher Branch vs.TheYoung Mens Chritian Association
Case Number: 96-CI-05184
Court: Jefferson Circuit Court Division 13
Court State: KY

Kavanaugh, Paul

VEI File Name: Kavanaugh/Pettus 2/20/1998 Deposition
Case Name: Shaun P. Pettus vs Mark S. Reinsel and Radiology Associates LTD
Case Number: CV-96-013481
Court: Circuit Court of Jackson Cty Missouri
Court State: MO

Kelly, R. Michael

VEI File Name: Kelly/Smith 12/18/1997 Court
Case Name: Albert J. Smith v. American Commercial Barge Line Company
Case Number: 94-CI-05694
Court: Jefferson Circuit Court
Court State: KY

Kenealy, William

VEI File Name: Sales/Johnson 4/5/1999 Deposition
Case Name: Helen Johnson v. Antonio Snyder, et al.
Case Number: 95 CI 04843
Court: Clark County Indiana Circuit Court
Court State: KY

Kerrick, Thomas

VEI File Name: KERRICK/SMITH 1/7/1997 Deposition
Case Name: NATALIE SMITH VS. SOUTHERN HERITAGE INSURANCE CO ET AL
Case Number: 95CV-83-H
Court: US DIST. CT,W.DIST OF KY, BOWLING GRE
Court State: KY

VEI File Name: Kerrick/Stahl 12/10/1998 Deposition
Case Name: Stahl vs. Tandem Transport and Paul Sprangue
Case Number: 97-L-0663
Court: Cook County Circuit Court
Court State: KY

Klingman, W. David

VEI File Name: Klingman/Runyon 2/16/1998 Court
Case Name: Elizabeth Runyon et al v. Jackie Nelms et al
Case Number: 96-CI-03388
Court: Jeff. Co Court. Division ten
Court State: KY

Kommor, Maury

VEI File Name: Kommor/Culliton 6/19/1998 Court
Case Name: Joan M. Culliton vs. Howard Wardel
Case Number: 96-CI-00445
Court: Jefferson Circuit Court Division 15
Court State: KY

Krauser, Michael E.

VEI File Name: KRAUSER/MCMILLIAN 8/13/1997 Court
Case Name: DONNA MCMILLIAN V. RONALD P. WEAKLEY ET AL.
Case Number: 94-CI-04183
Court: Jefferson Circuit Court
Court State: KY

LaFond, Richard

VEI File Name: LaFond/Happel 12/10/1999 Deposition
Case Name: Gerald K. Happel v. Motorola, Inc.
Case Number: 99-N-809
Court: U.S. District Court for the District of Colorado
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: Leighton/Reyes 1/13/2000 Deposition
Case Name: Juan Reyes et al v. 4453 Diversey Association et al
Case Number: 95-L-4736
Court: Circuit Court of Cook County, Law Div.
Court State: IL

Lewis, Esq, Albert B.

VEI File Name: LEWIS / CROUCH 10/6/1999 Deposition
Case Name: Kathleen and Joseph Crouch vs. New York Carpet World of FL, INC.
Case Number: 97-3579-CI-19
Court: Pinellas County, FL Circuit Court
Court State: FL

Lindner, Paul

VEI File Name: Lindner/Patel 2/21/2000 Deposition
Case Name: Natu Patel and Alpesh Khushal v. Ernest Haegele, First Class Coach Co. et al
Case Number: CI97-7807
Court: Circuit Court of 9th Judicial Circuit in Orange C
Court State: FL

VEI File Name: Lindner/Patel 2/29/2000 Court
Case Name: Natu Patel and Alpesh Khushal v. Ernest L. Haegele, First Class Coach Co. et al
Case Number: CI97-7807
Court: Circuit Court of the 9th Judicial Circuit FL
Court State: FL

Lindsay, Robert

VEI File Name: Lindsay/Mattingly 6/2/1999 Deposition
Case Name: Tina Mattingly v. Frank Lockett
Case Number: 98-CI-00580
Court: Jefferson Circuit Court, Div Two
Court State: KY

VEI File Name: Lindsay/Mattingly 4/13/2000 Court
Case Name: Tina Mattingly & Healthsource v Frank Lockett, et al
Case Number: 98-CI-00580
Court: Jefferson Circuit Division Two
Court State: KY

VEI File Name: Lindsay/Monyhan 9/13/1999 Court
Case Name: Darrell Monyhan v. James A. Youngblood
Case Number: 97CI-05548
Court: Jefferson Circuit Court, Div 10
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: Morgan/Epperson 10/13/1998 Video Deposition
Case Name: Tammy Epperson v Elbert Deaton and Allstate Indemnity Co,
Case Number: 97-CI-00669
Court: Perry Circuit Court
Court State: KY

VEI File Name: Morgan/Johnson 12/8/1998 Video Deposition
Case Name: Helen Johnson vs. Altie H. Hall
Case Number: 97-CI-00245
Court: Knott Circuit Court
Court State: KY

VEI File Name: Morgan/Martin 4/19/1999 Video Deposition
Case Name: Michelle Martin v. Douglas Martin
Case Number: 98 CI 00356
Court: Floyd Co. KY Circuit Court
Court State: KY

VEI File Name: Morgan/Nix 1/22/1999 Video Deposition
Case Name: Juanita Nix v. Wallace Melton, Jr. et al
Case Number: 96-CI-00338
Court: Perry County Circuit Court
Court State: KY

VEI File Name: Morgan/Sizemore 5/15/2000 Video Deposition
Case Name: Linda Sizemore v. Cornerstone Propane et al
Case Number: 99-CI-00346
Court: Perry Circuit Court
Court State: KY

Morris, Doug

VEI File Name: Morris/Carmine 1/13/2000 Deposition
Case Name: Estate of Marshall Carmine et al v. Anderson and Arnold et al
Case Number: 95-CI-00058
Court: Nelson Circuit Court
Court State: KY

VEI File Name: MORRIS/STANLEY 4/15/1997 Court
Case Name: Yvonne Stanley v. Aeroequipment
Case Number: C93-0145-L (M)
Court: United States District Court
Court State: KY

Attorney

Date of Testimony

Type of Testimony

Attorney Address

Morris, Douglas

VEI File Name: Morris/Sebree 11/9/1998 Deposition
Case Name: Louis W. Sebree, et al v. Dr. Rogers, et al
Case Number: 92-CI-03396
Court: Jefferson Circuit Court, Div 6
Court State: KY

VEI File Name: Morris/Weisberg 12/29/1998 Deposition
Case Name:
Case Number:
Court:
Court State: KY

Mour, David

VEI File Name: Mour/Wilford 6/10/1998 Court
Case Name: April E. Wilford vs. Ronald A. Wilford
Case Number: 96-FC-04965
Court: Jefferson Family Court Division 4
Court State: KY

Mour, David B.

VEI File Name: MOUR/EADS 3/28/1997 Court
Case Name: EADS V. EADS
Case Number:
Court:
Court State: KY

Norton, Dallas

VEI File Name: Norton/Vigil 4/13/2000 Deposition
Case Name: Eric Martin Vigil v. QED, Inc. et al
Case Number: 98 CV 5933
Court: District Court, City and County of Denver
Court State: CO

Oldfather, Ann

VEI File Name: Oldfather / Greiwe, T an 10/13/1999 Video Deposition
Case Name: Steve Greiwe, etc. vs. Cumberland Women's Group, et al.
Case Number: 96CI-00572
Court: Pulaski Circuit Court, Div. 2
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: Oldfather/Giuliani 6/10/1998 Court
Case Name: J. Dennis Giuliani vs. Michael Guiler
Case Number: 93-CI-0223
Court: Fayette Circuit Court Division 3
Court State: KY

Oldham, William

VEI File Name: Oldham/Spellman 6/1/1999 Deposition
Case Name: Mark Spellman v. Free Enterprise System et al
Case Number: 96-CI-06382
Court: Jefferson Circuit Court, Div. 6
Court State: KY

Oldham, William K.

VEI File Name: Oldham/Spellman 7/26/2000 Court
Case Name: Mark Spellman v. Free Enterprise System & William Jones
Case Number: 96-CI-06382
Court: Jefferson Circuit Court Division Six
Court State: KY

Oppenheimer, Brett

VEI File Name: Oppenheimer/Curtis 5/21/1998 Court
Case Name: James M. Curtis v Bernard Dailey, et al
Case Number: 97-CI-0046
Court: Breckinridge County Civil Court
Court State: KY

Page, James

VEI File Name: Page/Schabot 3/30/1999 Court
Case Name: Toni L. Schabot v. General Accident Ins. Co. and State Farm Automobile Ins. Co.
Case Number: CI 98 AN 1217
Court: Osceola Co. FL Circuit Ct.
Court State: FL

Parmenter, Matt

VEI File Name: Parmenter/Rudd 12/20/2000 Deposition
Case Name: Eric Rudd v. Graber Post Bldgs.
Case Number: 00 cv 4065
Court: US DIST. CT. SOUTHERN DIST. OF ILLINOI
Court State: KY

Parnmenter, Matt

VEI File Name: Parnmenter/Chambers 9/15/1998 Deposition
Case Name: Darrin Chambers v. Carl E. Kieffer and Kieffer
Case Number: 42DO1-3504-CT010
Court: Knox Superior Court
Court State: IN

Parris, Geneva

VEI File Name: Parris/Walker 3/23/2000 Court
Case Name: Lisa R. Walker v MDM Services Corporation, et al
Case Number: 25-160-00116-99
Court: American Arbitration Association
Court State: KY

Payton, John

VEI File Name: Payton/Henry 4/14/2000 Deposition
Case Name: Rachel Henry v. Flying J. Inc.
Case Number: IP98-1532-C
Court: US. District Court of Southern IN, Indy Div
Court State: KY

Perlman, Peter

VEI File Name: PERLMAN/HEILIG 4/23/1997 Deposition
Case Name: MICHAEL HEILIG, AS NEXT FRIEND OF ANDREA HEILIG, AND MICHAEL HEILIG, INDIVIDUALLY
Case Number: 93-CI-0409
Court: Fayette Circuit Court, Sixth Division
Court State: KY

Pfeiffer, Robert

VEI File Name: Pfeiffer/Arroyave 2/16/1999 Deposition
Case Name: Efrain Arroyave, MD v. Sandra Bouzagliou, MD et al
Case Number: 97-CI-01427
Court: Fayette Circuit Court, 8th Division
Court State: KY

Raine, C. Randall

VEI File Name: RAINE/HAMILTON 8/1/1997 Court
Case Name: Robert E. Hamilton, AIK Selective Self-Ins. Fnd v. Genequip, Brown&Vest, Star
Drywall, Cascade Empir
Case Number: 95-CI-03831
Court: Jefferson Circuit Court
Court State: KY

VEI File Name: Raine/Toles 9/20/2000 Deposition
Case Name: Kurt Toles v. Turner Expediting Service
Case Number: 96 CI 02388
Court: Jefferson Circuit Court, KY
Court State: KY

Rogers, Benjamin

VEI File Name: Rogers/Nunn 1/31/2000 Video Deposition
Case Name: David Kirk Nunn et al v. Roberto C. Campos et al
Case Number: 98-CI-00562
Court: Barren Circuit Court
Court State: KY

Rowe, Bobby

VEI File Name: Rowe/Blair 12/11/1997 Video Deposition
Case Name: Timothy Wayne Blair v. Kentucky May Coal; Miller Bros. Coal, Inc.
Case Number: 96-CI-01641
Court: Pike Circuit Court
Court State: KY

VEI File Name: Rowe/Pennington 3/3/1998 Video Deposition
Case Name: Ora Ellis Pennington v. Bell South Telecommunications Inc.
Case Number: 96-73703
Court: Comm.of KY; Dept. of Workers Comp Claims
Court State: KY

VEI File Name: Rowe/Sands 12/11/1997 Video Deposition
Case Name: David Lee Sands v. Allen Keathley & Pam Keathley
Case Number: 97-CI-00295
Court: Pike Circuit Court
Court State: KY

Salansky, Timothy

VEI File Name: Salansky/Norman 4/15/1999 Deposition
Case Name: Michael Norman et al v Suburban Medical Center et al
Case Number: 96 CI 04787
Court: Jefferson Co. KY Circuit Court, Div 12
Court State: KY

Sales, Kenneth

VEI File Name: Sales/Maggard 5/27/1998 Video Deposition
Case Name: Jerry Maggard, et al v Eimco Coal Machinery, et al
Case Number: 94-CV-0139-0(C)
Court: US Dist. Court; Western KY Div @ Owensboro
Court State: KY

VEI File Name: SALES/MAGGARD 9/22/1997 Deposition
Case Name: Jerry & Kathy Maggard vs EIMCO et al
Case Number: 94-CV-0139-0 (C)
Court: Western District of KY at Owensboro
Court State: KY

VEI File Name: Sales/Miiller 7/1/1998 Court
Case Name: Wendy L. Husband et al v. Tina M. Ringo
Case Number: 96CI-00980
Court: Jefferson Circuit Court, Div. 8
Court State: KY

Sampson, Jeffrey

VEI File Name: Sampson/Rogers 9/27/2000 Deposition
Case Name: Granville Rogers v. BFI, et al.
Case Number: 98-CI-02222
Court: Jefferson Circuit Court, Div. 15, KY
Court State: KY

Schachter, Paul

VEI File Name: Schachter/Mitchell 10/11/2000 Deposition
Case Name: Robin Lewis et al v. St. Elizabeth Medical Center et al
Case Number: 99-CI-000074
Court: Kenton Circuit Court, Division II
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Schafer, Michael

VEI File Name: Schafer/Newman 4/15/1998 Deposition
Case Name: William Newman v. City of Louisville and Home Supply Company
Case Number: 96-CI-04479
Court: Jefferson Circuit Court, Div. 16
Court State: KY

Self, Andrew

VEI File Name: Self/Hancock 1/9/1998 Video Deposition
Case Name: Roger D. Hancock v. Westfield Insurance Col
Case Number: 96-CI-01047
Court: Commonwealth of KY, Christian Circuit Court,
Court State: KY

Sellars, Rick

VEI File Name: Sellars/Marshall 1/27/1998 Deposition
Case Name: Tera Marshall v. Little Rock Public School et al
Case Number: LR-C-960-446
Court: U.S. Dist. Court, East Div of Ark., Little Rock
Court State: AR

Senn, Kenneth

VEI File Name: Senn/Gonzales 9/6/2000 Court
Case Name: Silviano and Wendy Gonzales v. William D. Higgs
Case Number: 98CV957
Court: District Court, Co. of Pueblo, CO
Court State: CO

Sergent, Bryan

VEI File Name: Sergent / Zemo 11/16/1999 Video Deposition
Case Name: Sandra Zemo vs Adam Logan Corp
Case Number: 99-CI-00030
Court: Floyd Circuit Court, Div 1
Court State: KY

VEI File Name: Sergent/Hatfield 11/1/2000 Video Deposition
Case Name: Peggy Hatfiel and David Hatfield v. Jimmy D. Jent et al
Case Number: 99-CI-543
Court: Perry Circuit Court
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: Sergent/Ramey 3/4/1999 Video Deposition
Case Name: Clinton D. Ramey v. Janice S. Moore and James A. Lowe
Case Number: 98-CI-747
Court: Pike County Circuit Court, Div. 1
Court State: KY

VEI File Name: Sergent/Shepherd 10/17/2000 Video Deposition
Case Name: Joseph Akers and Doris Shepherd v. Russell Frederick, Jr. et al
Case Number: 00-CI-00015
Court: Breathitt Circuit Court
Court State: KY

Smith, Brently

VEI File Name: SMITH/SMITH 4/26/2000 Deposition
Case Name: Steve Smith and Larry Smith v. State Farm Mutual
Case Number: 98-CI-05447
Court: Jefferson County Circuit, Div. 12
Court State: KY

Smith, Timothy

VEI File Name: Crawford/Smith 1/13/2000 Video Deposition
Case Name: Shannon Smith v. Herbert Parsons et al
Case Number: 97-CI-00046
Court: Letcher Circuit Court
Court State: KY

Snell, Roy Kimberly

VEI File Name: Snell/Meredith 1/19/1998 Deposition
Case Name: Timothy Meredith and Susan Meredith v. Transit Authority of River City
Case Number: 97-CI-00709
Court: Jeff. Co Court, Division Six
Court State: KY

Spragens, Robert

VEI File Name: SPRAGENS/COX 9/8/1997 Court
Case Name: Cox Estate vs Danny Tungate & Simms 208
Case Number: 96-CI-00080
Court: Taylor Circuit Court
Court State: KY

Tofaute, George

VEI File Name: Tofaute,Thorne 10/3/1997 Deposition
Case Name: Bonnie J. Thorne et al v. Chuck Case Trucking et al
Case Number: TH96-300-C
Court: U.S. District Court of IN, Terre Haute Division
Court State: IN

True, Guthrie

VEI File Name: True/McDaniel 1/14/1999 Deposition
Case Name: Shannon McDaniel et al v. Nippon Sheet Glass et al
Case Number:
Court:
Court State: KY

Turner, Arnold

VEI File Name: Turner/Hall 12/8/1999 Court
Case Name: Debra T. Hall et al v. Calvin Wendell Williams et al
Case Number: 95-CI-00189
Court: Pike County Circuit Court
Court State: KY

Vanover, Jim

VEI File Name: Vanover / Johnson 10/26/1999 Deposition
Case Name: Estate of Franklin vs. Bradley Montgomery
Case Number: 97-CI-00719
Court: Floyd Circuit Court
Court State: KY

Vanover, Jim G.

VEI File Name: Vanover/Collins 5/24/1999 Video Deposition
Case Name: Joseph Collins et al v. Kentucky Power Co. et al
Case Number:
Court:
Court State: KY

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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Watts, Jackson W.

VEI File Name: JACKSON/WATT 8/20/1997 Court
Case Name: PAUL REECE V. SAFECO INSURANCE
Case Number: 95-CI-4111
Court: Fayette County Circuit Court
Court State: KY

Weis, Mark

VEI File Name: Weis/Childers 1/13/1999 Court
Case Name: Jonathan Scott Childers et al v. Anthony F. Castellini et al
Case Number: 98-CI-00340
Court: Jefferson Circuit Court, Div. 10
Court State: KY

VEI File Name: Weis/Childers 12/17/1998 Deposition
Case Name: Childers vs. Castellini
Case Number: 98-CI-00340
Court: Jefferson Circuit Court
Court State: KY

VEI File Name: Weis/Crabtree 5/6/1998 Deposition
Case Name: Sandra Crabtree v Georgia Gawthop and Regional Airport Authority et al
Case Number: 97-CI-0575
Court: Jeff. Circuit Court, Div three
Court State: KY

VEI File Name: Weis/Crabtree 6/24/1998 Court
Case Name: Sandra M. Crabtree vs. George O. Gawthrop, JR.
Case Number: 97-CI-05475
Court: Jefferson Circuit Court Division 3
Court State: KY

Weston, Steve

VEI File Name: Weston/Butler 10/9/1997 Court
Case Name: Charles F. Butler v. Wal-Mart Stores, Inc.
Case Number: D96-0946-NO
Court:
Court State: MI

VEI File Name: Weston/Butler 10/9/1997 Court
Case Name: Charles F. Butler v Wal-mart Stores Inc.
Case Number: D96-0949-NO
Court:
Court State: MI

Attorney	Date of Testimony	Type of Testimony	Attorney Address
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VEI File Name: Weston/Gerth & McCurl 5/17/2000 Deposition
Case Name: Bess Gerth, Dan Gerth, Melody McCurley et al v. Thomas Construction et al
Case Number: 96-03-187-NO
Court: Circuit Court for the County Branch
Court State: IL

Wilhoit, William H.

VEI File Name: WILHOIT/HALL 6/9/1997 Deposition
Case Name: WILLIAM HALL V. TEX A. ENGLISH AND SARAH LOU ENGLISH
Case Number: 96 CI 00016
Court: Carter Circuit Court
Court State: KY

Wood, Jr., Thomas C.

VEI File Name: Wood/Arnold 2/25/1997
Case Name:
Case Number:
Court:
Court State:

VEI File Name: WOOD/ARNOLD 2/26/1997 Court
Case Name:
Case Number:
Court:
Court State: KY

Wright, Steven

VEI File Name: Facer/Gumble 12/17/1999 Deposition
Case Name: Daniel Gumble v. Himark Life Insurance Co. et al
Case Number: 99-2059
Court: Central District of Ill. Urbana Division
Court State: IL

Yewell, Mr. Terry

VEI File Name: YEWELL/STURGILL 9/30/1997 Court
Case Name: Candance Strugill et al vs. Lexington Unique Indoor Comfort et al
Case Number: 96-CI-00011
Court: Comm. Of KY, Fayette Circuit Court, 2nd Div.
Court State: KY

Attorney

Date of Testimony

Type of Testimony

Attorney Address

Yewell, Terry L.

VEI File Name: YEWELL/FAIRCLOTH 8/26/1997 Court

Case Name: WENDY FAIRCLOTH V. ADELINE WHITT AND ALLSTATE INSURANCE CO.

Case Number: 94-CI-1738

Court: Commonwealth of Ky., Fayette Circuit Court

Court State: KY

Young, Robert

VEI File Name: Young/Shaffer 12/21/2000 Deposition

Case Name: Shaffer vs. West Side Transport

Case Number: no suit yet filed

Court:

Court State:

N 46360

DING EXEMPTIONS S 0
ROLLING EXEMPTIONS S 0

REGULAR WAGES for 1998 4925.74

For 1998, you have no payroll adjustments which affected your federal wages (Box 1) or state wages. Therefore, the wages on your final 1998 check statement should be the same as the wages reported on your W-2 statement.

CHARLES A MATTHES
0125-0011014
PAYROLLS BY PAYCHEX

Copy C, for employee's records

Form W-2 Wage and Tax Statement 1998

a Control number 0052-E078		0125-001101		Void	c Employer's name, address, and ZIP code RODNEY D LUBEZNIK DBA MCDONALDS 101 W SECOND ST MICHIGAN CITY IN 46360		Department of the Treasury - Internal Revenue Service OMB No. 1545-0008			
15 Statutory employee	Deceased	Pension plan	Legal rep.	Deferred compensation	3 Social security wages 4925.74		1 Wages, tips, other compensation 4925.74	2 Federal income tax withheld 310.73		
3 Employer's identification number 35-1693622		4 Employer's social security number 067-62-8342					4 Social security tax withheld 305.39			
13 See Instrs. for Box 13		14 Other		e Employee's name, address, and ZIP code CHARLES A MATTHES RR 3 BOX 229 WINAMAC IN 46996		5 Medicare wages and tips 4925.74		6 Medicare tax withheld 71.43		
						7 Social security tips		8 Allocated tips		
						9 Advance EIC payment		10 Dependent care benefits		
						11 Nonqualified plans		12 Benefits included in Box 1		
16 State IN	Employer's state I.D. No. 002890186 001 1		17 State wages, tips, etc. 4925.74	18 State income tax 153.03	19 Locality name IN LPORT	20 Local wages, tips, etc. 4925.74	21 Local income tax 27.16			

This information is being furnished to the Internal Revenue Service

CORRECTED (if checked)

FILER'S name, street address, city, state, ZIP code, and telephone number Saint Joseph's College PO Box 889 Rensselaer IN 47978 (219) 866-6145		1	OMB No. 1545-1574		Tuition Payment: Statement
		2	1998 Form 1098-T		
FILER'S Federal Identification no. 35-0868152	STUDENT'S social security number 067-62-8342		Copy For Student		
STUDENT'S name, address, and ZIP code Matthes Charles Armstrong 2979 North 800 West Winamac IN 46996		This is important tax information and is being furnished to the Internal Revenue Service			
Account number (optional)					3 At least half-time student (if checked) <input checked="" type="checkbox"/>

Form 1098-T

(Keep for your records.)

Department of the Treasury - Internal Revenue Service

Plaintiff's Exhibit
Journey Dept
2A

98

Office Number: 14852
Payment Status: COD
Home Phone: 219-946-7081

CHARLES A MATTHERS
PO BOX 204
WINAMAC, IN 46996

SSN: 067-62-8342 Preparer Number/Name: 01201/LINDA BENNETT Return Preparation Fee: ~~48.00~~ 0.00
 TP: Preparation Date: 2/13/99 Electronic Filing Fees: 0.00
 Spouse: Source: Prior Tax Return State Elf Fees: Other: Gift Cert./Discount: Sales Tax: TOTAL FEES: ~~48.00~~ 0.00
 DOB: 1/10/1978 FED ELF Return Type: HRB Prepared Balance Due HRB Prepared FP: 2Z
 TP: ST ELF Return Type: ST ELF Firm Type: Receipt Number: *Charles A. Matters*

===== FORM W-2 INFORMATION =====

Source	T/S	Type	Gross	Federal	State	Gross	S.S.	care	Medi-	Federal	S.S.	care	Medi-	Taxes Withheld	ST	State	Local
RODNEY D LUBEZNIK	T	R	4926	IN	4926	4926	4926	4926	4926	311	305	71	IN	153		27	

=====
 Federal software version: 3.99.002 ADDITIONAL INFORMATION State software version (IN): 1.99.003

Form **8453**

**U.S. Individual Income Tax Declaration
 for Electronic Filing**

OMB No. 1545-0936

1998

Department of the Treasury
 Internal Revenue Service

For the year January 1 - December 31, 1998
 ▶ See instructions

Use the IRS label. Otherwise, please print or type.	L A B E H E R E	Your first name and initial CHARLES A. MATTHES	Last name	Your social security number 067-62-8342
		If a joint return, spouse's first name and initial	Last name	Spouse's social security no.
		Home address (number and street). If you have a P.O. box, see instructions. PO BOX 204	Apt. no.	▲ IMPORTANT ▲ You must enter your SSN(s) above. Telephone number (optional)
		City, town or post office, state, and ZIP code WINAMAC, IN 46996		

Part I Tax Return Information (Whole dollars only)	
1 Total income (Form 1040, line 22; Form 1040A, line 14; Form 1040EZ, line 4)	4,926
2 Total tax (Form 1040, line 56; Form 1040A, line 34; Form 1040EZ, line 10)	0
3 Federal income tax withheld (Form 1040, line 57; Form 1040A, line 35; Form 1040EZ, line 7)	311
4 Refund (Form 1040, line 66a; Form 1040A, line 41a; Form 1040EZ, line 11a)	311
5 Amount you owe (Form 1040, line 68; Form 1040A, line 43; Form 1040EZ, line 12)	

Part II Declaration of Taxpayer (Sign only after Part I is completed.)

6a I consent that my refund be directly deposited as designated in the electronic portion of my 1998 Federal Income Tax return. If I have filed a joint return, this is an irrevocable appointment of the other spouse as an agent to receive the refund.

b I do not want direct deposit of my refund or I am not receiving a refund.

c I authorize (1) the U.S. Treasury and its designated Financial Agents to initiate an ACH debit (automatic withdrawal) entry to my financial institution account designated in the electronic portion of my 1998 Federal income tax return for payment of my Federal taxes owed, and (2) my financial institution to debit the entry to my account. I also authorize the financial institutions involved in the processing of my electronic payment of taxes to receive confidential information necessary to answer inquiries and resolve issues related to my payment.

If I have filed a balance due return, I understand that if the IRS does not receive full and timely payment of my tax liability, I will remain liable for the tax liability and all applicable interest and penalties. If I have filed a joint Federal and state tax return and there is an error on my state return, I understand my Federal return will be rejected.

Under penalties of perjury, I declare that the information I have given my ERO and the amounts in Part I above agree with the amounts on the corresponding lines of the electronic portion of my 1998 Federal income tax return. To the best of my knowledge and belief, my return is true, correct, and complete. I consent to my ERO sending my return, this declaration, and accompanying schedules and statements to the IRS. I also consent to the IRS sending my ERO and/or transmitter an acknowledgement of receipt of transmission and an indication of whether or not my return is accepted, and, if rejected, the reason(s) for the rejection. If the processing of my return or refund is delayed, I authorize the IRS to disclose to my ERO and/or transmitter the reason(s) for the delay, or when the refund was sent.

Sign Here	COPY ONLY Your signature	Date	COPY ONLY Spouse's signature. If a joint return, BOTH must sign	Date
-----------	------------------------------------	------	---	------

Part III Declaration of Electronic Return Originator (ERO) and Paid Preparer (See instructions.)

I declare that I have reviewed the above taxpayer's return and that the entries on Form 8453 are complete and correct to the best of my knowledge. If I am only a collector, I am not responsible for reviewing the return and only declare that this form accurately reflects the data on the return. The taxpayer will have signed this form before I submit the return. I will give the taxpayer a copy of all forms and information to be filed with the IRS, and have followed all other requirements in Pub. 1345, Handbook for Electronic Return Originators of Individual Income Tax Returns. If I am also the Paid Preparer, under penalties of perjury I declare that I have examined the above taxpayer's return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. This Paid Preparer declaration is based on all information of which I have any knowledge.

ERO's signature	<i>Gene J. Bennett</i>	Date	2/13/99	Check if also paid preparer	<input checked="" type="checkbox"/>	Check if self-employed	<input type="checkbox"/>	Your social security number	
Use Only	Firm's name (or yours if self-employed) and address	H AND R BLOCK 106 W PEARL WINAMAC, IN		EIN	35-1998970		ZIP code	46996-0000	

Under penalties of perjury, I declare that I have examined the above taxpayer's return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. This declaration is based on all information of which I have any knowledge.

Paid Preparer's Use Only	Preparer's signature	Date	Check if self-employed	<input type="checkbox"/>	Preparer's social security no.
	Firm's name (or yours if self-employed) and address	EIN	ZIP code		

! CHARLES A<MATTHES

067-62-8342 38

! PO BOX 204
! WINAMAC IN 46996

! PPECF N SPECF FS 1 6A-SELF X
! 6D-TOTAL 01

1040 PAGE 1	!	PEIN-----35-1998970	!
7-----4926	!	POCC-STUDENT-----	!
22-----4926	!		!
33-----4926	!		!
	!	ADD INFO	!
	!	PDI-----1000000000	!
1040 PAGE 2	!	SEI-----	!
34-----4926	!	SC-----01	!
36-----4250	!		!
37-----676	!		!
38-----2700	!		!
39-----0	!		!
40-----0	!		!
49-----0	!		!
56-----0	!		!
57-----311	!		!
59A--NO-----	!		!
64-----311	!		!
65-----311	!		!
66A-----311	!		!
PREP-LINDA BENNETT----	!		!
FIRM-H AND R BLOCK----	!		!
ADD--106 W PEARL-----	!		!
CSZ--WINAMAC IN 46996-	!		!
-0000-----	!		!

TOTAL INCOME	LINE 22	4926	TOTAL TAX	LINE 56	0
TOTAL PAYMENTS	LINE 64	311	REFUND	LINE 66A	311

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

For Information Only - Do not File
Your Signature Date

For Information Only - Do not File
Spouse's Signature Date

Preparer's Signature 02131999
Date

IRS USE ONLY

Use the IRS label here

CHARLES A MATTHES

PO BOX 204

WINAMAC, IN 46996

Your social security number

067-62-8342

Spouse's social security number

Presidential Election Campaign (See page 7.) Note: Checking "Yes" will not change your tax or reduce your refund.

Do you want \$3 to go to this fund? Yes No

IMPORTANT
You must enter your SSN(s) above.

Yes No

If a joint return, does your spouse want \$3 to go to this fund? Yes No

Income

1 Total wages, salaries, and tips. This should be shown in box 1 of your W-2 form(s). Attach your W-2 form(s). **1**

2 Taxable interest income. If the total is over \$400, you cannot use Form 1040EZ. **2**

3 Unemployment compensation (see page 8.) **3**

4 Add lines 1, 2, and 3. This is your **adjusted gross income**. If under \$10,030, see page 9 to find out if you can claim the earned income credit on line 8a. **4**

5 Can your parents (or someone else) claim you on their return?
 Yes. Enter amount from worksheet on page 2. **5**
 No. If single, enter 6,950.00. If married enter 12,500.00. See page 2 for explanation. **5**

6 Subtract line 5 from line 4. If line 5 is larger than line 4, enter 0. This is your **taxable income**. **6**

4,926.

4,926.

6,950.

0.

Payments and tax

7 Enter your Federal income tax withheld from box 2 of your W-2 form(s). **7**

8a Earned income credit (see page 9).
 b Nontaxable earned income: enter type and amount below. **NO**
 Type \$ **8a**

9 Add lines 7 and 8a. These are your **total payments**. **9**

10 Tax. Use the amount on line 6 above to find your tax in the tax table on pages 20-24 of the booklet. Then, enter the tax from the table on this line. **10**

311.

311.

11a If line 9 is larger than line 10, subtract line 10 from line 9. This is your refund. **11a**

311.

Have it directly deposited! See page 12 and fill in 11b, 11c, and 11d.

b Routing number

c Type: Checking Savings

d Account number

12 If line 10 is larger than line 9, subtract line 9 from line 10. This is the amount you owe. See page 14 for details on how to pay. **12**

I have read this return. Under penalties of perjury, I declare that to the best of my knowledge and belief, the return is true, correct, and accurately lists all amounts and sources of income I received during the tax year.

Sign here

Your signature: **For Info Only** --- Spouse's signature if joint return: **Do Not File**

Keep copy for your records. Date: **STUDENT** Your occupation: **STUDENT** Date: Spouse's occupation:

For Official Use Only

1	2	3	4	5
<input type="text"/>				
6	7	8	9	10
<input type="text"/>				

Use this form if

- Your filing status is single or married filing jointly.
- You do not claim any dependents.
- You do not claim a student loan interest deduction or an education credit. See page 3.
- You had only wages, salaries, tips, taxable scholarship or fellowship grants, unemployment compensation, or Alaska Permanent Fund dividends, and your taxable interest income was not over \$400. But if you earned tips, including allocated tips, that are not included in box 5 and box 7 of your W-2, you may not be able to use Form 1040EZ. See page 8.
- You did not receive any advance earned income credit payments.
- You (and your spouse if married) were under 65 on January 1, 1999, and not blind at the end of 1998.
- Your taxable income (line 6) is less than \$50,000.

If you are not sure about your filing status, see page 7. If you have questions about dependents, use TeleTax topic 354 (see page 17). If you cannot use this form, use TeleTax topic 352 (see page 17).

Filling in your return

For tips on how to avoid common mistakes, see page 25.

Enter your (and your spouse's if married) social security number on page one. Because this form is read by a machine, please print your numbers inside the boxes like this:

9	8	7	6	5	4	3	2	1	0
---	---	---	---	---	---	---	---	---	---

Do not type your numbers. Do not use dollar signs.

If you received a scholarship or fellowship grant or tax-exempt interest income, such as on municipal bonds, see the booklet before filling in the form. Also, see the booklet if you received a Form 1099-INT showing Federal income tax withheld or if Federal income tax was withheld from your unemployment compensation or Alaska Permanent Fund dividends.

Remember, you must report all wages, salaries, and tips even if you do not get a W-2 form from your employer. You must also report all your taxable interest income, including interest from banks, savings and loans, credit unions, etc., even if you do not get a Form 1099-INT.

Worksheet for dependents who checked "Yes" on line 5

Use this worksheet to figure the amount to enter on line 5 if someone can claim you (or your spouse if married) as a dependent, even if that person chooses not to do so. To find out if someone can claim you as a dependent, use TeleTax topic 354 (see page 17).

A. Amount, if any, from line 1 on page 1	+ <u>250.00</u>	Enter total ▶							
B. Minimum standard deduction									700.00
C. Enter the LARGER of line A or line B here									
D. Maximum standard deduction. If single, enter 4,250.00; if married, enter 7,100.00									
E. Enter the SMALLER of line C or line D here. This is your standard deduction									
F. Exemption amount.									
• If single, enter 0.									
• If married and-									
- both you and your spouse can be claimed as dependents, enter 0.									
- only one of you can be claimed as a dependent, enter 2,700.00.									
G. Add lines E and F. Enter the total here and on line 5 on page 1									

If you checked "No" on line 5 because no one can claim you (or your spouse if married) as a dependent, enter on line 5 the amount shown below that applies to you.

- Single, enter 6,950.00. This is the total of your standard deduction (4,250.00) and your exemption (2,700.00).
- Married, enter 12,500.00. This is the total of your standard deduction (7,100.00), your exemption (2,700.00), and your spouse's exemption (2,700.00).

Mailing return

Mail your return by April 15, 1999. Use the envelope that came with your booklet. If you do not have that envelope, see page 28 for the address to use.

Paid preparer's use only

Under penalties of perjury, I declare that I have examined this return, and to the best of my knowledge and belief, it is true, correct, and accurately lists all amounts and sources of income received during the tax year. This declaration is based on all information of which I have any knowledge.

Preparer's Signature ▶ Firm's name (or yours if self-employed) and address ▶	Date 2/13/99	Check if self-employed <input type="checkbox"/>	Preparer's SSN EIN 35-1998970 ZIP code 46996-0000
H AND R BLOCK WINAMAC, IN			

See page 14.

KBA

Form 1040EZ (1998)

Form header section containing personal information: Your Social Security Number (067-62-8342), Spouse's Social Security Number, Your First Name (CHARLES), Initial Last Name (A MATTHES), Present Address (PO BOX 204), School District Number (6620), City (WINAMAC), State (IN), Zip Code (46996).

Indiana county information section. Includes instructions to enter 2-digit county code numbers for taxpayer and spouse. Taxpayer county: 66, Spouse county: 66. Includes note: 'Please round all entries to nearest dollar (see instructions on page 3)'.

Note: Read the instructions before completing this form.

Main table with 14 rows for tax calculations. Columns include line number, description, and amount in dollars and cents.
Line 1: AGI 4,926.00
Line 2: Deductions
Line 3: 4,926.00
Line 4: Exemptions 1,000.00
Line 5: 3,926.00
Line 6: State taxes due 133.00
Line 7: County taxes due 55.00
Line 8: Use tax due 0.00
Line 9: Total tax 188.00
Line 10: Credits 180.00
Line 11: Overpayment 0.00
Line 12: Nongame and Endangered Wildlife Fund 0.00
Line 13: Refund
Line 14: Amount you owe 8.00

ATTACH FORMS BETWEEN LINES 1 AND 14

Signature lines AA, BB, DD.

You must sign page 2 of the return

Renter's Deduction

Indiana Deduction Worksheet

Number of months rented during 1998

Amount of rent paid \$

Instructions begin on page 5

Address where rented (if different from page 1)

Enter Landlord's Name and Address

Please round all entries to nearest dollar (see instructions on page 3)

Attach additional location and landlord information if renting at more than one location.

Dollars Cents

Table with 3 rows: 1 Enter the lesser of the amount of rent paid for 1998 OR \$1500, 2 Enter the amount from line 7 of the unemployment compensation worksheet, 3 Total deductions: Add lines 1 and 2. Carry this total to page 1, line 2. Total: 0.00

Additional Information

- Enter the number of motor vehicles you and your spouse own or lease. 1
Are all these vehicles registered with the Indiana Bureau of Motor Vehicles? Yes [X] No [] If No, attach an explanation.

If any individual listed at the top of the IT-40EZ died during 1998, enter date of death below.

Taxpayer's date of death
Spouse's date of death

Authorization

Under penalty of perjury, I have examined this return and all attachments and to the best of my knowledge and belief, it is true, complete and correct. I also understand that if this is a joint return, any refund will be made payable to us jointly and each of us is liable for all taxes due under this return.

I authorize the Department to discuss my return with my tax preparer. Yes [X] No []

Your Signature Date
For Info Only - Do Not File

Your Daytime Telephone Number
(219) 946-7081

Spouse's Signature Date
For Info Only - Do Not File

Spouse's Daytime Telephone Number

Paid Preparer's Information:

Preparer's Name and Address

Name: H AND R BLOCK
Address: 106 W PEARL
City: WINAMAC
State: IN Zip Code +4: 46996-0000

Preparer's:

[X] Federal I.D. Number OR
[] Social Security Number

35-1998970
Preparer's Daytime Telephone Number
(219) 946-3832

Preparer's Signature Date
2/13/1999

Keep a copy of your completed return and attachments for your records.

Mail to: Indiana Department of Revenue, P.O. Box 6140, Indianapolis, IN 46206-6140.

98-HRB

County Tax Schedule for
Indiana Residents

◀ See instructions on page 13 to see if this schedule needs to be attached to your IT-40 ▶

Your first name and last name CHARLES A MATTHES	Your Social Security Number 067-62-8342
Spouse's first name and last name (if filing a joint return)	Spouse's Social Security Number

SECTION 1: To be completed by those taxpayers who were residents of a county that had adopted a county income tax.

Your county of residence as of January 1, 1998. (Enter 2-digit county code # from the chart on page 17.)	66	Spouse's county of residence as of January 1, 1998. (Enter 2-digit county code # from the chart on page 17.)	
--	-----------	--	--

	Column A - Yours	Column B - Spouse's
1. Enter the amount from IT-40, line 12. Note: If both you and your spouse lived in the same county on January 1, enter the entire amount from Form IT-40, line 12 on Line 1A only. See instructions on page 14	1A 3,926.00	1B
2. If you claimed a non-Indiana locality earnings deduction on Schedule 1, line 7, enter the amount here. If not, leave blank	2A	2B
3. Add lines 1 and 2	3A 3,926.00	3B
4. Enter the resident rate from the county tax chart on page 17 for the county code number shown above	4A 0.0140	4B
5. Multiply line 3 by the rate on line 4	5A 55.00	5B
6. Add lines 5A and 5B. Enter the total here. Note: Perry County Residents: If you live in Perry County and worked in the Kentucky counties of Breckinridge, Hancock or Meade, you must complete lines 7 and 8. Otherwise, enter the total here and on line 9 below (see page 15)	6	55.00
7. Enter the amount of income that was taxed by any of the Kentucky counties listed on line 6 above	7	
8. Multiply line 7 by .005 and enter total here	8	
9. Line 6 minus line 8. Enter the total here and on line 14 of Form IT-40	9	55.00

SECTION 2: To be completed by those taxpayers who on January 1, 1998, were residents of a county that had not adopted a county income tax, but worked in an Indiana county that had adopted a county income tax.

Your county of principal employment as of January 1, 1998. (Enter 2-digit county code # from the chart on page 17.)		Spouse's county of principal employment as of January 1, 1998. (Enter 2-digit county code # from the chart on page 17.)	
---	--	---	--

	Column A - Yours	Column B - Spouse's
1. Enter your principal employment income by entering the total income from your W-2s, net self-employment income (from Federal Schedule C or C-EZ) and/or farm income (from Federal Schedule F.) If you worked two or more jobs at the same time, enter the portion you earned from your main job. See page 15 for further instructions	1A	1B
2. Enter any amounts for payments made to self-employed retirement plans, IRA's, etc. See page 15 for the complete list of allowable deductions and further instructions	2A	2B
3. Subtract line 2 from line 1	3A	3B
4. Enter some or all of the exemptions from line 11 of Form IT-40 (see instructions on page 16)	4A	4B
5. Subtract line 4 from line 3	5A	5B
6. Enter the nonresident rate from the county tax rate chart on page 17 for the county number shown above under the Section 2 heading	6A	6B
7. Multiply the income on line 5 by the rate on line 6	7A	7B
8. Enter total of 7A plus 7B. Add to any Section 1, line 9 amount, and carry to line 14 of Form IT-40	8	

NEUROPSYCHOLOGICAL EVALUATION



Rehabilitation
Hospital of
Indiana

Patient Name: MATTHES, Charles
MR Number: 101273
Dictated by: Paul J. Roberts, PhD, ABPS
Dictated on: May 25, 1999

c: Frank E. Tolbert, Miller, Tolbert, Muehlhausen, Roth & Damm,
Attorneys at Law, 216 4th St., Logansport, IN 46947-7010
c: Charles Heinsen, MD, 121 E. Pearl, P.O. Box 338, Winamac, IN
46996

ADDRESS: 2979 N. County Road 800 W., Winamac, IN 46996
PHONE: (219) 843-7081
BIRTH DATE: 01/10/78
AGE: 21
MARITAL STATUS: Single

REFERRING PHYSICIAN: Charles Heinsen, MD

REASON FOR REFERRAL: The patient, Charles Matthes, is a 21-year-old single Caucasian male seen for comprehensive neuropsychological evaluation to ascertain his current level of cognitive and emotional functioning following his involvement in a motor vehicle collision.

PRESENTING PROBLEMS/BACKGROUND INFORMATION: The following information was provided by means of direct clinical interviews with the patient, Charles Matthes, his father, John Matthes, who served as a primary informant, and police reports and medical records.

According to the patient's records, Charles and a male friend, Gregory James, were traveling in Charles's 1989 Ford Mustang automobile en route to Kings Park, Long Island. The aforementioned accident occurred on the return trip to Indiana. As indicated previously, Gregory James was operating the vehicle of Charles, a 1989 Ford Mustang, and had been driving for approximately two hours when they left the Pennsylvania Turnpike near Clearfield, Pennsylvania, for a rest stop.

It is reported that Gregory was signaling his intention to turn to the left and stopped with a semi stopped directly behind their vehicle, owned by Ecklund Carriers, when a third vehicle, driven by Wade Scott Burkett, struck the rear of the semi, propelling it into the Mustang, severing the trunk deck and propelling it into the passenger's compartment where it struck the rear of Charles Matthes's head.

Radiographic studies at that time indicated that there were no intracranial



bleeds or intracranial trauma. The large laceration extended from the right occipital area superiorly up to the coronal margin of the skull forming a large 25 cm C-shaped laceration, and then following the same course on the opposite side of the skull down to the occipital area on the left side, which necessitated 59 stitches to close the wound.

From medical records, a large trap door defect, which was a full thickness scalp flap, which contained both the skin and subcutaneous tissue as well as the periosteal tissue covering the bone of the skull were observed. The skull bone was visualized, and it was at that time the patient was evaluated by Barry R. Stein and prepared for surgical correction of the scalp laceration.

On August 10, 1998, a CT scan was performed throughout the entire brain region. No mass, hemorrhage, or edema was observed, and ventricular size was normal. No midline shift was noted, though, some distortion of the scalp overlying the right parietal region was observed. CT of the cervical spine indicated straightening lordosis consistent with muscle spasm. However, no fracture or dislocation was seen.

In a report provided by Barry R. Stein, MD at the time of the initial evaluation at Clearfield Hospital in Clearfield, Pennsylvania, the patient was oriented times three, and did not present with any neurological evidence of an intracranial problem. It is reported that there was no evidence of loss of consciousness, however, this could not be verified.

Radiographic studies conducted on December 11, 1998 (MRI) indicated findings were negative. MRI of the cervical spine was also unremarkable.

MRI of the lumbar spine conducted on December 24, 1998 indicated the presence of a lateralizing left disk herniation at L5-S1. The radiologist indicated that there may have been a disk-free fragment at this level. It was observed to be lateral to the neural foramen, and would be considered a true lateral disk herniation. In summary, results of the MRI conducted on that day indicated a left lateralizing L5/S1 disk herniation with resultant exiting nerve root thickening due to the lateral disk herniation at this level on the left.

The patient was seen in followup by Lonnie L. Amico, MD of Northern Indiana Neurological Institute on January 6, 1999. On examination, the patient demonstrated decreased ankle jerk on the right and symmetry of the palpebral fissures. The L5-S1 lumbar disk was asymptomatic at the time, and the patient was subsequently referred to an orthopaedic specialist. At that time he was requested to continue followup with the chiropractor and



undergo physical therapy. The patient was prescribed a nonsteroidal anti-inflammatory medication (NSAID) and Flexeril with instructions to rest on a cervical contour pillow and utilize neck support on an as needed basis.

In evaluation conducted by Patrick D. Reibold, MD of Lafayette Neurology Associates conducted on January 22, 1999, the patient was diagnosed with flexion/extension injury to the neck, posttraumatic headaches, thoracic sprain, and the previously documented L5-S1 disk herniation. At that time, the patient was prescribed amitriptyline for sleep, Midrin for headaches, and he was requested to attempt to wean from the Vicodin with the intent of obtaining an OTC anti-inflammatory agent.

Results of a neuropsychology symptom check list indicated presence of flashing lights in the periphery, a "racing heart," though the patient is not able to indicate whether it is medication induced or anxiety, muscle spasms in the cervical and lumbar spine, transient difficulties with balance, and tremors in the right upper extremity distally. Other symptoms ascribed by the patient include numbness in the left occiput, pins and needles sensation in the bilateral lower extremities, the aforementioned pain in the cervical and lumbar spine, headaches, dizziness, feelings of faintness, and photosensitivity.

The patient reportedly becomes lost often, and this is concurred by this examiner who had scheduled two individual appointments of a three hour duration, however, the patient became lost while en route to the hospital on both occasions. The patient states that he has difficulty remembering the right word when speaking, has had difficulties with stress and anxiety following the motor vehicle collision injuries, a loss of interest in everyday activities (anhedonia), and abulia. Previously, the patient was socially and athletically active.

The patient's appetite has reportedly slightly decreased, however, without any significant change in weight. The patient reports a current height of 6 feet 1/2 inch and a weight of 155 pounds.

The patient's sleep pattern is reportedly disturbed as a result of the pain complaints with retiring occurring at 0100 hours and awakening at approximately 1000 hours. The patient states that he has broken sleep and, previously, "slept like a rock." The patient denies any legal, military, or psychiatric history.

The patient's family history is positive for diabetes in a maternal grandfather (deceased age 74) and diabetes in a maternal uncle. The patient comes



Neuropsychological Evaluation
RE: MATTHES, Charles
Page: 4

from a family of 12 children. However, one child (age 14 months) died in a tragic house fire in 1993. The 11 remaining children range in age from 23 to eight years of age with six being male and five female.

At the time of the incident, the patient was enrolled to attend St. Joseph College in Rensselaer, Indiana with the intent to matriculate full time with various scholarship benefits.

In the period following his high school graduation, the patient was employed at McDonalds at Valparaiso, Indiana. He had intended on studying Mass Communications at St. Joseph College.

The patient reports subjective complaints of difficulties with memory, with specific reference to scheduling appointments, keeping appointments once they are scheduled, arriving at designated meeting times, difficulties remembering the topic of conversation, and the name of individuals with whom he has been introduced. Other subjective complaints include feelings of being fatigued, headaches, pain, whiteouts, dizziness, panic-like symptoms, "feelings of doom," the aforementioned photosensitivity and phonosensitivity, and difficulties with attention and concentration (divided/simultaneous). The symptoms were concurred by the patient's father, John Matthes. The father states he will often ask his son, "what are you doing?" since he often displays confusion when performing everyday tasks.

CURRENT MEDICATIONS:

1. Flexeril one tablet q.d. in the a.m.
2. Vicodin 7.5/750 one tablet q.i.d.
3. Toradol of an unspecified dosage.
4. Neurontin 300 mg t.i.d.
5. Butyl one tablet q.i.d.

The patient's attorney is Frank E. Tolbert of Logansport, Indiana.

INSTRUMENTATION:

Category Test.
Seashore Rhythm Test.
Speech-Sounds Perception Test.
Finger Oscillation Test.
Grip Strength Test.
Trails A/B.
Symbol Digit Modalities Test.
Stroop Neuropsychological Test.

Neuropsychological Evaluation

RE: MATTHES, Charles

Page: 5



Visual Search and Attention Test.
Hooper Visual Organization Test.
Digit Vigilance Test.
Wechsler Memory Scale-Revised.
Wide Range Achievement Test-Revision III.
Ruff Selective Attention Test.
Rey Complex Figure and Recognition Test.
Wechsler Adult Intelligence Scale-Revised.
MMPI-II Mental Status Examination.
Clinical Interviews.

MENTAL STATUS EXAMINATION: On examination, the patient's affect was mildly-moderately depressed, but remained stable without evidence of emotional lability or mood swings. The patient's affect was appropriate for subject and setting. His thought pattern was unremarkable without evidence of delusion or flight of ideas and his speech was appropriate, purposeful and goal-directed.

Mr. Matthes was alert and oriented in all spheres, denies the presence of auditory and/or visual hallucinations, and did not appear to respond to internal stimuli. No evidence of formal psychopathology was observed.

Attention span and concentration were within acceptable limits in a 1:1 context. However, it is expected that with competing stimuli or under stressful or novel situations that this may deteriorate as evidenced by the patient becoming lost en route to the hospital for two of his three hour scheduled appointments.

The patient admits to a positive history of ethanol usage on a social basis, perhaps two times per year, tobacco usage at the rate of one pack per day since age 19. However, the patient denies OTC and/or illicit substance usage past or present. Moreover, the patient denies suicidal ideation or gesture, past or present, and no evidence of antisocial behavior was observed.

The patient's verbal expression was characterized by average vocabulary, phrasing, and articulation. Cranial nerve testing indicated CN II-CN XII were grossly intact without evidence of cerebellar, extrapyramidal, or focal neurological findings. No evidence of constructional dyspraxia was observed.

TEST RESULTS/CLINICAL IMPRESSIONS: In order to assess Mr. Matthes's current level of cognitive functioning, the Wechsler Adult Intelligence Scale-



Revised was administered. The *Full Scale IQ* summarizes overall performance on the WAIS-R and provides a broad assessment of general intellectual ability. By contrast, the separate subtests of the WAIS-R indicate particular strengths and weaknesses that characterize the individual's functioning. The patient obtained a Full Scale IQ of 109 (mean = 100), which placed him in the **Average** range when comparison is made to other individuals of his age and education level.

The Verbal IQ is generally based on performance on all six of the WAIS-R verbal subtests. It provides an indication of verbal comprehension, including the ability to use verbal skills and reasoning and solving problems, and the capacity to learn verbal material. Other areas assessed by the Verbal Scale include memory for general information, attention/concentration, knowledge of numerical concepts and basic mathematical operations, and the ability to perform logical and abstract thinking. The patient obtained a Verbal IQ of 106 (mean = 100), which placed him in the **Average** range when compared to his age and education peers.

In contrast, the Performance IQ is generally based on all five of the WAIS-R Performance subtests. It reflects the efficiency and integrity of the individual's perceptual organization, including nonverbal reasoning skills, the ability to employ visual images in thinking, and the ability to process visual material. Other areas assessed by the Performance Scale include visual memory for common objects, cause/effect relationships, visual-motor coordination and visual-motor integration abilities.

Mr. Matthes obtained a Performance IQ of 112 (mean = 100), which placed him in the **High Average** range when comparison is made to other individuals of his stated chronological age and education level. A nonsignificant 6.0 Verbal-Performance discrepancy was noted on this measure, which indicates that the patient's verbal and nonverbal abilities are comparably developed. Although the patient's performance was assessed to be in the **Average to High Average** range overall, two salient weaknesses were noted on measures which purport to assess practical knowledge and judgement in social situations, and the ability to perform logical and abstract thinking.

In order to assess this individual's level of memory functioning, the Wechsler Memory Scale-Revised was administered. The patient's scores were as follows:

<u>Subtests</u>	<u>Index</u>
Verbal Memory	111
Visual Memory	117



General Memory	118
Attention/Concentration	103
Delayed Recall	119

Results of this measure indicate performance in the **Average** range (Attention/Concentration, Verbal Memory). The patient's performance extended into the **Above Average** range on Visual Memory, Delayed Recall, and General Memory. No salient pattern of strengths or weaknesses were noted on this measure. The patient's performance on the Wechsler Memory Scale is commensurate with findings obtained from the WAIS-R.

In assessing Mr. Matthes's current level of academic ability, the Wide Range Achievement Test-Revision III was administered to obtain a baseline level of academic performance. The patient's scores were as follows:

<u>Subtests</u>	<u>Standard Score</u>	<u>Grade Score</u>
Reading	101	High School
Spelling	103	High School
Arithmetic	113	Post High School

The patient's performance on this measure was assessed to be in the **Average to High Average** range (arithmetic) without any significant pattern of strengths or weakness. The patient's performance was comparable to that obtained on other related measures.

On a selective measure of visual memory, the patient's performance in immediate recall was **Above Average**, while delayed recall was **Above Average**, and total recognition was in the **Average** range. This performance is also commensurate with findings obtained on the Wechsler Memory Scale-Revised.

Measures of grip strength and psychomotor speed were found to be within normal limits.

On a measure which purports to assess auditory discrimination for verbal and nonverbal elements, were found to be in the **Impaired** range when comparison is made to his age and education peers. This may implicate difficulties with rate of information processing as well as may suggest possible deficits in sustained attention. This appears to be concurred by separate measures of attention (selective, divided, sustained), which also implicate a slowed rate of information processing and diminished mental flexibility.

Neuropsychological Evaluation

RE: MATTHES, Charles

Page: 8



A measure of incidental learning (SDMT) was found to be within normal limits as was a measure of visual organization.

On a specific measure, which assesses selective attention, the patient's performance was found to be in the **Average** range for overall accuracy in responding, while **Mild Impairment** was noted on sections which required divided attention.

In order to assess Mr. Matthes's current level of emotional functioning, the MMPI-II was administered as well as information gleaned from extensive patient interviews and family reports. Results of the MMPI-II indicated the profile was valid and able to be interpreted.

Individuals with similar profiles present with numerous somatic complaints including headaches, chest pain, back pain, and numbness or tremors of the extremities. Other physical complaints may include weakness, fatigue, dizziness, and sleep disturbance. The physical symptoms will tend to become more pronounced in times of stress, and there may be a secondary gain associated with the symptoms, though it is not believed that this is the case with Mr. Matthes.

Individuals with this profile often present themselves as normal and responsible, but they may utilize denial, projection, and rationalization. These individuals may harbor resentments and hostilities toward other people, particularly those who are perceived as not adequately fulfilling their needs for attention. Most of the time, they may be described as overcontrolled and likely to express their negative feelings indirectly and passively, but they occasionally lose their tempers and express themselves in angry, but not violent ways. Behaving in a socially acceptable manner is important, and they generally need to convince other people that they are logical and reasonable, and they are conventional and conforming in their attitudes and values.

This individual may be very anxious, tense, and agitated with tendencies to worry a great deal even over very small problems. They may be described as fearful and apprehensive, high strung and jumpy and, as a result, they may report difficulties in concentrating and often receive anxiety disorder diagnoses. This appears to concur with the patient's and family reports of panic-like symptoms and recurrent bad dreams following the motor vehicle collision.

These individuals tend to be very introspective, and they sometimes report fears that they are losing their minds. Obsessive thinking and ruminations



often centered around feelings of insecurity and inferiority are common. In general, these individuals may be neat, orderly, organized, and meticulous. They are often seen as persistent and reliable, but they may lack ingenuity and originality in their approach to problems. They may tend to be shy, and do not interact well socially. They may be described as hard to get to know, and they worry a great deal about popularity and social acceptance. Some people may view them as sentimental, peaceable, softhearted, and sensitive, while others may see them as dependent, unassertive, and immature.

Individuals with similar profiles often tend to be excessively sensitive and overly responsive to the opinions of others. They may be seen at times as suspicious and guarded and commonly exhibit resentment and occasionally argumentative manner.

Prognosis for psychotherapy is guarded because these individuals generally do not like to disclose information regarding emotional problems, and they are likely to rationalize these a majority of the time.

SUMMARY/CONCLUSIONS: The patient, Charles Matthes, is a 21-year-old single Caucasian male of assessed **Average** verbal abilities, **High Average** nonverbal abilities with intact memory functioning. The patient's academic abilities were assessed to be within normal limits commensurate with an individual of his stated age and education level (13 years).

Grip strength and psychomotor speed were assessed to be within normal limits as were visual organization abilities and incidental learning. **Mild Impairment** was noted on measures which purport to assess attentional abilities (selective, divided, sustained) with levels of impairment ranging from **Mild** to **Severe**. Auditory discrimination for nonverbal and verbal elements were also found to be in the impaired range, which may indicate difficulties with sustained attention as well as may implicate impaired discrimination abilities between competing stimuli.

The patient's personality profile indicates the presence of a **Mild to Moderate** mental disturbance, which is in need of professional attention, and is believed to have been caused by injuries sustained in a motor vehicle collision on August 10, 1998.

Considered collectively, it is believed that the primary deficits are in speed of information processing, immediate short-term memory for verbal elements (informal conversation) as well as sustained attention.



It is believed that the patient provided a demonstration of his best possible effort and, accordingly, the aforementioned findings reflect a reliable and accurate assessment of his current level of neuropsychological and emotional functioning. No evidence of symptom exaggeration or malingering were observed. The reader is referred to the test results/interpretation section of the report for a more complete treatment of the patient's status.

DIAGNOSES:

AXIS I:	296.32	Major depressive disorder - recurrent, mild without mood-congruent psychotic features.
	293.89	Anxiety disorder due to closed head injury - with generalized anxiety and possible panic-like symptoms.
	305.10	Nicotine dependence.
AXIS II:	V799.90	Diagnosis deferred.
AXIS III:	854	Mild traumatic brain injury. Lateralized disk herniation at L5/S1. Cervical extension/flexion injury.

RECOMMENDATIONS:

1. In light of the patient's reported myofascial/muscular pain, sleep disturbance, and headaches, continuation of the current medications is indicated without modification.
2. Continued neurological followup is suggested on an as needed basis to monitor for any potential changes in the patient's physical status.
3. Reassessment of the patient's neuropsychological status in the area of attention (selective, divided, sustained) may be indicated within a period of one year to document for any potential improvements in the patient's status.

Prognostically, it is believed that the patient will demonstrate slow, but progressive improvement in his neuropsychological and emotional status given that he continues under the care of a qualified neurologist and neuropsychologist until discharge. Residual deficits in attention may become part of the clinical picture, though further evaluation is required before a definitive diagnosis can be rendered.

From a physical standpoint, it is believed that the cervicogenic headaches and back pain may be of a chronic nature, though again,



Rehabilitation
Hospital of
Indiana

ongoing evaluation and assessment will be required indefinitely.

4. Should a deterioration in the patient's emotional status be observed by family members, coworkers, or educators, followup with neuropsychology is strongly recommended.
5. Upon return to academic pursuits, the educational institution should be alerted to the possibility of acquired learning difficulties secondary to the injury sustained in the motor vehicle collision as outlined above. Modifications may be required in terms of instruction and evaluation. The neuropsychologist will avail himself to the educational institution should this become necessary.
6. Based on the aforementioned findings, it is believed the patient is deemed competent to designate DNR, POA, and manage his financial affairs without assistance. Independent operation of a motor vehicle is not contraindicated. However, in light of the previous difficulties with route finding, accompaniment by a responsible adult may be helpful.

Paul J. Roberts, PhD, ABPS

Neuropsychologist Diplomate, American College of Forensic Examiners

PJR/3992mcg7/May 26, 1999*

Lafayette Neurology Associates, P.C.

Theodore A. Nukes, M.D. Patrick D. Reibold, M.D.

Edmund C. Haskins, Ph.D.

1012 North 14th Street, Lafayette, Indiana 47904

765-429-6333 Fax: 765-420-7744

January 22, 1999

Charles Heinsen, M.D.

121 E. Pearl

P.O. Box 338

Winamac, IN 46996

Cc: Mr. Frank Tolbert
Miller, Tolbert – Attorneys at Law
216 Fourth St.
Logansport, IN 46947

Re: Charles Matthes

Dear Dr. Heisen:

CHIEF COMPLAINT: Headache, neck pain and back pain.

HISTORY OF PRESENT ILLNESS: Charles Matthes is a 21 year old, right handed, white male who was involved in a motor vehicle accident on August 10, 1998. The patient was a passenger of the car. He was rear ended by a semi. The patient suffered a severe laceration to the back of his scalp. He was treated in Pennsylvania and then released a day or two later. Apparently, he did not have loss of consciousness at the scene, but was quite stunned. Since the accident, the patient has been having a variety of neurologic symptoms. The main one is that of headaches. The pain usually begins in his neck and radiates to the top of the head. These headaches can be quite severe.

Occasionally, they are associated with blurred vision. They are not associated with nausea. They tend to last for several hours. He has been getting them up to every day, but over the past week or two, he tells me he gets one approximately every other day. He is currently taking some Vicodin for this, which helps a little bit as well as some Flexeril.

The patient's second complaint is that of pain in his thoracic area. The pain is pretty much constant. It does tend to wax and wane. It does not radiate. It perhaps has been a little bit better over the past month.

A month ago, he did have pain in his low back that radiated down into his right leg. This only lasted for apparently a day or two, and subsequently has resolved. At this point, he does not complain of any pain in his lumbar area nor does he have any symptoms of pain radiating into his left leg.

Plaintiff's Exhibit

Jerry Depo
#2C

Page 2

Re: Charles Matthes

PAST MEDICAL HISTORY: Unremarkable.

ALLERGIES: None.

SOCIAL HISTORY: He does smoke. He occasionally drinks. He is currently a student. He had been working at MacDonaldis, but is not currently working following the injury.

FAMILY HISTORY: Positive for heart disease and arthritis.

REVIEW OF SYSTEMS:

Neurologic: Positive for diffuse weakness and occasional fatigue. He does complain of some difficulty with sleeping. He has had some dizziness in the past, but this is not bothering him as much right now.

PHYSICAL EXAMINATION:

VITALS: Blood pressure is 140/80, pulse was 100. Weight was 154.

HEAD: Revealed it to be a bit tender to palpation.

NECK: Range of motion was normal. He had mild diffuse muscle spasm in the cervical spine area.

BACK: He was mildly tender to palpation about the thoracic area. There was no tenderness in the lumbar area.

HEENT: Unremarkable. Carotids are full without bruits.

LUNGS: Clear.

CARDIAC: No murmur.

EXTREMITIES: No lesions. Straight leg raising was negative bilaterally.

NEUROLOGIC EXAMINATION:

MENTAL STATUS: He was alert. Speech is fluent and coherent. He had a bit of a flat affect. He was a good historian.

CRANIAL NERVES: Fundi are benign. Extraocular movements are full. Visual fields are full to confrontation. There is no facial weakness. Palate elevates symmetrically and tongue is in the midline.

MOTOR: Revealed 5/5 strength throughout with normal bulk and tone.

FINE FINGER MOVEMENTS: Finger to nose is normal.

REFLEXES: 1/5 throughout. Toes are downgoing.

GAIT: Gait is narrow-based and steady.

The patient's medical records reveals that he had a whole body bone scan performed on 12/9/98. This revealed increased activity in the right calvarium consistent with where he had his injury. MRI scan of the cervical spine was normal, and MRI scan of the lumbar spine revealed a L5-S1 disc herniation to the left.

Page 3

Re: Charles Matthes

IMPRESSION:

1. Status post motor vehicle accident 8/10/98.
2. Flexion/extension injury to the neck.
3. Post traumatic headaches.
4. A thoracic sprain.
5. Left L5-S1 disc herniation without clinical symptoms at this point.

PLAN: I gave the patient some low dose Amitriptyline to try at bedtime to see if this will help him sleep. I gave him some Midrin to try for his headaches. I told him to try to cut down on the amount of Vicodin that he is using if at all possible, and go ahead and get an over-the-counter anti-inflammatory agent.

The patient informs me that he has been getting chiropractic treatment for his neck pain and this is helping him. It is my opinion that if this is indeed helping with his symptoms, it should be continued. I would expect the future course here of that of improvement even though we are five months now and the patient is still having symptoms, I think it is still too early to tell how much of his symptoms will be permanent. I think it would be best to wait at least several more months, if not an entire year before assessing Mr. Matthes for maximal medical improvement.

I would be more than happy to see him in follow-up in the future if necessary.

Sincerely yours,



Patrick D. Reibold, M.D.
PDR/tjc

Matthes, Charles

High School Attendance and Scholarship Record

School NJ-SP		Yr. 1992-1993		Days of School		School NJ-SP		Yr. 1993-1994		Days of School		School NJ-SP		Yr. 1994-1995		Days of School					
Subject	Gr.	No. Periods	Length Period	No. Weeks	Semester Mark	Credit	Subject	Gr.	No. Periods	Length Period	No. Weeks	Semester Mark	Credit	Subject	Gr.	No. Periods	Length Period	No. Weeks	Semester Mark	Credit	
Algebra 1-2	9				D+	1-0	Adv. P.E. 1	10				B	1	Algebra 1-2	11					C+D-	0-1
Biology 1-2					B-	1-1	Algebra 1-2			(Audit)		F	0-0	English 11						C	1-1
Choral Choir					A-	1-1	Chemistry I					F	0	German 3-4						C-	1-1
English 9L/G	G				B	1-1	Comp. Appl. 1-2					A	1-0	Health						C+	1
P.E. 1-2					B-	5-5	Eng. 10L/G					B-	1-0	Raint/Home/Dec.						C	1-1
World Geo.					B-		German 1-2					B-	1-0	TP Chem. 1-2						C+D	1-1
Machine Shop					B-	1	Small Engine/Health					C	1-0	U.S. History 1-2						C+	B
														Cam. Appl. 2						D+	1
Total						10	Total						5	Total						13	

School NJ-SP		Yr. 1995-1996		Days of School		School NJ-SP		Yr. 1996-1997		Days of School		School NJ-SP		Yr. 1997-1998		Days of School					
Subject	Gr.	No. Periods	Length Period	No. Weeks	Semester Mark	Credit	Subject	Gr.	No. Periods	Length Period	No. Weeks	Semester Mark	Credit	Subject	Gr.	No. Periods	Length Period	No. Weeks	Semester Mark	Credit	
Chem. 1-2	12				D+	1-1															
Eng. 12					C	1-1															
Geometry 1-2					C	1-1															
Gov't.					C	1-1															
Human Anat.					D	1-1															
Nutr./Foods 1-2					A	1-1															
Psychology/Sociology					B-	1-1															
Total						14	Total						5	Total						13	

School		Yr. 19		Days of School		Summary of Credits		Attendance Record					
Subject	Gr.	No. Periods	Length Period	No. Weeks	Semester Mark	Credit	English	Year	1992-93	1993-94	1994-95	1995-96	
English 10		Summer	1995		B	1	Social Studies	130	107	189	180		
							Foreign Language	10	21 3/4	23	7 3/4		
							Mathematics	170	83 3/4	157	172 1/2		
							Sciences	10	9	7	8		
							Health Education						
Total						1	Total						1

Entered high school from
 Date Entered
 Date graduated 5-24-96 Rank in Class 76/101
 Curriculum GPA 5.159 / 11.0
 Credits 43
 Credits 43
 Credits 43

Plaintiff's Exhibit
 Jeremy DePo
 #20

Name Charles Walker

Achievement Test Record

Name of Test	Form	Date Given	Grade	Score	Per. centile	Grade Equiv.	Ed. Age	Trait	1st Year	2nd Year	3rd Year	4th Year	5th Year	6th Year	7th Year
<u>ACTS</u>	<u>7</u>	<u>4/82</u>	<u>9</u>	<u>7</u>	<u>7</u>	<u>8</u>		Industry							
	<u>7</u>	<u>4/88</u>	<u>9</u>	<u>5</u>	<u>7</u>	<u>7</u>		Initiative							
	<u>7</u>	<u>4/89</u>	<u>5</u>	<u>7</u>	<u>7</u>	<u>7</u>		Cooperation							

THRES	CHARLI A	ISTEP	SCORES	READING VOC	COMP	TOTL	LANGUAGE MECH	EXPR	TOTL	MATHEMATICS COMPT	CMA	TOTL	TEST TCS LEVEL	CSI 106 AGE	SCORES 1st Year	2nd Year	3rd Year	4th Year	5th Year	TOT
B: 1/10/70			111	75	94	07	71	00	02	56	02	70	T	15						
DES. FROM: 1900				6	12.4	12.4	12.4	12.4	12.4	10.3	12.4	12.4	C	15						
RMS FROM: 1900				12.1	03	54	62	74	69	53	70	61	S	15						
RTER MONTH: 26				64	54	54	55	54	54	52	52	54								
TTERN (IRT)				55	54	54	55	54	54	52	52	54								
03132003-05-03151																				

High School Extra-curriculum Activities and Honors

Intends to enter college
 Vocational preference
 Parents' preference
 Subjects liked best
 Subjects liked least
 Special abilities
 Hobbies
 Other information:

High School Guidance Data

Your Scores

Test Date: **MARCH 1996**
 R = Recentered score (test dates on or after April 1, 1995)

SAT I: Reasoning Test	Score	Score Range	Percentiles	
			College-bound Seniors	National State
Verbal	R 520	490-550	54	59
Math	R 530	500-560	58	63

Intelligence Test Record

Name of Test	Form	Date Given	Gross Score	Per. centile	M.A.	C.A.	I.Q.	Date	Works Permit	Type of Work	Employer	Success
TEST/LEVEL	CAI IID	DATE										
TCS - 2	CA	10/87	79	82	68	56	76	79	80	65	56	74
		9-09	7	7	6	5	6	18	18	12	13	61

Employment Record

Name of Test	Form	Date Given	Gross Score	Per. centile	M.A.	C.A.	I.Q.	Date	Works Permit	Type of Work	Employer	Success
TEST/LEVEL	CAI IID	DATE										
TCS - 2	CA	10/87	79	82	68	56	76	79	80	65	56	74
		9-09	7	7	6	5	6	18	18	12	13	61

MATTHES CHARLI A ISTEP

DOB: 1/10/78
 CODES:1.1
 NORMS FROM: 1988
 QUARTER MONTH: 26
 PATTERN (IRT)

GRADE
 8.6
 DATE
 3/92

M002852002-04-01431

SCORES	READING			LANGUAGE			MATHEMATICS			TTL	TTL BATT	T C S	TEST TCS LEVEL	CSI 119 AGE 14- 2	SCORES	SE
	C	COMP	TOTL	MECH	EXPR	TOTL	COMP	C&A	TTL							
NP	95	92	95	45	93	75	94	97	96	92						
NS	8	8	8	5	8	6	8	9	9	8						
GE	12. +	12. +	12. +	7.9	12. +	12.9	12. +	12. +	12. +	12. +						
NCE	85	80	84	47	82	64	83	88	86	80						
AANCE	66	64	66	64	64	65	58	60	61	66						

STUDENT

Matthes Charles Armstrong

TERM -----COJRSE----- MID FIN

981 24110M CONTMP SITUATN P C C
24111M CONTMP SITUATN E C B
TERM GPA: 2.50 HOURS EARNED: 6.00

982 24120J MODERN WORLD P B+
24121J MODERN WORLD E A-
TERM GPA: 0.00 HOURS EARNED: 0.00

CUMULATIVE - GPA : 2.50 HOURS EARNED: 6.00

STATUS: CURRENT STUDENT CLASS: 20



Northern Indiana Neurological Institute, P.C.

NEUROLOGY

Larry M. Selberg, M.D.
Richard L. Cristes, M.D.
James R. Miller, M.D.
Lonnie L. Amico, M.D.
Mark A. Simega, M.D.

PHYSICAL MEDICINE AND REHABILITATION

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Munster
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Winamac

December 9, 1998

Charles E. Heinsen, M.D.
121 E. Pearl Street
P.O. Box 338
Winamac, IN 46996

RE: MATTHES, Charles

Dear Dr. Heinsen:

I had the opportunity to examine Mr. Charles Matthes on December 7, 1998. He was involved in a motor vehicle accident on August 10, 1998. Mr. Matthes was the passenger in a 1989 Mustang that was rear-ended by a semi-trailer truck. He was ejected onto the rear truck lid and had severe lacerations to the back of his scalp, which has rendered his scalp numb. The patient has subsequently had lightheadedness, severe headaches, cervical and lumbar pain, and dysfunction of his right hand that is mild to moderate in nature and involves difficulty using it and a change in sensation. There is pain when he walks in his lumbar spine and, at times, his legs do not feel quite right.

Mr. Matthes' past medical history is not relevant. Review of systems is fairly remarkable for blurred vision, for which he has seen an ophthalmologist, back pain, which we mentioned, and faintness when he stands up too quickly.

Examination revealed slight weakness in the abductor pollicis brevis and the abductor digiti minimi perhaps in the right hand. The reflexes were symmetrically normal, sensation was preserved, and the cranial nerves seemed intact. There is a scar on the scalp that is somewhat overgrown by hair. There appeared to be a stellate laceration of the scalp. The patient is obviously uncomfortable and obviously not able to resume his normal activities.

Plaintiff's Exhibit

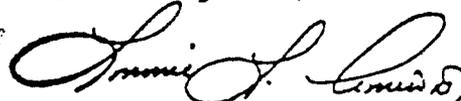
Jerry D. G. # 7 F

Charles E. Heinsen, M.D.
RE: MATHIS, Charles
December 9, 1998
Page 2

The clinical impressions here are cervical and lumbosacral strain and/or sprain of the interspinous ligaments. The dysfunction of the right hand is somewhat bothersome as is the slight change in the function of the lower extremities. I should note that there is no bowel, bladder, or sexual dysfunction.

I would propose to you that we scan his brain, cervical and lumbar spine with MR, and do a bone scan to look for occult fractures. He needs nerve conduction studies of his legs and right upper extremity. I want to see him at the conclusion of these basic studies. If, in fact, there is no significant structural abnormality, he should return to Dr. Herman, his chiropractor, and work with a physical therapist and an athletic trainer to get him back in shape. I think presently, in lieu of the pathology, I would continue the Vicodin if that relieves his pain. I will keep you informed of his progress with us.

Best regards,


Lonnie L. Amico, M.D.

LLA/cm

Dictated but not read.

RADIOLOGY REPORT

PULASKI MEMORIAL HOSPITAL
P.O. BOX 279
616 E. 13TH STREET
WINAMAC, IN 46996-0279

NAME: MATTHES, CHARLES		ROOM # OP	M.R./X-RAY # 628342
PHYSICIAN: DR. AMICO		DATE OF PROCEDURE 12-9-98	

WHOLE BODY BONE SCAN:

History of trauma.

There is some increased activity within the calvarium on the right compatible with the patient's history of skull surgery. There is contrast within the kidneys as well as urinary bladder. There is slight asymmetry with minor fullness of the upper pole collecting system on the right. There is not evidence of increased activity within the dorsal or lumbar spine to suggest occult fracture.

IMPRESSION:

Increased activity involving the calvarium on the right, compatible with the patient's prior history of trauma and surgery.

Note is made of slight asymmetry of the collecting symptoms with the kidneys being slightly full in the upper pole of the right. There is not evidence of increased activity within the dorsal or lumbar spine to suggest underlying occult fracture.

JEFFREY HUTH, M.D.

JH/irh
D/T 12-9-98

cc: Dr. Amico (fax) 219-755-0608
X-RAY

Plaintiff's Exhibit
Jeffrey Huth
2F



ARNETT CLINIC PROGRESS NOTES

Patient Name Charles Matthes

Patient History # 2275758

Date

THOMAS J. CUREMAN, M.D.
January 22, 1999

PRESENTATION

This 21-year-old male was referred by Charles E. Heinsen, M.D. in Winamac for evaluation of persistent severe headaches and muscle spasm pain of the neck and back status post motor vehicle accident.

HISTORY OF PRESENT ILLNESS

History of present illness is obtained from the patient who is a fair historian. He states that he was a restrained passenger reclining with the front seat back returning from New York when in Pennsylvania they were struck from behind by a vehicle as they were at a stop waiting to turn. The vehicle behind them had been struck by a semi that was coming down the hill at a high speed and could not stop. Impact was severe enough that it knocked the trunk into the passenger space and struck him in the right parietal region. He was briefly unconscious, but awoke and recalls details following the accident. He did have significant head and back pain at the scene and this persisted on a daily basis for weeks afterwards. In the first several weeks he had had left hip pain radiating down into the thigh, but that has now resolved.

His main complaint at this point is the persisting severe headaches associated with marked fatigability. He has had chiropractic treatments with only transient benefit. His headaches are no longer daily, but now occur about three times per week. They consist of a severe squeezing pain in the fronto-occipital distribution extending into the neck and back region. There is no associated nausea or vomiting, but he is sensitive to light.

Magnetic resonance imaging of the brain and cervical spine in December was normal. The lumbar MRI revealed an L5 disc lateralized to the left. Bone scan showed some increased activity in the calvarium on the right.

Upon questioning he does state that he has been quite irritable and anxious since the time of the accident and has had some difficulty driving.

PAST MEDICAL HISTORY

Past medical history is negative for headaches prior to these injuries and he has otherwise been quite healthy. He did have one hospitalization for food poisoning.

Surgeries: None except related to the accident.

Medications: Flexeril twice a day, Vicodin two pills per day.

Allergies: None.

REVIEW OF SYSTEMS

He has headaches as described above and denies problems with vision, hearing, speech, swallowing, or bowel or bladder control. He has not had rashes or joint

Plaintiff's Exhibit
Henry Dye
24

Date
THOMAS J. CURFMAN, M.D.
January 22, 1999
Continued (-2-)

inflammation. He has been sleeping poorly with a tendency to toss and turn and averages just six hours of sleep per night. The appetite has been stable.

PERSONAL HISTORY

He is a student at St. Joe College in mass communications. He is single. He smokes one pack of cigarettes per day and drinks alcohol occasionally.

FAMILY HISTORY

Family history is negative for neurologic problems.

PHYSICAL EXAMINATION

Blood pressure in the right arm is 132/80 with a pulse of 80. Weight is 160 pounds. Height is 6 foot.

Appearance: Thin male in no acute distress.

Head and Neck: Head and neck exam is normocephalic. Examination of the spine reveals some loss of the natural curvature with obvious spasm of the paraspinal musculature. Straight leg raising test is negative bilaterally. Carotids are 1+ without bruits.

Mental Status: He has very poor eye contact with blunted affect and some psychomotor retardation. Left/right discrimination is intact. There is no drift to the extremities or evidence of aphasia.

Speech: Normal without dysarthria, but somewhat low and monotone.

Station and Gait: Normal with good toe, heel, and tandem walk. He squats and rises well. There is no Romberg.

Cerebellar Exam: Finger-to-nose and heel-to-shin are smooth. Rapid, alternating movements are intact. There is no increase in rebound.

Motor Exam: Tone and appearance are normal. Strength is 5/5 in all major muscle groups.

Sensory Exam: Intact to pin, cotton, and vibration testing.

Reflexes: Reflexes are 2+ and symmetric. The toes are downgoing to plantar stimulation.

CRANIAL NERVES: Cranial nerves II-XII are intact.

II: The pupils are 3 mm, round, and reactive to light and accommodation. The discs are flat and of normal coloration. Visual fields are full to confrontation.

1

ARNETT CLINIC PROGRESS NOTES

Patient Name Charles Matthes

Patient History # 2275758

Date

THOMAS J. CURFMAN, M.D.
January 22, 1999
Continued (-3-)

- III, IV & VI: EOMI without nystagmus or diplopia.
- V: Motor and sensory are intact.
- VII: The face is strong and symmetric.
- VIII: Intact.
- IX & X: The palate elevates symmetrically.
- XI: SCMs are strong.
- XII: The tongue is midline without atrophy or fasciculations.

SUMMARY

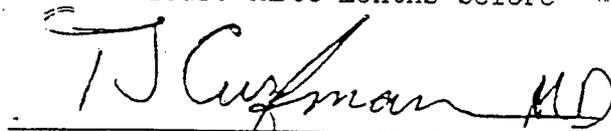
A 21-year-old male with persistent severe headaches, neck and back pain status post automobile accident. Neurologic exam is significant for objective findings of paraspinal spasm of the cervical, thoracic, and lumbar levels and blunted-affect with poor eye contact, but no localizing abnormalities are found and there is no evidence to support active lumbosacral radiculopathy at the level of his disc herniation demonstrated on MRI.

IMPRESSION

Post traumatic headaches and paraspinal spasm with associated depression.

PLAN

He will begin a therapeutic trial on Remeron 30 mg p.o. q.h.s. and was asked to hold back on his Flexeril to avoid excessive sedation during the day. The importance of daily stretching and conditioning exercises was emphasized and he will alternate use of Vicodin with Naprosyn 500 mg for pain control until the Remeron can become effective. An appointment was made for four to five weeks for a followup in case this has not led to significant improvement at which time reassessment would be indicated. If he is feeling much better then he will followup with Doctor Heinsen and was advised to continue the Remeron for at least three months before discontinuing it.



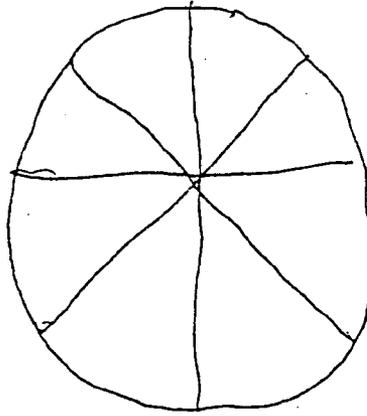
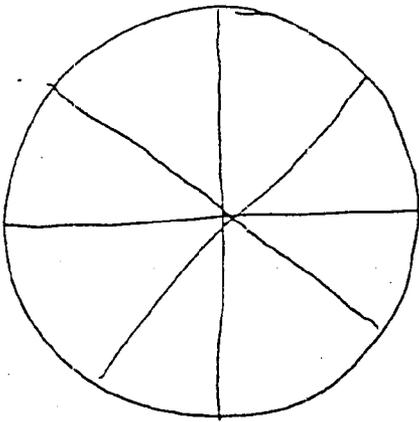
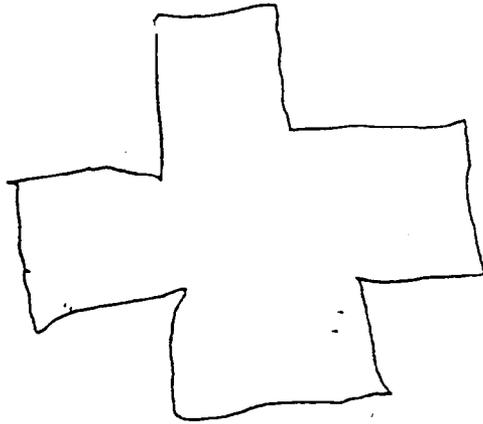
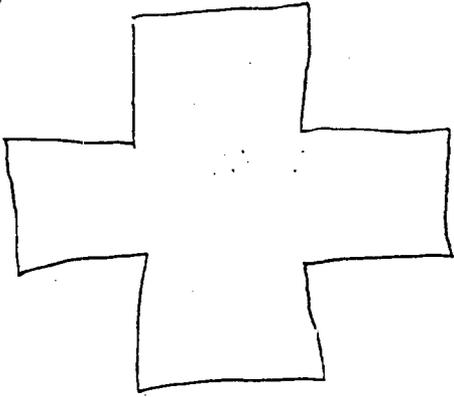
Thomas J. Curfman, M.D.
Dictated But Not Read

TJC/lat
1/22/99 D
1/25/99 T

pc: Charles E. Heinsen, M.D.
530 North Hospital Drive
Winamac, IN 46996

Charles Matthes

1-22-99



$$\begin{array}{r} 70^{15} \\ 85 \\ - 27 \\ \hline 58 \end{array}$$

$$\begin{array}{l} 3 \times 17 = 32 \\ \hline \text{STM: R, D, B, Z} \end{array}$$

ARNETT CLINIC Neurology Initial Visit

Patient: **FC HCS**
 Pt. H: **CHARLES MATTHES**
 PH: 219-843-1016
 Birth: Gender: 01/10/1978

Info?:
 Date:
 Ref. Dr.: **Hinsen**

COMPLAINT Back + neck pain ^{front occipital}

HISTORY 21 yr ^{old} HA + back pain - occipital and right P/A Aug 10th 98. waiting room in Pains. Semi struck car behind house - trunk lid came in and hit (R) side of head - only brief LOC → severe HA + constant back pain of some (L) hip pain - now gone - feels fatigued
 No - Radicular pain or focal weakness
 Now HA not as frequent - Now just 9 30. No nausea or vertigo
 but light bothers. Back hasn't changed → chiropractors -
 Was out easily + limited irritable -
Anxious

HOSP: Food poisoning

SURG
 APP CHOL HER TONS.
 HYST DISC GAST COLON
 Close Head MVA

MEDS: Flexeril 2x daily
 Fied: Ficodin 2/4 for both helps - has been on 4 mos.
 Now pain <

ALLERGIES: NKDA

PMH

ROS V, H, S, S, B, B, R, J, I Sleep Toss + turn Aug 6 hrs
App: stable

PH Cig: 1ppd EtOH see Single - was Student at Jo - Mass Comm

FH D, J

EXAM

BP Right 132/80 Left
 Pulse 80 Weight 160 Height 1.71m



2600 Greenbush Street
Lafayette, Indiana 47904
317/448-8000

Certification of Medical Records

Attached hereto are medical records pertaining to Charles Matthes
originated by an employee or employees of the Arnett Clinic for treatment to Charles
5 pages are attached. MATthes

The records attached are true and complete copies of original records originated by an employee or employees of the Arnett Clinic. The records were made in the course of regularly conducted activity, were made at or near the time of the occurrence of the matters set forth, by or from information transmitted by a person with knowledge of those matters, and kept in the course of the regularly conducted activity, and were made by the regularly conducted activity as a regular practice.

This certificate is made pursuant to the Indiana Rules of Evidence, Sec. 803(6) and 902(9) by the custodian of the aforesaid records.

I affirm under the penalties of perjury that the foregoing representations are true.

[Signature]
Records Custodian
Arnett Clinic

Witnessed by:

[Signature]

Dated 3-18-99

CLEARFIELD HOSPITAL, PO BOX 992, CLEARFIELD, PA 16830
EMERGENCY DEPARTMENT RECORD

PATIENT: MATTHEWS, CHARLES
DATE OF SERVICE: 10/10/98
PHYSICIAN: David A. Brett, D.O.

MR #:0000157919

TIME DICTATED: 16:08:20

TIME TRANSCRIBED: 16:09:15

PRIORITY

CHIEF COMPLAINT: Motor vehicle accident.

HISTORY OF PRESENT ILLNESS: This 20-year-old white male was a restrained passenger in a Ford Mustang with severe rear end damage. The car was hit from behind by a ^{semi truck} ~~trailer truck~~ which pushed the butt end of the car all the way up to the back of the front seats. The patient denied any neck, back, hip, chest, or abdominal pain. He denied any shortness of breath, chest pain, nausea, or vomiting. He complains of some head pain where there is a laceration on top of his head but no loss of consciousness. There is a fair amount of bleeding from the laceration, but otherwise, he was stable without complaints. When I saw him, this history was confirmed. He knows all of his demographics and remembers what happened.

DAS emr
8-10-98
semi truck trailer
hit from behind
pushed by
and
prec
h:10:13
(1)

PAST MEDICAL HISTORY: Negative.

MEDICATIONS: None.

ALLERGIES: None.

SOCIAL HISTORY: Negative alcohol and tobacco.

FAMILY HISTORY: Non-contributory.

REVIEW OF SYSTEMS:

GENERAL: No fever or chills. No weight changes.

HEENT: Positive headache but no blurred vision, hearing problems, or facial numbness. No loss of consciousness or seizures. No neck pain. No epistaxis or pain in the facial bones.

PULMONARY: No shortness of breath or respiratory difficulty or wheezing.

CARDIAC: No palpitations or chest pain.

ABDOMEN: No abdominal pain, nausea, vomiting, back pain. No hip pain.

GENITOURINARY: No genitourinary complaints.

EXTREMITIES: No pain in the extremities.

NEUROLOGICAL: No numbness, tingling, or weakness.

PHYSICAL EXAMINATION:

VITAL SIGNS: Temperature 97.7, pulse 76, respirations 18, BP 153/99, O2 sat 97%.

Plaintiff's Exhibit
J. Brett, D.O.
24

PATIENT: MATTHEWS, CHARLES

MR #:0000157919

posterior scalp which goes in four different directions to a total of at least 20 cm. It is a stellate-type laceration. In the center of the laceration, the galea is severely disrupted in several directions, and the laceration also extends obliquely through the layers of the scalp in the center as well. There is no palpable bone deformity. The bone is visible, however. Hemostasis is adequate at this time. There are focal pieces of blue cloth in the center of the laceration. No other facial injuries are seen. Ears - Tympanic membranes are clear. Eyes - PERRLA. EOMI. Sclerae and conjunctivae unremarkable. Lips, nares, and gums are moist. No epistaxis. No trauma to the facial bones, teeth, or tongue.

NECK: Soft and supple. Trachea is midline.

LUNGS: Clear to auscultation. No palpable deformity of the clavicles or upper extremities.

CARDIAC: Auscultation of the heart is negative for murmurs or extra heart sounds. No muffled heart tones.

ABDOMEN: Soft. Liver and spleen not enlarged or tender. Bowel sounds heard in all four quadrants.

EXTREMITIES: No hip or back tenderness. Lower extremities are atraumatic. Pulses equal and symmetrical.

NEUROLOGICAL: No sensory difficulties. Motor strength is equal and symmetrical. Deep tendon reflexes 2/4 upper and lower extremities. Cranial nerves II through XII grossly intact.

LABS: Urinalysis was negative for blood. X-rays of the cervical spine were unremarkable. A CAT scan of the head was negative.

THERAPY: He was given a tetanus shot and Ancef 1 g IV.

CONSULTATIONS: Dr. Stein.

DIAGNOSES:

1. Examination for motor vehicle accident.
2. Complex scalp laceration.

DISPOSITION: Dr. Stein is coming to the hospital to treat another patient involved in this accident and will also accept this patient as an admission so he can repair the scalp laceration in a definitive manner which may require operative intervention. The patient was also given IV Demerol 25 mg for pain with good results. The patient was transferred to the floor with stable vital signs awaiting Dr. Stein.

DATE: 8-10-98

PHYSICIAN'S SIGNATURE: _____

David A. Brett
David A. Brett, D.O.

Suite 2100
 One Riverfront Plaza
 Louisville, Kentucky 40202
 502-589-0995
 Federal ID: 61-0944083

#: 20474

SALES ORDER #:

Page 1 of 1

SOLD TO:
 Mr. Frank E. Tolbert
 216 Fourth Street
 Logansport, IN 46975
 USA

SHIPPED TO:
 Mr. Frank E. Tolbert
 216 Fourth Street
 Logansport, IN 46975
 USA

INVOICE DATE	YOUR ORDER #	PAYMENT TERMS	SALESMAN	ORDER SOURCE	SHIPPED VIA
7/21/1999	MATTHES	Net 30	Tierney, John P.		

Qty Ord	Qty Sh	Item #	Description	Disc	Tax	Price	Amount
1	1		VOCATIONAL ECONOMIC ASSESSMENT	0.0%	<input type="checkbox"/>	\$2,150.00	\$2,150.00

Comments:

SUBTOTAL:	\$2,150.00
FREIGHT:	\$0.00
0.00% TAX:	\$0.00
OTHER TAX:	\$0.00
OTHER:	\$0.00
TOTAL	\$2,150.00

PAYMENTS:

AMOUNT DUE \$0.00

DEP TO ACCT	DATE PAID	CHECK/CARD NUM	EXP DATE	AMT PAID	AMT RECVD	AUTHORIZATION
Main Bank Account	7/21/1999	072199		\$900.00	\$900.00	
Main Bank Account	8/3/1999	11465		\$1,250.00	\$1,250.00	
Total:				\$2,150.00		

Customer

Plaintiff's Exhibit
Tierney Seal

#: 24004

Suite 2100
 One Riverfront Plaza
 Louisville, Kentucky 40202
 502-589-0995
 Federal ID: 61-0944083

SALES ORDER #:

Page 1 of 1

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 Mr. Frank E. Toibert
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 Mr. Frank E. Tolbert
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 USA

INVOICE DATE	YOUR ORDER #	PAYMENT TERMS	SALESMAN	ORDER SOURCE	SHIPPED VIA
2/5/2001		Net 30	Tierney, John P.		

Qty Ord	Qty Sh	Item #	Description	Disc	Tax	Price	Amount
0.5	0.5		File Review-New Information (1/29/01)	0.0%	<input type="checkbox"/>	\$175.00	\$87.50

Comments:

SUBTOTAL:	\$87.50
FREIGHT:	\$0.00
0.00% TAX:	\$0.00
OTHER TAX:	\$0.00
OTHER:	\$0.00
TOTAL	\$87.50

PAYMENTS:

AMOUNT DUE

DEP TO ACCT	DATE PAID	CHECK/CARD NUM	EXP DATE	AMT PAID	AMT RECVD	AUTHORIZATION
Undeposited Funds	2/20/2001	13865		\$87.50	\$87.50	
Total:				\$87.50		

Customer

#: 24005

Suite 2100
 One Riverfront Plaza
 Louisville, Kentucky 40202
 502-589-0995
 Federal ID: 61-0944083

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Page 1 of 1

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 USA

INVOICE DATE	YOUR ORDER #	PAYMENT TERMS	SALESMAN	ORDER SOURCE	SHIPPED VIA
2/5/2001		Net 30	Tierney, John P.		

Qty Ord	Qty Sh	Item #	Description	Disc	Tax	Price	Amount
1.5	1.5		File Review-New Information (1/30/01)	0.0%	<input type="checkbox"/>	\$175.00	\$262.50

Comments:

SUBTOTAL:	\$262.50
FREIGHT:	\$0.00
0.00% TAX:	\$0.00
OTHER TAX:	\$0.00
OTHER:	\$0.00
TOTAL	\$262.50

PAYMENTS:

AMOUNT DUE \$0.00

DEP TO ACCT	DATE PAID	CHECK/CARD NUM	EXP DATE	AMT PAID	AMT RECVD	AUTHORIZATION
Undeposited Funds	3/6/2001	13870		\$262.50	\$262.50	
Total:				\$262.50		

Suite 2100
 One Riverfront Plaza
 Louisville, Kentucky 40202
 502-589-0995
 Federal ID: 61-0944083

#: 24073

SALES ORDER #:

Page 1 of 1

SOLD TO:
 Mr. Frank E. Tolbert
 216 Fourth Street
 Logansport, IN 46975
 USA

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 Mr. Frank E. Tolbert
 216 Fourth Street
 Logansport, IN 46975
 USA

INVOICE DATE	YOUR ORDER #	PAYMENT TERMS	SALESMAN	ORDER SOURCE	SHIPPED VIA
2/22/2001		Net 30	Tierney, John P.		

Qty Ord	Qty Sh	Item #	Description	Disc	Tax	Price	Amount
1	1		Consultation by Phone (2/21/01)	0.0%	<input type="checkbox"/>	\$175.00	\$175.00

Comments:

SUBTOTAL:	\$175.00
FREIGHT:	\$0.00
0.00% TAX:	\$0.00
OTHER TAX:	\$0.00
OTHER:	\$0.00
TOTAL	\$175.00

PAYMENTS:

AMOUNT DUE

DEP TO ACCT	DATE PAID	CHECK/CARD NUM	EXP DATE	AMT PAID	AMT RECVD	AUTHORIZATION
Undeposited Funds	3/6/2001	13926		\$175.00	\$175.00	
Total:				\$175.00		

HEALTHSOUTH

Rehabilitation Hospital of Kokomo

INDEPENDENT MEDICAL EVALUATION

PATIENT NAME: MATTHES, CHARLES

DATE SEEN: NOVEMBER 9, 2000

REFERRED BY: ATTORNEY FRANK TALBOT AND DR. PAUL J. ROBERTS

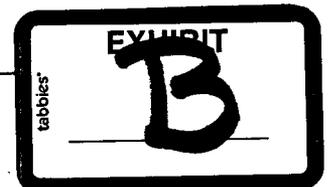
HISTORY:

Mr. Matthes is a 22-year-old, right-handed, white male who was involved in a motor vehicle collision on 08/10/1998. He states that he was driving home from school from Pennsylvania. He was stopped at a stop sign when a semi-trailer pulled behind him and stopped. The semi was apparently hit and drove the trailer into his car. The patient states that he had a scalp laceration as well as some loss of consciousness. He also has debilitating neck pain as well as back pain. He has been to see several physicians. Most notably his pain physician Dr. Sapir. Dr. Sapir has done multiple procedures on him including diagnostic cervical medial branch blocks on the left and right side under fluoroscopy as well as radio frequency thermal denervation of the cervical medial branch on the left X1 and on the right X2. The patient has also had physical therapy. He has also had an MRI of his lumbar spine which shows him to have some left lateralizing L5/S1 disc herniation with some possible nerve root thickening. The patient states that he has more pain when he carries books, or when he moves his neck. He states that physical therapy and some cool showers will decrease his pain. His medications are Vioxx, Vicodin ES and Remeron. He states most of his pain is on his right side of his neck with some radiation into his upper trapezius. He also has some pain in his buttocks area with some low back pain and some left thoracic paraspinal pain. He will also get headaches. They get worse with light. He states that the radiofrequency did decrease his pain, but only worked for approximately four months. Otherwise, the patient is not working at this time. He used to work part time at McDonalds, but he does go to school. He states that he is otherwise healthy.

PHYSICAL EXAMINATION:

The patient is alert and oriented, pleasant and cooperative. His cranial nerves 2-12 are intact. He ambulates independently. He was able to walk on his heels and toes. Motor strength is 5/5. He has good range of motion of all of his extremities. Sensation is intact to light touch. Deep tendon reflexes were 2+. On back range of motion, the patient has 75° range of motion of his back in flexion, and 20° of extension. He has a negative straight leg raise test in a seated position. In a supine position he does have some tightness in his bilateral hamstrings. Neck range of motion shows him to have full range of motion in flexion and extension. Rotation towards the right is at 75°, towards the left is at 90°, tilting is within normal limits. He does have paraspinal tenderness on his right cervical region as well as right upper trapezius tenderness. The patient also has some left rhomboid tenderness, but all muscle strength is 5/5.

829 N. Dixon Rd. • Kokomo, IN 46901 • 765 452-6700 • Fax 765 452-7470



PATIENT: MATTHES, CHARLES
DATE: NOVEMBER 9, 2000
PAGE 2

At this time I believe this patient does have some permanent impairment as well as some permanent restrictions. I would limit him to lifting no greater than 20 lbs at a time, and also limit overhead. The patient does not exhibit any radiculopathy activity.

According to the 4th Edition of AMA Guides to the Evaluation of Permanent Impairment, Mr. Matthes would fit into the DRE Thoracolumbar Category II (page 106) 5% whole person impairment.

If you have any further questions regarding this evaluation, or if my office can offer you any further assistance in this matter, please do not hesitate to phone.

Sincerely,



Rodney Chou, M.D.

11/21/00
Date

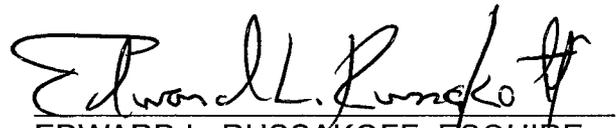
Dictated but not proofread

CERTIFICATE OF SERVICE

I, EDWARD L. RUSSAKOFF, ESQUIRE, hereby certify that a true and correct copy of the foregoing MOTION IN LIMINE has been forwarded to the following counsel of record, via First Class U.S. Mail, this 27th day of July, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222


EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendant,
WADE SCOTT BURKETT

51
GA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

MOTION IN LIMINE

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235
GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

FILED

AJG 07 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT,)
 S & S TRUCKING,)
)
 Defendants.)

MOTION IN LIMINE

AND NOW, comes the Plaintiff, Charles Matthes, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE and
MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., and
FRANK E. TOLBERT, ESQUIRE, and files this Motion in Limine and in support thereof, avers
as follows:

1. This action arises out of a motor vehicle accident occurring on August 10, 1998.
2. The Plaintiff claims personal injuries as a result of the negligence of all Defendants herein.
3. In the collision between the Defendants' vehicles and the vehicle that the Plaintiff was a passenger in, Defendants, Keith W. Peters and Wade Scott Burkett, allegedly also suffered personal injuries.

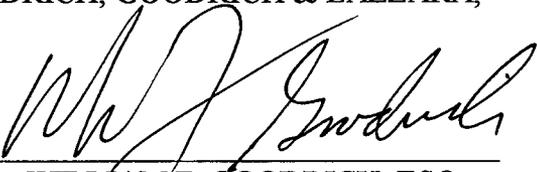
4. Any alleged injuries incurred by Defendants Keith W. Peters and Wade Scott Burkett are irrelevant to the issues to be tried in the present lawsuit, which involves the injuries to the Plaintiff, Charles Matthes.

5. Any attempt to introduce evidence or testimony of injuries sustained by either Defendant Keith W. Peters or Wade Scott Burkett is designed to prejudice the Plaintiff's claim and evoke sympathy from the jury as to the responsibility and liability of the Defendants Keith W. Peters and Wade Scott Burkett.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant this Motion in Limine and issue an Order prohibiting the Defendants, any and all of the Defendants' witnesses, and/or Defendants' counsel from remarking to the jury, giving testimony or in any other way referring to any alleged injuries sustained by Defendant Keith W. Peters and Defendant Wade Scott Burkett in the accident of August 10, 1998 which is the subject of this lawsuit.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA,

BY: 
WILLIAM F. GOODRICH, ESQ.

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM,

BY: 
FRANK E. TOLBERT, ESQ.

CERTIFICATE OF SERVICE

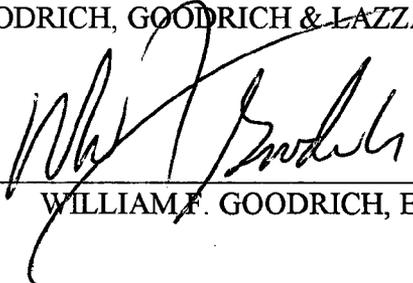
I hereby certify that on this 30 day of July, 2001, a true and correct copy of the within Motion in Limine has been forwarded by facsimile and by regular first class mail, postage prepaid to the following counsel of record:

EDWARD L. RUSSAKOFF, ESQUIRE
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
FAX #: (412) 261-3222

RICHARD J. TRANKOCY, JR., ESQUIRE
BAGINSKI & BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222
FAX #: (412) 391-0568

GOODRICH, GOODRICH & LAZZARA,

BY:


WILLIAM F. GOODRICH, ESQ.

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM,

BY:


FRANK E. TOLBERT, ESQ.

FILED

AUG 02 2001

MILITICE atty

William A. Shaw
Prothonotary

W. A. Shaw

W. A. Shaw

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH E. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT,)
 S & S TRUCKING,)
)
 Defendants.)

ORDER OF COURT

AND NOW, to wit, this ____ day of _____, 2001, upon presentation of the foregoing Motion in Limine, it is hereby **ORDERED, ADJUDGED and DECREED** that the Defendants and all of the Defendants' witnesses and/or Defendants' counsel are prohibited from remarking to the jury, giving testimony or in any other way referring to any alleged injuries sustained by Defendant Keith W. Peters or Defendant Wade Scott Burkett in the accident which is the subject of this lawsuit.

BY THE COURT:

J.

52
CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**PLAINTIFF'S RESPONSE TO
DEFENDANT WADE SCOTT BURKETT'S
MOTION IN LIMINE**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235
GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

FILED

AUG 02 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT,)
 S & S TRUCKING,)
)
 Defendants.)

**PLAINTIFF'S RESPONSE TO DEFENDANT
WADE SCOTT BURKETT'S MOTION IN LIMINE**

AND NOW, comes the Plaintiff, Charles Matthes, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE and
MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., and
FRANK E. TOLBERT, ESQUIRE, and files respectfully replies to the Defendant Wade Scott
Burkett's Motion in Limine as follows:

1. Plaintiff, Charles Matthes, noticed the deposition of John P. Tierney for discovery
and use at trial (copy of the Notice attached and marked as Exhibit "A") and as such Defendant
Burkett's representation that it was a pre-trial deposition is a misrepresentation to the Court.

2. John Tierney was listed as an economic and vocational expert in Plaintiff's Pre-
Trial in addition to his report being provided to the Defendant's representatives in a letter dated
July 22, 1999 to Tonya Truitt, over two (2) years ago.

3. Mr. Tierney, testified, without objection to his qualifications, that in addition to his advanced degrees in guidance and counseling, from Spalding University in Louisville, Kentucky, he also took additional course work in Vocational Counseling, Vocational Rehabilitation Counseling, Economics and Finance at the Universities of Cincinnati, Nevada at Las Vegas and Purdue University. Mr. Tierney further testified that he was the Director of Personnel for the Catholic Archdiocese in Louisville, Kentucky, involving counseling disabled and non-disabled clients relating to their performance in their jobs. He further testified that he was a Vocational Rehabilitation Counselor with Community Mental Health System in Southern Indiana and that subsequently at Louisville, Kentucky, where he developed and was in charge of employee assistance programs dealing with people who had health problems or disabilities which affected their performance on the job. Mr. Tierney additionally testified that for eleven (11) years he was the Director of Rehabilitation for the Metropolitan Sewer District in Louisville, Kentucky and that as part of job he was to work with people who had been injured and tried to return them back to their usual and customary work as much as possible and if unsuccessful, he was involved in finding individuals work in some other type of field that would be compatible with the injuries that they had. In 1986 to 1992, he was under contract for the United States Government as a Vocational Expert. He would testify in front of an Administrative Law Judge in Social Security Disability Claims regarding disabled people and their ability to work and if so, what type of work they could perform. Additionally, he testified that he has been doing Vocational Rehabilitation counseling for over twenty-three (23) years. Mr. Tierney further testified that he was on the Associate Faculty at Spalding University in Louisville, Kentucky and at Indiana University Southeast and at the University of Louisville, teaching Counseling and Vocational Counseling. Mr. Tierney also indicated that he has been accepted as an expert in Vocational Economics in a

number of states since 1988, including Kentucky, Illinois, Michigan, Indiana, Florida, Colorado, West Virginia, Tennessee, Georgia, in both State and Federal Courts. Additionally, on cross-examination, Mr. Tierney indicated that he has testified two or three times in Pennsylvania.

4. Paragraph 4 of Defendant's Motion in Limine is admitted. However, it is noted that Mr. Tierney has over thirty (30) years of experience in the Vocational Economics field.

5. Paragraph 5 of Defendant's Motion in Limine is admitted in part. It is admitted that Mr. Tierney relied upon Dr. Roberts' proposed testimony (i.e., report.) Dr. Roberts' deposition has been taken for use at trial wherein Dr. Roberts indicates that the Plaintiff has a brain injury.

In paragraph (b) Mr. Tierney did testify that the Plaintiff is clearly disabled at deposition page 86, no objection was raised. It is further noted that in further testimony no objection was raised;

Paragraph (c) is admitted;

Paragraph (d) is admitted. Same is the question of weight;

Paragraph (d1) is admitted. It is further averred that the same is a question of weight for the jury;

Paragraph (e) is admitted. Same is a question of weight;

Paragraph (f) is admitted. Same is a question of weight;

Paragraph (g) is admitted, based upon a statistical analysis of the United States Department of Labor;

Paragraph (h) is admitted based upon a statistical analysis of the United States Department of Labor;

Paragraph (i) is admitted based upon a statistical analysis of the United States Department of Labor;

Paragraph (j) is admitted based upon a statistical analysis of the Department of Labor;

Paragraph (k) is admitted based upon a statistical analysis of the Department of Labor;

Paragraph (l) is admitted based upon a statistical analysis of the Department of Labor;

Paragraph (m) is admitted based upon a statistical analysis of the Department of Labor;

Paragraph (n) is admitted based upon a statistical analysis of the Department of Labor; and

Paragraph (o) is admitted, however an objection was raised by the Defendants to the relevance of the same.

6. Paragraph 6 (a) and (b) are admitted. Further, it is noted for the court that from pages 24 through 39 of Mr. Tierney's deposition, he discussed the methodology of his evaluation and the basis for the same. Also, the fact that this methodology is and has been accepted throughout all the Courts he has testified in and has been accepted by all individuals who do this type of Vocational Evaluation as a correct methodology.

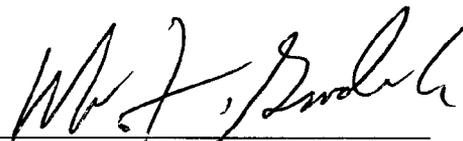
7. Paragraph 7 is admitted. The same is a question of weight to be determined by the jury. It is not necessary for the economic's expert to speak to the medical care givers, only that he has relied upon their reports. Mr. Tierney indicated that he relied upon the Plaintiff's neuropsychological examination at page 69 of his deposition and that of Plaintiff's own assessment of what he could do physically.

8. Paragraph 8 of Defendant's Motion in Limine is erroneous as follows:
 - a. Relating to his insertion of medical opinion and conclusion, there was no objection raised by the Defendant as to his opinions, as such, in that the video was made for use at trial, they have been waived;
 - b. Mr. Tierney's qualifications are more than adequate to testify as an expert in this matter based upon his testimony from pages 5 through 17 of which no objections were made as to his qualifications to testify;
 - c. There was more than sufficient foundation layed by the testimony of Mr. Tierney concerning opinions as to the wage loss sustained by the Plaintiff herein. *See Ruzzi v. Butler Petroleum Company*, 527 Pa.1, 588 A.2d 1 (1991). Further, no objection was made as to the foundation for Mr. Tierney's testimony and, as such, the same is waived;
 - d. The methodology utilized by Mr. Tierney was covered exhaustively in page 24 through 39 of his deposition. Further, the same has been accepted in all of the Courts he has testified in. There was no objection made by the Defendants as to his methodology, as such, the same is waived;
 - e. It is denied as stated in that the same is not specific so as to respond;
 - f. Paragraph f is denied as stated. To the contrary, the Courts in Pennsylvania have permitted the use of statistical information of the United States Department of Labor used in economic testimony *See Ruzzi v. Butler Petroleum Company*, 527 Pa. 1, 588 A.2d 1 (1991).

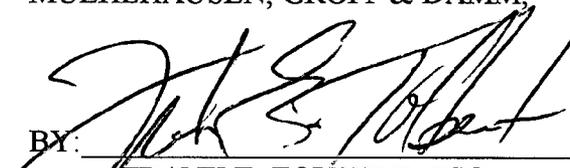
WHEREFORE, Plaintiff, Charles Matthes, respectfully requests that the Defendant's Motion herein be denied as stated and that costs be assessed against the Defendant for filing a frivolous motion herein and the Plaintiff being forced to expend time to respond to the same.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA,

BY: 
WILLIAM F. GOODRICH, ESQ.

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM,

BY: 
FRANK E. TOLBERT, ESQ.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

NO.: 00-88-CD

Issue No.:

**NOTICE OF DEPOSITION OF
JOHN P. TIERNEY**

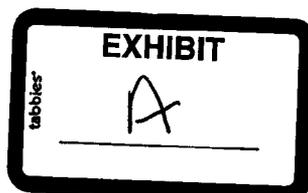
Filed on behalf of CHARLES MATTHES,
Plaintiff

Counsel of Record for this Party:

William F. Goodrich, Esq.
Pa. I.D. #30235

GOODRICH, GOODRICH LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

NO.: 00-88-CD

Issue No.:

NOTICE OF VIDEO DEPOSITION OF JOHN P. TIERNEY

TO: COUNSEL OF RECORD

PLEASE TAKE NOTICE that the video deposition of John P. Tierney will be taken for the purpose of discovery and for the use at trial and in accordance with the Pennsylvania Rules of Civil Procedure before a notary public duly authorized to administer oaths on Wednesday, January 10, 2001, at 10:00 a..m. Chicago time at the offices of Vocational Economics, Inc., Three First National Plaza, 70 West Madison, Suite 1400, Chicago, IL 60602, at which time and place you are invited to appear and take such part as shall be fitting and proper.

The scope and purpose of this deposition is to inquire into all the facts of which you may have knowledge surrounding the happening of the incident in the above-captioned case; and to inquire into all of the facts and circumstances of which you may have knowledge which relate to

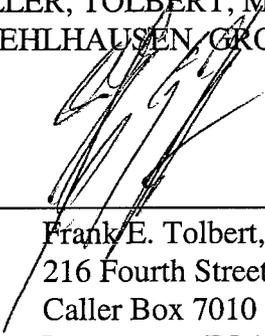
No. 00-88-CD

the injuries and damages which Plaintiff has suffered as a result of the incident out of which the above-captioned case arises.

Respectfully submitted:

GOODRICH, GOODRICH & LAZZARA, P.C.

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.

By: 

Frank E. Tolbert, 863-09
216 Fourth Street
Caller Box 7010
Logansport, IN 46947
Telephone: 219-722-4343

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

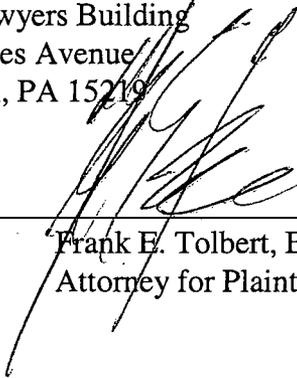
This is to certify that a true and correct copy of the within NOTICE OF VIDEO DEPOSITION OF JOHN P. TIERNEY has been served upon all parties either individually or through counsel by:

- Hand Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following addresses:

Richard J. Trancocy, Jr., Esq.
BAGINSKI & BASHLINE
One PPG Place, Suite 1650
Pittsburgh, PA 15222

Vicki Hunt Mortimer, Esq.
EGLER, GARRETT & EGLER
2100 The Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219



Frank E. Tolbert, Esq.
Attorney for Plaintiff

Dated: 11-30-2000

CC: Karen Price & Associates
7863 Broadway
Suite 118
Merrillville, IN 46410
(219) 756-0702

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

CIVIL DIVISION

NO.: 00-88-CD

Issue No.:

**AMENDED NOTICE OF DEPOSITION
OF JOHN P. TIERNEY**

Filed on behalf of CHARLES MATTHES,
Plaintiff

Counsel of Record for this Party:

William F. Goodrich, Esq.
Pa. I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

CIVIL DIVISION

NO.: 00-88-CD

Issue No.:

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT, S & S TRUCKING,

Defendants.

AMENDED NOTICE OF VIDEO DEPOSITION OF JOHN P. TIERNEY

TO: COUNSEL OF RECORD

PLEASE TAKE NOTICE that the video deposition of John P. Tierney will be taken for the purpose of discovery and for the use at trial and in accordance with the Pennsylvania Rules of Civil Procedure before a notary public duly authorized to administer oaths on Wednesday, March 28, at 10:00 a.m. Chicago time at the offices of Vocational Economics, Inc., Three First National Plaza, 70 West Madison, Suite 1400, Chicago, IL 60602, at which time and place you are invited to appear and take such part as shall be fitting and proper.

The scope and purpose of this deposition is to inquire into all the facts of which you may have knowledge surrounding the happening of the incident in the above-captioned case; and to inquire into all of the facts and circumstances of which you may have knowledge which relate to

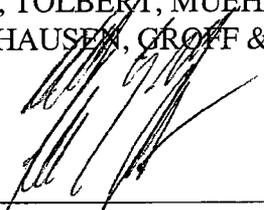
No. 00-88-CD

the injuries and damages which Plaintiff has suffered as a result of the incident out of which the above-captioned case arises.

Respectfully submitted:

GOODRICH, GOODRICH & LAZZARA, P.C.

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.

By: 

Frank E. Tolbert, 863-09
216 Fourth Street
Caller Box 7010
Logansport, IN 46947
Telephone: 219-722-4343

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

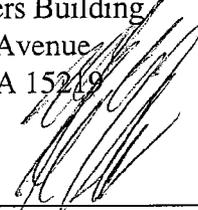
This is to certify that a true and correct copy of the within NOTICE OF VIDEO DEPOSITION OF JOHN P. TIERNEY has been served upon all parties either individually or through counsel by:

- Hand Delivery
- First-Class Mail, Postage Prepaid
- Certified Mail - Return Receipt Requested
- Express Mail/Federal Express
- Facsimile

at the following addresses:

Richard J. Trancocy, Jr., Esq.
BAGINSKI & BASHLINE
One PPG Place, Suite 1650
Pittsburgh, PA 15222

Vicki Hunt Mortimer, Esq.
EGLER, GARRETT & EGLER
2100 The Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219



Frank E. Tolbert, Esq.
Attorney for Plaintiff

Dated: January 29, 2001

CC: Karen Price & Associates
7863 Broadway
Suite 118
Merrillville, IN 46410
(219) 756-0702

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2001, a true and correct copy of the within Motion in Limine has been forwarded by facsimile and by regular first class mail, postage prepaid to the following counsel of record:

EDWARD L. RUSSAKOFF, ESQUIRE
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
FAX #: (412) 261-3222

RICHARD J. TRANKOCY, JR., ESQUIRE
BAGINSKI & BASHLINE
Suite 1650
One PPG Place
Pittsburgh, PA 15222
FAX #: (412) 391-0568

GOODRICH, GOODRICH & LAZZARA,

BY: William F. Goodrich
WILLIAM F. GOODRICH, ESQ.

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM,

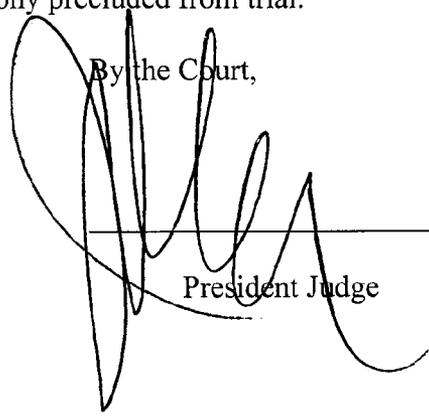
BY: Frank E. Tolbert
FRANK E. TOLBERT, ESQ.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES :
-vs- : No. 00 - 88 - CD
KEITH W. PETERS, ECKLUND :
CARRIERS, WADE SCOTT BURKETT, :
S & S TRUCKING :

ORDER

NOW, this 2nd day of August, 2001, following argument into Motion in Limine filed on behalf of Plaintiff above-named seeking to exclude from trial any testimony or evidence concerning the extent of injuries suffered by either of the Defendants, Keith W. Peters or Wade Scott Burkett, it is the ORDER of this Court that said Motion be and is hereby granted and such evidence and testimony precluded from trial.

By the Court,


President Judge

FILED

AUG 07 2001

William A. Shaw
Prothonotary

FILED

AUG 02 2001

0134511 << atty Frankson
William A. Shaw
Prothonotary

1 << atty Frankson
1 << atty Woodrich
And 1 << atty Kussler

54
CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS, WADE
SCOTT BURKETT, S & S TRUCKING

Defendants.

CIVIL DIVISION

NO. 00-88-CD

MOTION IN LIMINE AS TO
PHOTOGRAPHS OF SOUTHBOUND
PENNSYLVANIA ROUTE 153

Filed on behalf of Defendant,
WADE SCOTT BURKETT,

Counsel of record for this Party:
EDWARD L. RUSSAKOFF, ESQUIRE
PA ID NO. 29684

DiBELLA & GEER, P.C.
FIRM ID NO. 099

312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

(412) 261-2900
FAX: (412) 261-3222

FILED
AUG 06 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Charles MATTHES,

CIVIL DIVISION

Plaintiff,

No.: 00-88-CD

v.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT, S & S TRUCKING,

Defendants.

MOTION IN LIMINE
AS TO PHOTOGRAPHS OF SOUTHBOUND
PENNSYLVANIA ROUTE 153

AND NOW, come the Defendants, WADE SCOTT BURKETT and S & S TRUCKING ("BURKETT"), by and through their attorneys, EDWARD L. RUSSAKOFF, ESQUIRE and DIBELLA & GEER, P.C., and file the following Motion in Limine as to Photographs of southbound Pennsylvania Route 153:

1. In this action, Plaintiff seeks damages for injuries he sustained in an accident on August 10, 1998, at the intersection of Pennsylvania Route 153 and Township Route 925 ("T-925").

2. Plaintiff was traveling northbound on Route 153 at the time of the collision. His friend, Greg James, was driving. At trial, Plaintiff will testify that just before the accident occurred, he and Mr. James were stopped, waiting to make a left turn onto T-925.

3. Defendant, KEITH W. PETERS ("PETERS") was allegedly stopped just behind Plaintiff and Mr. James. The accident occurred when BURKETT, who was also driving north on Route 153, his truck struck the rear of the tractor-trailer that

PETERS was operating. PETERS' tractor-trailer was pushed into the rear of Plaintiff's car.

4. BURKETT will testify that when the collision took place, heavy rain was falling. He came over the crest of a hill, traveling northbound on Route 153, just south of the site of the accident. He will state that because of the rain and because he observed only three lights at the top of PETERS' trailer, he could not discern whether PETERS was stopped or moving as he came over the crest of that hill. He will then testify that he could not stop his truck in time to avoid a collision.

5. BURKETT expects Plaintiff to call Daniel Aerni to testify as an expert on liability at trial. He believes that Aerni will state that there was sufficient distance from the top of the hill to the end of PETERS' trailer within which BURKETT could stop. BURKETT believes that in support of this opinion, Aerni will refer to photographs of the intersection that he took on March 14, 2001. A large number of these pictures show the view of Route 153 southbound from various points at or near T-925 to the top of the hill.

6. Furthermore, during discovery, Plaintiff produced photographs of Route 153 that an investigator took around the time of the accident. These photographs also included views of southbound Route 153 from T-925 or nearby. BURKETT believes and avers that Plaintiff may show these pictures to various witnesses, such as Trooper Thomas Reed, Clenic Figaro, Kenneth Lytle, and Greg James, during direct examination. BURKETT additionally believes that Plaintiff himself will refer to these pictures during his testimony.

7. BURKETT's defense to liability centers upon the view he had from the top of the hill northbound on Route 153 to the intersection with T-925. Therefore, all of the pictures showing southbound Route 153 are irrelevant to this action.

8. The views of Pennsylvania Route 153 southbound do not in any way correlate with the view from the top of the hill looking north. As such, therefore, the pictures of southbound Route 153 are extremely misleading and will cause prejudice to BURKETT.

WHEREFORE, Defendants, WADE SCOTT BURKETT and S & S TRUCKING, request this Honorable Court to grant this Motion in Limine and to exclude from evidence, at trial, all photographs of southbound Route 153.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY:



EDWARD L. RUSSAKOFF, ESQUIRE

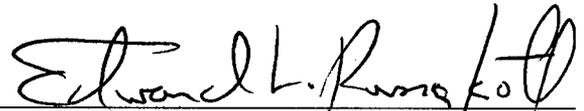
Attorney for Defendants,
WADE SCOTT BURKETT and
S & S TRUCKING

CERTIFICATE OF SERVICE

I, EDWARD L. RUSSAKOFF, ESQUIRE, hereby certify that a true and correct copy of the foregoing MOTION IN LIMINE AS TO PHOTOGRAPHS OF SOUTHBOUND PENNSYLVANIA ROUTE 153 has been forwarded to the following counsel of record, via FAX, this 3rd day of August, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222



EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendants,
WADE SCOTT BURKETT and
S & S TRUCKING

59

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS' PROPOSED
VERDICT SLIP

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

JURY TRIAL DEMANDED

BASHLINE & HUTTON
FIRM I.D. #150
ONE PPG PLACE, SUITE 1650
PITTSBURGH, PA 15222
(412) 391-7005

FILED

AUG 07 2001

W. Shaw
17

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES : CIVIL DIVISION
Plaintiff, :
vs. : COURT NUMBER: 00-88-CD
KEITH W. PETERS, ECKLUND :
CARRIERS, WADE SCOTT :
BURKETT, S&S TRUCKING, :
Defendants. :

PROPOSED VERDICT SLIP

AND NOW, to-wit, this ____ day of ____ of August, 2001, the jurors empanelled in this case find as follows:

QUESTION 1

Do you find Defendants Keith W. Peters and his employer, Ecklund Carriers negligent?

Keith W. Peters and
Ecklund Carriers Yes _____ No _____

If your Answer to Question 1 is "NO" as to Defendants Keith W. Peters and Ecklund Carriers, the Plaintiff cannot recover from these Defendants. You should proceed to Question

If your Answer to Question 1 is "YES" as to either or both of the Defendants, proceed to answer Question 2.

QUESTION 2

Do you find Defendants Wade Scott Burkett and his employer, S&S Trucking negligent?

Yes _____ No _____

If your Answer to Question 2 is "NO" as to Defendants Wade Scott Burkett and S&S Trucking, the Plaintiff cannot recover from these Defendants and you should not answer any further questions.

If your Answer to Question 2 is "YES" as to either or both of the Defendants, proceed to answer Question 3.

QUESTION 3

Was the negligence of the Defendant(s) whom you have found to be negligent in Questions 1 and 2 a substantial factor in causing the injuries to the Plaintiff, Charles Matthes?

Keith W. Peters and
Ecklund Carriers

Yes _____ No _____

Wade Scott Burkett and
S&S Trucking

Yes _____ No _____

If your Answer to Question 3 is "NO" as to both Defendants, the Plaintiff cannot recover against the Defendants, and you should answer no further questions because you have concluded your deliberations.

If your Answer to Question 3 is "YES" as to all Defendants, you should proceed to answer Question 4.

If your answer to Question 3 is "YES" as to only one of the Defendants, you should proceed to Question 5.

QUESTION 4

Taking the combined negligence that was a substantial factor in causing the injuries to Plaintiff, Charles Matthes, as 100 percent, what percentage of negligence is attributable to each of the Defendants, both of whom you have found to be negligent?

1. Defendants Keith W. Peters and Ecklund Trucking

-- Percentage of negligence attributable to Defendants
to Defendants Keith W. Peters and Ecklund Trucking _____%

(Answer only if you have answered "YES" with respect to
Defendants Keith W. Peters and Ecklund Trucking in both
Questions 1 and 3).

2. Defendants Wade Scott Burkett and S&S Trucking

-- Percentage of negligence attributable to Defendants
Wade Scott Burkett and S&S Trucking _____%

(Answer only if you have answered "YES" with respect to
Defendants Wade Scott Burkett and S&S Trucking in both
Questions 2 and 3).

Proceed to answer Question 5.

QUESTION 5

State the amount of damages that you award the Plaintiff, Charles Matthes

\$ _____

YOU HAVE COMPLETED YOUR DELIBERATIONS AFTER THE FOREPERSON OF THE JURY HAS SIGNED AND DATED THE VERDICT SLIP, PLEASE ADVISE ONE OF THE TIPSTAFFS THAT YOU HAVE REACHED A VERDICT.

Date: _____

Foreperson

Richard J. Wambough
on behalf of Defendant
Peters and Ecklund

510

NO. 2000-88-CD

DATE OF JURY SELECTION: APRIL 20, 2001

PRESIDING
JUDGE: JOHN K. REILLY, JR. P.J.

COURT
REPORTER: KATHY PROUST

CHARLES MATTHES

Plaintiff,

DATE OF TRIAL: AUGUST 6, 2001

VS.

DATE TRIAL ENDED: _____

KEITH W. PETERS, ECKLUND CARRIERS, WADE
SCOTT BURKETT, d/b/a S & S TRUCKING

Defendants

MEMBERS OF THE JURY

- 1. RUTH DIXON
- 2. DARRELL WOLFGANG
- 3. MARY GREGORY
- 4. MICHELLE MOORE
- 5. STEVEN TUBO
- 6. ROSEMARY SHANER
- ALT #1 LOLA RACKOVAN

- 7. TIMOTHY MCCRACKEN
- 8. SHELLY CRAIN
- 9. PEGGY DAVIS
- 10. PHILIP FISH
- 11. MARY VALLERY
- 12. FRED TRIMPEY
- ALT #2 BEVERLY REICH

PLAINTIFF'S WITNESSES:

- 1. Trp. Reed, P.S.P.
- 2. ~~GREG JAMES~~ MR. FIGARDO
- 3. GREG JAMES
- 4. DANIEL HARKNEY
- 5. Wade S. Burkett
- 6. KEITH W. PETERS

DEFENDANT'S WITNESSES

- 1. DR. PAUL D. NEESBAUM
- 2. DR. FOSTER uca Vidar
- 3. _____
- 4. _____
- 5. _____
- 6. _____

PLTF'S ATTY: WILLIAM F. GOODRICH

DEFT'S ATTY: RICHARD J. TRANKOCY
EDWARD RUSSAKOFF*

ADDRESS TO JURY: 4:05 pm

ADDRESS TO JURY: 2:46 *

JUDGE'S ADDRESS TO JURY: 8:59 a.m.

JURY OUT: 9:29 a.m. JURY IN: 12:57

VERDICT: For Plaintiff in the amount \$325,000.00

FILED

AUG 10 2001

William A. Shaw
Prothonotary

7. DR. DAN SAPIR

8. DON LOGAN

9. DR. STEIN

10. CHARLES MATTHES

11. JOHN MATTHES

12. JOHN MATTHES, JR

13. PAUL D. FRAIZER

14. DR. PAUL ROBERTS

15. DR. CHARLES E. HEINSEN

16. JOHN TIERNY

17.

CHARLES MATTHES

VERSUS

KEITH PETERS, ECKLUND CARRIERS, WADE

SCOTT BURKETT, d/b/a S & S

TRUCKING

IN THE COURT OF COMMON PLEAS
OF THE COUNTY OF CLEARFIELD, PA.

No. 00-88-CD Term, 19

VERDICT

And now to wit: August 10, 2001 19, we, the Jurors

empanelled in the above entitled case, find A Verdict in Favor

NEgligent - Guilty
Cause - Guilty

total 325,000

Phillip Fish Foreman

No. 2000-88-CD Term, 19

Charles Matthes

VERSUS

Keith W. Peters, Ecklund Carriers,

Wade Scott Berkett, d/k/a S & S TRUCKING

VERDICT

Filed 19

Prothonary

FILED

AUG 10 2001

William A. Shaw Prothonary

WAS

WAS

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**MOTION TO MOLD VERDICT
TO ADD DELAY DAMAGES**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235
GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

FILED
AUG 1 2001

William A. Shaw
Notary

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT,)
 S & S TRUCKING,)
)
 Defendants.)

MOTION TO MOLD VERDICT TO ADD DELAY DAMAGES

AND NOW, comes the Plaintiff, Charles Matthes, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE and
MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., and
FRANK E. TOLBERT, ESQUIRE, and files this Motion in support thereof, avers as follows:

1. The within captioned case was instituted by filing a complaint on January 24, 2000 with service effectuated on February 2, 2000 in Huntington County, Pennsylvania. Plaintiff's cause of action accrued on August 10, 1998.

2. Damages for delay are to be computed one year after the service of process has been effectuated by the Defendant, which would be February 2, 2001.

3. A jury was selected in this matter and the case was tried before the Honorable John Reilly and a gross verdict rendered on August 10, 2001 in favor of the Plaintiff, Charles

Matthes, in the amount \$325,000.00 against Wade Scott Burkett.

4. Negligence was apportioned by the jury against the Defendant, Wade Scott Burkett, at 100% in that the Plaintiff could not be negligent.

5. The Defendant, Wade Scott Burkett d/b/a S & S Trucking made a written offer prior to trial of \$40,000.00. Said offer was less than 125% of the verdict of \$325,000.00.

6. Damages for delay shall be calculated at the rate equal to the prime rate listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus one percent, not compounded. ($9.5 + 1 = 10.5\%$)

7. Delay damages do not run in the within case until April 13, 2001 as a result of Plaintiff's continuance of the trial from the January 2001 term.

8. Delay damages should run from April 3, 2001 until August 10, 2001, the day of the verdict, a total of 129 days.

9. The following computation is made by the Plaintiff, Charles Matthes, of delay damages pursuant to Rule 238 as follows:

April 3, 2001 to August 10, 2001	
$\$325,000.00 \times 10.5\% \times .35 =$	\$11,943.75
TOTAL DELAY DAMAGES	
TO BE ASSESSED	\$11,943.75

10. Counsel for the Plaintiff continued the trial of the within action from the January 2001 term to the April 2001 term and as such, no delay damages are to be added for the time between January 2, 2001 and April 3, 2001.

WHEREFORE, Plaintiff, Charles Matthes, would respectfully request this Honorable Court to add delay damages in the amount of \$11,943.75 to the verdict, thereby molding the verdict to reflect a total verdict of \$336,943.75.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA,

BY: 

WILLIAM F. GOODRICH, ESQ.
Attorney for Plaintiff,
Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of August, 2001, a true and correct copy of the within Motion to Mold the Verdict to Add Delay Damages has been forwarded by regular first class mail, postage prepaid to the following counsel of record:

EDWARD L. RUSSAKOFF, ESQUIRE
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

GOODRICH, GOODRICH & LAZZARA,

BY: 
WILLIAM F. GOODRICH, ESQ.

MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM,

BY: 
FRANK E. TOLBERT, ESQ.

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,

Plaintiff,

vs.

Case No. 00-88-CD

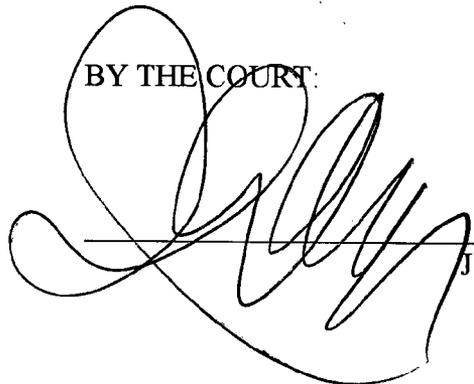
KEITH E. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants.

ORDER OF COURT

AND NOW, to wit, this 16 day of July, 2001, upon consideration of the foregoing, it is hereby **ORDERED, ADJUDGED and DECREED**, pursuant to Rule 238 of Pennsylvania Rules of Civil Procedure, delay damages in the amount of \$11,943.75 are to be added to the pro rata share of the jury verdict assessed against the Defendant, Wade Scott Burkett, of \$325,000.00. It is hereby further **ORDERED, ADJUDGED and DECREED** that the verdict be molded to reflect a total verdict of \$336,943.75.

BY THE COURT:



_____ J.

FILED

AUG 17 2001

0/4:00/m
William A. Shaw
Prothonotary

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W/et

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**MOTION TO MOLD THE VERDICT
FOR ADDITUR OF DAMAGES**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235
GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343

FILED

AUG 27 2001

**William A. Shaw
Prothonotary**

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
)
 vs.) Case No. 00-88-CD
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT,)
 S & S TRUCKING,)
)
 Defendants.)

MOTION TO MOLD THE VERDICT FOR ADDITUR OF DAMAGES

AND NOW, comes the Plaintiff, Charles Matthes, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C. and WILLIAM F. GOODRICH, ESQUIRE and
MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., and
FRANK E. TOLBERT, ESQUIRE, and files this Motion in support thereof, avers as follows:

1. The within matter was tried to a jury with a verdict being returned on Friday,
August 10, 2001 in the amount of \$325,000.00 for the Plaintiff.
2. During the trial of the within case, testimony by deposition of Dr. Charles Heisen
indicated approximately \$500.00 per month in pharmaceutical expenses for an indefinite period of
time.
3. Considering the life expectancy of the Plaintiff in excess of fifty (50) years, the
Plaintiff will incur in excess of \$25,000.00 during his lifetime.

4. The jury failed to consider these additional charges during their deliberations and, as such, the same should be added to the verdict by the Court.

WHEREFORE, Plaintiff would respectfully request this Honorable Court to mold the verdict in the nature of additur of \$25,000.00 to the jury's verdict.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA,

BY: William F. Goodrich
WILLIAM F. GOODRICH, ESQ.
Attorney for Plaintiff,
Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2001, a true and correct copy of the within Motion to Mold the Verdict for Additur of Damages was forwarded by regular first class mail, postage prepaid to the following counsel of record:

EDWARD L. RUSSAKOFF, ESQUIRE
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

GOODRICH, GOODRICH & LAZZARA,

BY: William F. Goodrich
WILLIAM F. GOODRICH, ESQ.

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS, WADE
SCOTT BURKETT, S & S TRUCKING

Defendants.

CIVIL DIVISION

NO. 00-88-CD

REPLY TO MOTION TO MOLD
THE VERDICT FOR ADDITUR OF
DAMAGES

Filed on behalf of Defendant,
WADE SCOTT BURKETT,

Counsel of record for this Party:
EDWARD L. RUSSAKOFF, ESQUIRE
PA ID NO. 29684

DiBELLA & GEER, P.C.
FIRM ID NO. 099

312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

(412) 261-2900
FAX: (412) 261-3222

FILED

AUG 24 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Charles MATTHES,

CIVIL DIVISION

Plaintiff,

No.: 00-88-CD

v.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT, S & S TRUCKING,

Defendants.

**REPLY TO MOTION TO MOLD
THE VERDICT FOR ADDITUR OF DAMAGES**

AND NOW, comes the Defendant, WADE SCOTT BURKETT, d/b/a S & S TRUCKING, by and through his attorneys, EDWARD L. RUSSAKOFF, ESQUIRE and DIBELLA & GEER, P.C., and files the following Reply to Plaintiff's Motion to Mold the Verdict for Additur of Damages ("Motion").

1. The averments set forth in Paragraph 1 of the Motion are admitted.
2. The averments set forth in Paragraph 2 of the Motion are denied.

To the contrary, a review of the Deposition of Charles E. Heinsen, M.D., taken on March 29, 2001, which was read into evidence verbatim at trial, reveals that there is no testimony stating that Plaintiff will require approximately \$500.00 per month in pharmaceutical expenses for an indefinite period of time. In fact, there is no evidence at all with regard to whether Plaintiff will incur any pharmaceutical expenses at any time in the future. By way of further response, this Defendant avers that the Deposition of Dr. Heinsen, which Plaintiff placed into evidence as an exhibit, speaks for itself.

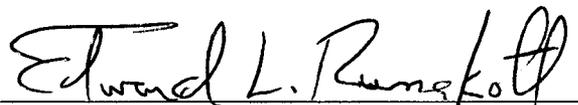
3. The averments set forth in Paragraph 3 of the Motion are denied.

By way of further reply, this Defendant incorporates by reference Paragraph 2 of this Reply to the Motion with the same force and effect as though set forth at length herein.

4. The averments set forth in Paragraph 4 of the Motion are denied. By way of further response, this Defendant incorporates by reference Paragraph 2 of this Reply to the Motion with the same force and effect as though set forth at length herein. In addition, the jury rendered a general verdict with the consent of Plaintiff's counsel, and the Court instructed the jury to consider whether Plaintiff was entitled to any and all future medical expenses. Counsel for Plaintiff did not object to this instruction. Therefore, to the extent that Dr. Heinsen proffered any testimony with regard to future pharmaceutical expenses, the Court sufficiently alluded to it in its charge, and those expenses were before the jury for consideration. Finally, because Dr. Heinsen's supposed testimony referred only to the alleged need for pharmaceutical products for an "indefinite period of time", this Court does not have the power to grant an additur, for in so doing, the Court would effectively set aside the jury's verdict and render its own. Dougherty v. McLaughlin, 432 Pa. Super 129, 637 A.2d 1017 (1994), abrogated on other grounds, Davis v. Mullen, 773 A.2d 764 (Pa. 2001).

WHEREFORE, Defendant, WADE SCOTT BURKET, d/b/a S & S TRUCKING, requests this Honorable Court to enter an Order denying Plaintiff's Motion to Mold the Verdict for Additur of Damages.

Respectfully submitted,
DiBELLA & GEER, P.C.

BY: 
EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendant,
WADE SCOTT BURKETT, d/b/a
S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Charles MATTHES,

CIVIL DIVISION

Plaintiff,

No.: 00-88-CD

v.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT, S & S TRUCKING,

Defendants.

ORDER OF COURT

AND NOW, this ____ day of _____, 2001, upon consideration of Plaintiff's Motion to Mold the Verdict for Additur of Damages, it is hereby ORDERED and ADJUDGED that the said Motion is denied.

BY THE COURT:

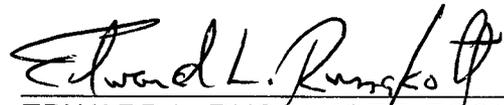
_____ J.

CERTIFICATE OF SERVICE

I, EDWARD L. RUSSAKOFF, ESQUIRE, hereby certify that a true and correct copy of the foregoing REPLY TO MOTION TO MOLD THE VERDICT FOR ADDITUR OF DAMAGES has been forwarded to the following counsel of record, via FAX, this 22nd day of August, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222


EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendants,
WADE SCOTT BURKETT and
S & S TRUCKING

FILED

AUG 24 2001

William A. Shaw
Prothonotary

MS411 ← atty Kuzak 6/20
WAS

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS, WADE
SCOTT BURKETT, S & S TRUCKING

Defendants.

CIVIL DIVISION

NO. 00-88-CD

MOTION FOR SANCTIONS BASED
UPON VIOLATION OF 42 PA. C.S.
§8355

Filed on behalf of Defendant,
WADE SCOTT BURKETT,

Counsel of record for this Party:
EDWARD L. RUSSAKOFF, ESQUIRE
PA ID NO. 29684

DiBELLA & GEER, P.C.
FIRM ID NO. 099

312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

(412) 261-2900
FAX: (412) 261-3222

FILED

OCT 12 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Charles MATTHES,
Plaintiff,

CIVIL DIVISION
No.: 00-88-CD

v.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT, S & S TRUCKING,

Defendants.

MOTION FOR SANCTIONS BASED UPON
VIOLATION OF 42 PA. C.S. §8355

AND NOW, come the Defendants, WADE SCOTT BURKETT and S & S TRUCKING, (hereinafter collectively "BURKETT"), by and through their attorneys, EDWARD L. RUSSAKOFF, ESQUIRE and DIBELLA & GEER, P.C., and file the following Motion for Sanctions Based Upon Violation of 42 PA. C.S. §8355, and in support thereof, avers as follows:

1. In this action, Plaintiff sought damages for injuries he sustained in an automobile accident that occurred in Pine Township, Clearfield County, Pennsylvania on August 10, 1998.

2. The case was tried before a jury from August 6, 2001 through August 10, 2001. On August 10, the jury rendered a verdict in plaintiff's favor and against BURKETT in the amount of \$325,000.00. Defendants, KEITH W. PETERS and ECKLUND CARRIERS, were granted a directed verdict the day before, and none of the claims pleaded against them were submitted to the jury for consideration.

3. BURKETT decided not file a Motion for Post-Trial Relief. On September 4, 2001, therefore, Empire Fire and Marine Insurance Company, ("Empire"),

BURKETT's liability carrier, issued a check made payable to Plaintiff and the law firm of Goodrich, Goodrich & Lazzara, for \$336,943.75. This figure reflected the jury's verdict plus \$11,943.75 in delay damages. (Sometime before the 10-day period for post trial motions expired, Plaintiff filed a Motion seeking delay damages in that amount. BURKETT did not oppose the Motion.) The check was delivered to the office of Goodrich, Goodrich & Lazzara, on September 10, 2001. A true and correct copy of the cover letter, along with a receipt that a representative of the Goodrich law firm signed that same day, is attached hereto and marked Exhibit "A".

5. On August 20, 2001, the deadline for post-trial motions, Plaintiff filed a Motion to Mold the Verdict for Additur of Damages. ("Motion"). A true and correct copy of this Motion is attached hereto and marked Exhibit "B".

6. In the Motion, Plaintiff asserted that during the trial, "testimony by deposition of Dr. Charles Heinsen indicated approximately \$500.00 per month in pharmaceutical expenses for an indefinite period of time." (Motion, Paragraph 2.) Plaintiff then contended that because his life expectancy exceeded 50 years, he would incur over \$25,000.00 in pharmaceutical expenses through the remainder of his lifetime. (Motion, Paragraph 3.) He then claimed that the jury failed to consider these charges during its deliberations and that accordingly, the Court was required to mold the verdict by adding \$25,000.00 to it. (Motion, Paragraph 4.)

7. As Plaintiff was well aware, Dr. Heinsen's deposition was taken for use at trial on March 29, 2001, and the transcript was completed months before the trial actually began. Plaintiff's counsel had a copy of the transcript, and entered it into evidence at trial. Plaintiff, however, did not attach copies of the pages showing that the

doctor ever gave this testimony to the Motion, nor even cited to the pages and lines where it was supposedly given.

8. On August 22, 2001, BURKETT filed a Reply to the Motion pointing out that the deposition of Dr. Heinsen had been read into evidence, verbatim, at trial, and that the doctor never testified that Plaintiff would require approximately \$500.00 per month in pharmaceutical expenses for an indefinite period of time. In fact, BURKETT noted, Dr. Heinsen never stated that Plaintiff would incur any pharmaceutical expenses at all at any time in the future, let alone expenses totaling \$500.00 per month. A true and correct copy of BURKETT's Reply to Motion to Mold the Verdict for Additur of Damages is attached hereto and marked Exhibit "C".

9. In Paragraph 4 of the Reply, BURKETT reminded the Court that Plaintiff's counsel consented to the entry of a general verdict and that the Court had instructed the jury to consider whether Plaintiff was entitled to any and all future medical expenses. BURKETT further noted that Plaintiff's counsel did not object to this instruction.

10. Plaintiff cannot refute any of this. In addition, there was no evidence from any other source asserting that Plaintiff would be required to purchase pharmaceutical products at the rate of \$500.00 per month for an indefinite period of time. Therefore, plaintiff filed the Motion to Mold the Verdict for Additur of Damages for an improper purpose, specifically to either harass Burkett or to maliciously injure him.

11. Moreover, Plaintiff's counsel signed the Motion knowing that it was neither grounded in any fact, nor warranted by existing law. Thus, the filing of the Motion violated 42 PA. C.S. §8355.

12. Because the Motion was signed and filed in violation of that section, BURKETT is entitled to costs and to the reasonable attorney's fees incurred in reviewing the Motion, in performing legal research in support of the Reply and in preparing the Reply. The amount these Defendants incurred is \$420.00. A true and correct copy of a print-out of the bill counsel for BURKETT submitted to Empire for these tasks is attached hereto and marked as Exhibit "D".

13. In addition, counsel for BURKETT will bill Empire \$630.00, or attorney's fees for six hours at the rate of \$105.00 per hour for driving from Pittsburgh, Pennsylvania to Clearfield, Pennsylvania and back, (five hours), and for an anticipated one hour in Court. Furthermore, counsel for BURKETT will bill Empire \$85.00 in mileage, 250 miles, for the round-trip x \$0.34 per mile.

14. Because of Plaintiff's counsel's violation of 42 PA.C.S. §8355, BURKETT is entitled to attorney's fees and costs in the total amount of \$1,135.00 payable by either plaintiff, his attorneys or both.

WHEREFORE, Defendants, WADE SCOTT BURKETT and S & S TRUCKING, request this Honorable Court to enter an Order granting Sanctions based on Plaintiff's counsel's violation of 42 PA. C.S. §8355 in the amount of \$1,135.00.

Respectfully submitted,
DiBELLA & GEER, P.C.

BY:


EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendant,
WADE SCOTT BURKETT and
S & S TRUCKING

DiBELLA & GEER, P.C.

Attorneys At Law

312 Boulevard of the Allies

Third Floor

Pittsburgh, Pennsylvania 15222

Telephone: 412-261-2900

FAX: 412-261-3222

Edward L. Russakoff

September 10, 2001

VIA: HAND DELIVERY

William F. Goodrich, Esquire

Goodrich, Goodrich & Lazzara, P.C.

Suite 1400 - Law & Finance Building

429 Fourth Avenue

Pittsburgh, PA 15219

Re: Charles Matthes, v. Keith W. Peters, Ecklund Carriers,
Wade Scott Burkett & S & S Trucking
Claim No. : 889144

Dear Mr. Goodrich:

Enclosed find check number 1444548 from Empire Fire and Marine Insurance Company, dated September 4, 2001, made payable to Charles Matthes and Goodrich, Goodrich and Lazzara in the amount of \$336,943.75. This figure reflects the jury verdict of \$325,000, plus \$11,943.75 in delay damages.

I ask that either you or someone with the requisite authority from your office acknowledge receipt by signing in the space below. Please provide a copy of the receipt to the messenger.

I have never received an Order of Court granting delay damages. If you have, would you mind faxing over a copy?

Thank you,

Edward L. Russakoff
EDWARD L. RUSSAKOFF

ELR:cat

I, MARCELLA MARSHALL on behalf of Goodrich, Goodrich and Lazzara, P.C., hereby acknowledge that on 9/10, 2001, I accepted delivery of the check described hereinabove, and affirm that I was fully authorized to do so.



Marcella Marshall

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT,
S & S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

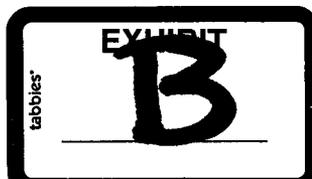
**MOTION TO MOLD THE VERDICT
FOR ADDITUR OF DAMAGES**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235
GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219
(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947
(219) 722-4343



4. The jury failed to consider these additional charges during their deliberations and, as such, the same should be added to the verdict by the Court.

WHEREFORE, Plaintiff would respectfully request this Honorable Court to mold the verdict in the nature of additur of \$25,000.00 to the jury's verdict.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA,

BY: William F. Goodrich
WILLIAM F. GOODRICH, ESQ.
Attorney for Plaintiff,
Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2001, a true and correct copy of the within Motion to Mold the Verdict for Additur of Damages was forwarded by regular first class mail, postage prepaid to the following counsel of record:

EDWARD L. RUSSAKOFF, ESQUIRE
DiBELLA & GEER, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

GOODRICH, GOODRICH & LAZZARA,

BY: William F. Goodrich
WILLIAM F. GOODRICH, ESQ.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS,
ECKLUND CARRIERS, WADE
SCOTT BURKETT, S & S TRUCKING

Defendants.

CIVIL DIVISION

NO. 00-88-CD

REPLY TO MOTION TO MOLD
THE VERDICT FOR ADDITUR OF
DAMAGES

Filed on behalf of Defendant,
WADE SCOTT BURKETT,

Counsel of record for this Party:
EDWARD L. RUSSAKOFF, ESQUIRE
PA ID NO. 29684

DIBELLA & GEER, P.C.
FIRM ID NO. 099

312 Boulevard of the Allies
Third Floor
Pittsburgh, Pennsylvania 15222

(412) 261-2900
FAX: (412) 261-3222

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 24 2001

Attest.

William L. ...
Prothonotary



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Charles MATTHES,
Plaintiff,

CIVIL DIVISION
No.: 00-88-CD

v.

KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT, S & S TRUCKING,

Defendants.

REPLY TO MOTION TO MOLD
THE VERDICT FOR ADDITUR OF DAMAGES

AND NOW, comes the Defendant, WADE SCOTT BURKETT, d/b/a S & S TRUCKING, by and through his attorneys, EDWARD L. RUSSAKOFF, ESQUIRE and DIBELLA & GEER, P.C., and files the following Reply to Plaintiff's Motion to Mold the Verdict for Additur of Damages ("Motion").

1. The averments set forth in Paragraph 1 of the Motion are admitted.
2. The averments set forth in Paragraph 2 of the Motion are denied.

To the contrary, a review of the Deposition of Charles E. Heinsen, M.D., taken on March 29, 2001, which was read into evidence verbatim at trial, reveals that there is no testimony stating that Plaintiff will require approximately \$500.00 per month in pharmaceutical expenses for an indefinite period of time. In fact, there is no evidence at all with regard to whether Plaintiff will incur any pharmaceutical expenses at any time in the future. By way of further response, this Defendant avers that the Deposition of Dr. Heinsen, which Plaintiff placed into evidence as an exhibit, speaks for itself.

3. The averments set forth in Paragraph 3 of the Motion are denied.

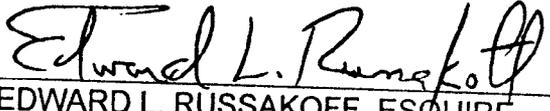
By way of further reply, this Defendant incorporates by reference Paragraph 2 of this Reply to the Motion with the same force and effect as though set forth at length herein.

4. The averments set forth in Paragraph 4 of the Motion are denied. By way of further response, this Defendant incorporates by reference Paragraph 2 of this Reply to the Motion with the same force and effect as though set forth at length herein. In addition, the jury rendered a general verdict with the consent of Plaintiff's counsel, and the Court instructed the jury to consider whether Plaintiff was entitled to any and all future medical expenses. Counsel for Plaintiff did not object to this instruction. Therefore, to the extent that Dr. Heinsen proffered any testimony with regard to future pharmaceutical expenses, the Court sufficiently alluded to it in its charge, and those expenses were before the jury for consideration. Finally, because Dr. Heinsen's supposed testimony referred only to the alleged need for pharmaceutical products for an "indefinite period of time", this Court does not have the power to grant an additur, for in so doing, the Court would effectively set aside the jury's verdict and render its own. Dougherty v. McLaughlin, 432 Pa. Super 129, 637 A.2d 1017 (1994), abrogated on other grounds, Davis v. Mullen, 773 A.2d 764 (Pa. 2001).

WHEREFORE, Defendant, WADE SCOTT BURKET, d/b/a S & S TRUCKING, requests this Honorable Court to enter an Order denying Plaintiff's Motion to Mold the Verdict for Additur of Damages.

Respectfully submitted,
DiBELLA & GEER, P.C.

BY:


EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendant,
WADE SCOTT BURKETT, d/b/a
S & S TRUCKING

DiBella & Geer, P.C.
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222

EIN: 25-1754305

October 5, 2001

Invoice submitted to:

Empire Fire & Marine
13810 First National Bank Parkway
P.O. Box 542003
Omaha, NE 68154-5202
Attention: Tonya Truitt

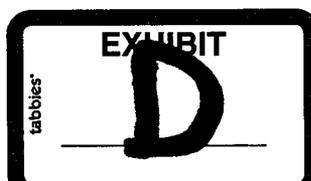
In Reference to: Wade Scott Burkett/Charles Matthes

Claim No. : 889144
Our File No. : 21179
Professionals : ELR/ELR

Invoice No. CE #28834

Professional Services

			<u>Hours</u>	<u>Amount</u>
8/22/2001	ELR	Research re: validity of Plaintiff's Motion to Mold Verdict for additional damages.	1.00	105.00
8/22/2001	ELR	Receipt and review of plaintiff's Motion to Mold Verdict for additional damages.	.30	31.50
8/22/2001	ELR	Review of deposition of Dr. Heinsen to determine accuracy of Plaintiff's claim in Motion to Mold Verdict for additional damages.	.60	63.00
8/22/2001	ELR	Dictation of reply to Motion to Mold Verdict for additional damages.	2.10	220.50
		Total of billable time slips		
		Total of Fees (Time Charges)		\$ <u>420.00</u>



CERTIFICATE OF SERVICE

I. EDWARD L. RUSSAKOFF, ESQUIRE, hereby certify that a true and correct copy of the foregoing MOTION FOR SANCTIONS BASED UPON VIOLATION OF 42 PA. C.S. §8355 has been forwarded to the following counsel of record, via FAX, this 9th day of October, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

The Honorable John K. Reilly
Clearfield County
One North 2nd Street
Clearfield, PA 16830



EDWARD L. RUSSAKOFF, ESQUIRE
Attorney for Defendants,
WADE SCOTT BURKETT and
S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CHARLES MATTHES

:

-vs-

:

No. 00 - 88 - CD

KEITH W. PETERS, ECKLUND

:

CARRIERS, WADE SCOTT BURKETT,

:

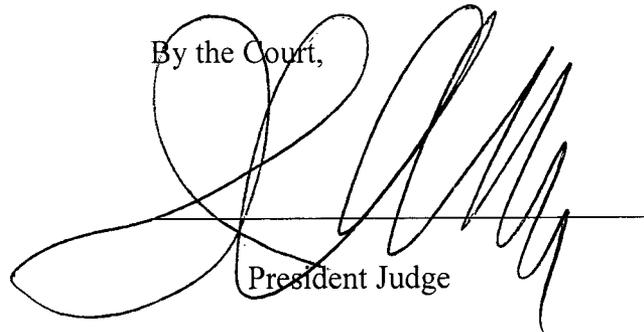
S & S TRUCKING

:

ORDER

NOW, this 3rd day of December, 2001, following argument into Plaintiff's Motion for Additur of Damages, it is the ORDER of this Court that said Motion be and is hereby dismissed.

By the Court,

A large, stylized handwritten signature in black ink, appearing to be 'W.A. Shaw', written over a horizontal line.

President Judge

FILED

DEC 03 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CHARLES MATTHES :

-vs-

No. 00 – 88 – CD

KEITH W. PETERS, ECKLUND :

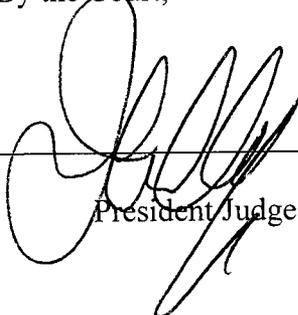
CARRIERS, WADE SCOTT BURKETT, :

S & S TRUCKING :

ORDER

NOW, this 29th day of January, 2002, upon consideration of Plaintiff's Motion for Sanctions Based Upon Violation of 42 PA. C.S.A. §8355, of Defendants, Wade Scott Burkett and S & S Trucking, it is hereby ORDERED and ADJUDGED that said Motion is Granted. Plaintiff, Charles Matthew, shall pay Empire Fire and Marine Insurance Company the amount of \$1,135.00, such amount to represent costs and reasonable attorney's fees incurred because of these Defendants' necessary opposition to Plaintiff's Motion to Mold the Verdict for the Additur of Damages, within 10 days of the date hereof.

By the Court,



President Judge

FILED

JAN 30 2002

William A. Shaw
Prothonotary

FILED

013:3481
JAN 30 2002

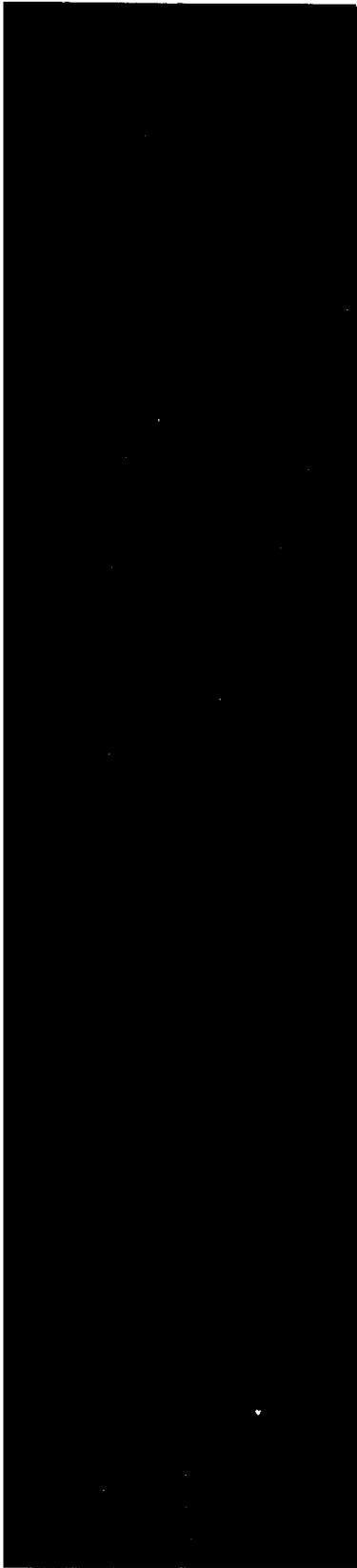
William A. Shaw
Prothonotary

1cc Atty Goodrich

1cc Atty Trankocic

1cc Atty Russakoff





IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**PROPOSED VOIR DIRE OF
DEFENDANTS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Edward L. Russakoff, Esquire
Pa. I.D. #29684

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

7

**PROPOSED VOIR DIRE OF DEFENDANTS
WADE SCOTT BURKETT AND S&S TRUCKING**

AND NOW, come defendants, Wade Scott Burkett and S&S Trucking, by their attorneys, Egler, Garrett and Egler, and files the following Proposed Voir Dire:

1. The two individual defendants in this case were driving large trucks at the time of the accident. Defendant, Keith W. Peters, was driving a semi tractor-trailer. Defendant, Wade Scott Burkett, was driving a tri-axle dump truck. Is there any reason why you could not be a fair and impartial juror knowing that these kinds of trucks were involved in the accident?

EGLER, GARRETT AND EGLER

By: 

ATTORNEYS FOR
DEFENDANT, WADE
SCOTT BURKETT, d/b/a
S & S TRUCKING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PROPOSED VOIR DIRE OF DEFENDANTS, WADE SCOTT BURKETT d/b/a S & S TRUCKING** has been served on the following by first class mail, postage pre-paid on this the 18th day of April, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANT,
WADE SCOTT BURKETT
d/b/a S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**PLAINTIFF'S PROPOSED
VOIR DIRE QUESTIONS**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947

(219) 722-4343

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
) Case No. 00-88-CD
 vs.)
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT)
 and S& S TRUCKING,)
)
 Defendants.)

PLAINTIFF'S PROPOSED VOIR DIRE QUESTIONS

AND NOW, comes the Plaintiff, CHARLES MATTHES, by and through his attorneys, GOODRICH, GOODRICH & LAZZARA, P.C., and WILLIAM F. GOODRICH, ESQUIRE, and propose the following Voir Dire Questions:

TO BE ASKED TO THE ENTIRE PANEL

1. The attorneys in this lawsuit and their law firms are: William F. Goodrich, Esquire of Goodrich, Goodrich & Lazzara, P.C. and Frank E. Tolbert, Esquire of Miller, Tolbert, Muehlhausen, Muehlhausen, Groff & Damm on behalf of Plaintiff, Charles Matthes; Richard J. Trankocy, Jr., Esquire of Baginski & Bashline on behalf of Defendants, Keith W. Peters and Ecklund Carriers; Edward L. Russakoff, Esquire of Egler, Garrett & Garrett on behalf of Defendants, Wade Scott Burkett and S&S Trucking. Have you had any social, business or professional contact with any of these attorneys or their law firms

2. The parties in this lawsuit are Charles Matthes, Plaintiff v. Keith W. Peters, Ecklund Carriers, Wade Scott Burkett and S&S Trucking, Defendants. Do you know or have you had any social, business, professional contact or employment with any of these parties?

3. This lawsuit concerns an automobile accident *arrest* caused by Defendants in which Plaintiff suffered severe and serious personal injuries.

4. Have you or any other member of your family been involved in a lawsuit or a court action? If so, what was the lawsuit or proceeding about? Were you or your family member the Plaintiff or Defendant? What was the outcome?

5. *not* Have either you, your spouse, your parents, brothers and sisters ever worked in the insurance industry or have any of your own stock in an insurance company? If so, please explain. Will that influence your judgment in this case so you may not be able to fair and impartial?

6. Are you a licensed driver of a motor vehicle?

7. *not* Have you heard or read information or advertising on television, radio, on billboards or in the newspapers or magazines that deals with the subjects of lawsuits generally. As a result, do you have an opinion or belief about lawsuits in general. If so, what is that opinion or belief? Will that influence your judgment in this case so that you may not be able to fair and impartial?

8. Is there anyone who does not believe in a jury trial as a means for establishing compensations for injuries sustained as a result of negligence and carelessness of another?

9. Is there anyone who could not or would not award money damages even if the evidence fully supported such a finding in a trial for personal injuries?

Out
10. Do you believe that the civil justice system should be changed to limit the ability of injured people to bring claims or recover compensation for injury or death?

11. This case involves a claim for money damages in this type commonly called a negligence claim. Do you have an opinion or belief for or against this type of case, the people who file this type of case, or the persons who are sued in this type of case? If so, what is that opinion or belief? Will that influence your judgment in this case so that you may not be able to fair and impartial?

Out
12. Have you read, seen or heard anything about the so-called litigation explosion of the suggestion that there are too many frivolous lawsuits? Will this affect your ability in this case to be fair and impartial?

13. Is any member of your immediate family or close personal friend a truck driver or otherwise operates a trucking business? If so, who is that person and what is the nature of his or her employment?


14. The law in Pennsylvania indicates that if a person has been harmed as a result of the conduct of another person, and it can be proven that the conduct of the other person was careless, the injury victim is entitled to be compensated for his or her injuries. Do you have any negative feelings about the general principal awarding money damages to an injury victim which affects your ability to be fair and impartial in this case. Do you think if you were picked for the jury that you would be the kind of people you would want to sit on a jury if you were injured?

15. Would anyone have a problem with evidence being presented to you by videotape versus a witness testifying live in front of you? Would you be more likely to believe someone testifying personally versus someone who is testifying by way of videotape?

16. Have you ever been on a prior jury? If so, what kind of case did you sit as a juror on, and what was the verdict?

17. Is there anyone who could not or would not award substantial money damages if the evidence fully supported such a finding?

18. There are elements of damage in this case which are alleged to include, among other things, some intangible elements of damage, such as physical pain and suffering. Do any of you have any quarrel with the law which allows the award of compensation for pain and suffering? Does anyone disagree with the law which allows an award for damages for mental anguish.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZARA

BY: 

WILLIAM F. GOODRICH, ESQ.

FRANK E. TOLBERT, ESQ.

Attorneys for Plaintiff,

Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Proposed Voir Dire Questions was served upon the following by mailing same by regular first class mail, postage prepaid to the following:

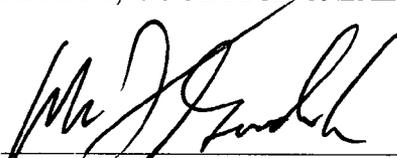
THE HONORABLE JOHN K. REILLY, JR.
CLEARFIELD COUNTY COURTHOUSE
230 E. Market Street
Clearfield, PA 16830

RICHARD J. TRANKOCY, JR., ESQUIRE
BAGINSKI & HUTTON
One PPG Place, Suite 1650
Pittsburgh, PA 15222
(Counsel for Defendants, Keith W. Peters and Ecklund Carriers)

EDWARD L. RUSSAKOFF, ESQUIRE
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219
(Counsel for Defendants, Wade Scott Burkett and S&S Trucking)

GOODRICH, GOODRICH & LAZZARA

4/17/01
DATE

BY: 
WILLIAM F. GOODRICH, ESQ.
FRANK E. TOLBERT, ESQ.
Attorneys for Plaintiff,
Charles Matthes

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

v.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**RESPONSES AND OBJECTIONS
TO PLAINTIFF'S PROPOSED
VOIR DIRE**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Edward L. Russakoff, Esquire
Pa. I.D. #29684

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

**RESPONSES AND OBJECTIONS TO
PLAINTIFF'S PROPOSED VOIR DIRE**

AND NOW, come defendants, Wade Scott Burkett and S&S Trucking, (hereinafter collectively "Burkett"), by their attorneys, Egler, Garrett and Egler, and file the following Responses and Objections to Plaintiff's Proposed Voir Dire:

1. No objection.

2. No objection.

3. Objection. The phrase "caused by defendants", and the characterization of plaintiff's alleged injuries as "severe and serious" are highly prejudicial to the defendants and the proposed question is therefore improper.

4. No objection.

5. No objection.

6. No objection.

7. Objection. This proposed question is unduly vague, overly broad and otherwise irrelevant to the task of selecting a competent, fair and impartial jury.

8. No objection.

9. No objection.

10. Objection. This proposed question is unduly vague, overly broad and otherwise irrelevant to the task of selecting a competent, fair and impartial jury.

11. Objection. This proposed question is unduly vague, overly broad and otherwise irrelevant to the task of selecting a competent, fair and impartial jury.

12. Objection. The terms "litigation explosion" and "frivolous lawsuits" are vague, overly broad and inflammatory and, therefore, the entire proposed question is irrelevant to the task of selecting a competent, fair and impartial jury.

13. No objection.

14. Objection. This proposed question is unduly vague and overly broad, and otherwise prejudicial to the defendants.

15. Objection. This is an improper area of inquiry. Furthermore, the function of addressing any "problems" a prospective juror may have with regard to videotape testimony belongs to the Court, and can only be undertaken in cautionary instructions to the jury that is ultimately impaneled.

16. No objection.

17. Objection. To the extent that the premise of this proposed question is even valid, it is adequately covered in question 9, to which Burkett has not objected.

18. Objection. This proposed question is overly broad, unduly vague and irrelevant to the task of selecting a competent, fair and impartial jury. To the extent that the question may be valid, it is adequately covered in question 9, to which Burkett has not objected.

EGLER, GARRETT AND EGLER

BY: 
ATTORNEYS FOR
DEFENDANT, WADE
SCOTT BURKETT, d/b/a
S & S TRUCKING

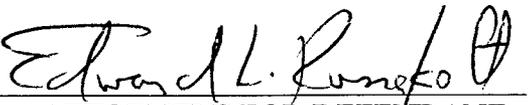
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **RESPONSES AND OBJECTIONS TO PLAINTIFF'S PROPOSED VOIR DIRE** has been served on the following by first class mail, postage pre-paid on this the 18th day of April, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 

ATTORNEYS FOR DEFENDANT,
WADE SCOTT BURKETT
d/b/a S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES

-vs-

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
d/b/a S & S TRUCKING

:
:
:
:
:
:
:

No. 00 – 88 – CD

ORDER

NOW, this 18th day of April, 2001, this matter coming before the Court on Defendants Keith W. Peters and Ecklund Carriers Motion for Summary Judgment, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby dismissed without prejudice in said Defendants to raise the issue again upon completion of Plaintiff's case in chief or post trial.

By the Court,

/s/ John K. Reilly, Jr.

President Judge

Confirmation Report - Memory Send

Time : Apr-18-2001 01:24pm
Tel line : +8147657649
Name : CLEARFIELD COUNTY COURTS

Job number : 722
Date : Apr-18 01:23pm
To : 14123910568
Document pages : 001
Start time : Apr-18 01:23pm
End time : Apr-18 01:24pm
Pages sent : 001
Status : OK

Job number : 722

*** SEND SUCCESSFUL ***

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES

-vs-

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
d/b/a S & S TRUCKING

:
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:

No. 00 - 88 - CD

ORDER

NOW, this 18th day of April, 2001, this matter coming before the Court on Defendants Keith W. Peters and Ecklund Carriers Motion for Summary Judgment, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby dismissed without prejudice in said Defendants to raise the issue again upon completion of Plaintiff's case in chief or post trial.

By the Court,

/s/ John K. Reilly, Jr.

President Judge

Confirmation Report - Memory Send

Time : Apr-18-2001 01:23pm
Tel line : +8147657649
Name : CLEARFIELD COUNTY COURTS

Job number : 721
Date : Apr-18 01:22pm
To : 14122324545
Document pages : 001
Start time : Apr-18 01:23pm
End time : Apr-18 01:23pm
Pages sent : 001
Status : OK

Job number : 721

*** SEND SUCCESSFUL ***

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES

-vs-

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
d/b/a S & S TRUCKING

:
:
:
:
:
:
:

No. 00 - 88 - CD

ORDER

NOW, this 18th day of April, 2001, this matter coming before the Court on Defendants Keith W. Peters and Ecklund Carriers Motion for Summary Judgment, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby dismissed without prejudice in said Defendants to raise the issue again upon completion of Plaintiff's case in chief or post trial.

By the Court,

/s/ John K. Reilly, Jr.

President Judge

Confirmation Report - Memory Send

Time : Apr-18-2001 01:22pm
Tel line : +8147657649
Name : CLEARFIELD COUNTY COURTS

Job number : 720
Date : Apr-18 01:22pm
To : 14123912132
Document pages : 001
Start time : Apr-18 01:22pm
End time : Apr-18 01:22pm
Pages sent : 001
Status : OK

Job number : 720 *** SEND SUCCESSFUL ***

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

CHARLES MATTHES

-vs-

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
d/b/a S & S TRUCKING

No. 00 - 88 - CD

ORDER

NOW, this 18th day of April, 2001, this matter coming before the Court on Defendants Keith W. Peters and Ecklund Carriers Motion for Summary Judgment, and argument and briefs thereon, it is the ORDER of this Court that said Motion be and is hereby dismissed without prejudice in said Defendants to raise the issue again upon completion of Plaintiff's case in chief or post trial.

By the Court,

/s/ John K. Reilly, Jr.

President Judge

Law Offices of
EGLER, GARRETT & EGLER

2100 The Lawyers Building
428 Forbes Avenue
Pittsburgh, Pennsylvania 15219
(412) 281-9810

Edward L. Russakoff
Attorney at Law

Telecopier (412) 391-2132
E-Mail: info@egler.com

FAX

April 18, 2001

The Honorable John K. Reilly, Jr.
Clearfield County Courthouse
230 E. Market Street, Suite 124
Clearfield, Pennsylvania 16830

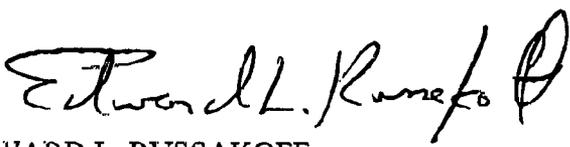
Re: Charles Matthes v. Keith W.
Peters, Ecklund Carriers,
Wade Scott Burkett, d/b/a
S & S Trucking
No. 00-88-CD

Dear Judge Reilly:

Enclosed please find a copy of defendant Wade Scott Burkett's Brief in Opposition to Motion for Summary Judgment of Defendants, Keith W. Peters and Ecklund Carriers. The original Brief will be mailed to the Prothonotary for filing.

Very truly yours,

EGLER, GARRETT & EGLER

BY: 
EDWARD L. RUSSAKOFF
ELR:jlh

Enclosure

cc: William F. Goodrich, Esquire
(w/enclosure - via fax)

cc: Richard J. Trankocy, Jr., Esquire
(w/enclosure - via fax)

cc: Frank E. Tolbert, Esquire
(w/enclosure - via fax)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

y.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT
BURKETT d/b/a S & S TRUCKING,

Defendants.

CIVIL DIVISION

No.: 00-88-CD

Issue No.:

**BRIEF IN OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT OF DEFENDANTS,
KEITH W. PETERS AND
ECKLUND CARRIERS**

Code:

Filed on behalf of Defendants, WADE
SCOTT BURKETT and S & S
TRUCKING

Counsel of Record for this party:

Frederick N. Egler, Jr., Esquire
Pa. I.D. No. 28864

Edward L. Russakoff, Esquire
Pa. I.D. #29684

EGLER, GARRETT & EGLER
Firm No. 077

2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219

(412) 281-9810
(412) 391-2132 FAX

JURY TRIAL DEMANDED

**BRIEF IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT OF DEFENDANTS,
KEITH W. PETERS AND ECKLUND CARRIERS**

AND NOW, comes defendant, Wade Scott Burkett, (hereinafter "Mr. Burkett"), by his attorneys, Egler, Garrett and Egler, and files the following Brief in Opposition to Motion for Summary Judgment of defendants, Keith W. Peters and Ecklund Carriers (hereinafter collectively "Ecklund"):

STATEMENT OF CASE

In this action, plaintiff seeks damages for injuries he sustained in an automobile accident that occurred at the intersection of State Route 153 and T.R. 925 in Pine Township, Clearfield County, on August 10, 1998. The manner in which the mishap occurred is succinctly laid out in the briefs the other parties filed with regard to Ecklund's Motion for Summary Judgment.

On March 14, 2001, the Court, after hearing argument on Ecklund's motion, decided to defer a decision until after two independent witnesses, Clemic Figaro and Kenneth Lytle, were deposed. Mr. Figaro and Mr. Lytle were deposed on April 3, 2001. Both indicated, in discussing the key factual question that Ecklund's motion has posed, that they saw the front emergency flashers on the Ecklund truck in operation just before the collision occurred. *See*, Deposition of Clemic Figaro, at 10-11, and deposition of Kenneth Lytle, at 16. Contradicting plaintiff's deposition testimony, but confirming Mr. Burkett's, both additionally agreed that it was raining heavily at the time of the mishap. Figaro depo., at 10, Lytle depo., at 12. Mr. Figaro also pointed out that rain had been falling continuously throughout the day before the accident took place. Figaro depo., at 10. True and correct copies of the pages from Mr. Figaro's deposition are attached hereto and marked collectively as **Exhibit "A."** True and correct copies of the relevant pages from Mr. Lytle's deposition are attached hereto and marked collectively as **Exhibit "B."**

All of the parties to this action agree that the collision here did not occur within the populated confines of either Clearfield or DuBois, but somewhere in between, well out in the heavily forested countryside. State Route 153, the road on which all of the drivers were traveling before impact, had only two lanes, with traffic proceeding in both directions. The drivers were all heading north, and there was no stop sign or traffic light for northbound traffic at the intersection. As Mr. Burkett explained in his pre-trial statement, the intersection, a three way junction, lies at the bottom of the last of three consecutive hills. The only warning of its presence that northbound drivers on Route 153 are ever given is in one sign situated about halfway down the hill.

At a pre-trial conference on April 10, 2001, counsel for Ecklund asserted to the Court that that deposition testimony of Mr. Figaro and Mr. Lytle did not alter the factual posture of the case, and that his clients were therefore entitled to summary judgment for the same reasons he advanced in the motion and brief he filed initially. Plaintiff's counsel and counsel for Burkett disagreed, arguing that in view of the dispute between Mr. Burkett's testimony that he never saw flashers activated at the rear of the truck and that of the two independent witnesses, there was still a genuine issue of material fact with regard to whether Ecklund's driver, Keith W. Peters, complied with a Pennsylvania statute dealing with vehicular hazard signal lamps, 75 Pa.C.S. §4305. The Court then asked the parties to brief the issue of whether that statute imposed on Peters a duty to activate the truck's emergency flashers under the circumstances that existed when the accident occurred. Although Mr. Burkett had neither previously replied to the Motion nor submitted an opposing brief, the Court granted him leave to address this question.

QUESTIONS PRESENTED

- 1. Was Mr. Peters required to comply with the mandate of 75 Pa.C.S. § 4305?**

ANSWER: Yes.

2. **If so, is there a genuine issue of material fact as to whether he in fact complied?**

ANSWER: Yes.

ARGUMENT

In the Memorandum of Law submitted on their behalf, the Ecklund defendants apply the definition of the word “stop”, as set forth in the Definitions part of the Pennsylvania Motor Vehicle Code, to §4305 and conclude that the enactment did not bind Mr. Peters. They contend that their vehicle was halted to “avoid a conflict with other traffic”, and that since the statutory definition of “stop” supposedly excludes that scenario, Mr. Peters was not obligated to activate the flashers. (Ecklund’s Memorandum of Law in Support of Motion for Summary Judgment, at 2-3.)

This reasoning is totally misplaced, and leads to an absolutely erroneous interpretation of §4305. Ecklund misconstrues the statutory definition of the word “stop.” The situation of avoiding conflict with other traffic is not excluded from the definition; rather, the definition states that an otherwise prohibited stop becomes legal if it is carried out for that purpose. The word “except,” as employed in the definition, is not intended to formulate an exclusion, but instead delineates the circumstances under which a generally illegal stop may be considered within the law. Thus, assuming that Ecklund was stopped to avoid a conflict with traffic, its stop was well within the scope of the definition.

Ecklund, however, did not face a conflict with other traffic, but merely moved along in its regular flow. There is no question that plaintiff’s car was stopped, waiting to make a left turn, and that the Ecklund truck was at rest just behind it, waiting for plaintiff’s driver, Greg James, to complete the turn. This picture does not portray a potential conflict between vehicles, or a disruption in the usual course of traffic, but illustrates the typical movement of cars and trucks along the road.

Traffic was flowing as it should have, and the Ecklund truck was actually stopped as required in accordance with the unequivocal delineation of the word set forth in paragraph (1) of the definition.

In any event, the kind of stop in which Mr. Peters was engaged is simply irrelevant to the resolution of Ecklund's motion, and has no bearing on it whatsoever. That the Ecklund truck was not moving at impact is clear. That §4305 applies to stopped vehicles is also beyond dispute. When read as a whole, § 4305 imposes a duty to activate flashers not because of any statutory construction, but whenever the situation with which a stopped vehicle is confronted makes it a "*vehicular traffic hazard*", as specified in the statute. Thus, the real issue here is whether under § 4305, the truck's flashers should have been on in the conditions extant at the time of the accident. Or, more pointedly, the question is whether they should have been activated under conditions of heavy rain that could have impaired visibility, on a narrow, hilly two lane highway, at an uncontrolled intersection of which there was very little warning, located in the middle of a rural area.

The phrase "vehicular traffic hazard" is not defined anywhere in the Motor Vehicle Code, let alone in §4305. The statute makes exceptions only when the stop is to obey a traffic control signal, or when the vehicle is legally parked. It does not include stops at uncontrolled intersections in remote parts of the wilderness. By using the broad, somewhat unspecific phrase "vehicular traffic hazard," and by carving very limited exceptions, the legislature recognized that hazardous conditions can arise under many combinations of circumstances, and that the use of vital safety devices like emergency flashers cannot be mandated in only certain, clearly demarcated instances. In litigation, therefore, the question of whether there was a "vehicular traffic hazard" that required the use of flashers is necessarily a jury question. For example, in the present case, plaintiff will say that when the accident occurred, the rain was light. From this, a jury could conclude that activating the flashers

was not required. But the jury, hearing the evidence about heavy rain and examining the pictures of the scene, could conclude that flashers were indeed necessary.

When the dispute over whether the rear flashers were on is added in, the possible outcomes multiply. The jury could conclude that all of the flashers were on and worked properly, and that answering the question of whether a vehicular traffic hazard was present is unnecessary. Or, the jury could believe that because of the rain and the location of the accident, the flashers were properly activated, but that they were not working in the rear as they should have been. There are therefore numerous questions of material fact, and accordingly, Ecklund's Motion for Summary Judgment must be denied.

CONCLUSION

For the reasons stated above, defendant, Wade Scott Burkett, requests this Honorable Court to enter an Order denying Ecklund's Motion for Summary Judgment.

EGLER, GARRETT AND EGLER

By: 
ATTORNEYS FOR
DEFENDANT, WADE SCOTT
BURKETT

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA
CIVIL DIVISION

* * * * *

CHARLES MATTHES, *
Plaintiff * No. 00-88-CD
vs. *
KIETH W. PETERS, *
ECKLUND CARRIERS, *
WADE SCOTT BURKETT*
S & S TRUCKING, *
Defendants *

* * * * *

DEPOSITION OF
CLEMIC FIGARO
APRIL 3, 2001

COPY

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10

1 I-80, it's in Philipsburg right
2 outside Philipsburg to be exact.

3 Q. What were the weather
4 conditions like at the time of the
5 accident on Pennsylvania Route 153?

6 A. It was raining.

7 Q. And how long had it been
8 raining prior to the accident?

9 A. Oh, it was raining all
10 day.

11 Q. Was it a hard rain, light
12 rain, drizzle at the time of the
13 accident?

14 A. Oh, it was moderately
15 heavy.

16 Q. Could you tell me what you
17 saw as you were proceeding south on
18 Pennsylvania Route 153 when this
19 accident occurred if you could take
20 us through frame by frame in your
21 mind what you recall seeing?

22 A. I was heading south and I
23 was going down a small incline to go
24 up the hill. A red Mustang was
25 stopped with the signal light to

11

1 turn left on, I think right it's
2 T-925. The tractor-trailer was
3 stopped behind him with his
4 four-ways on.

5 Q. Okay. Now, when you say
6 four ways, could you explain what
7 you mean?

8 A. Well, as I say flashers,
9 we say --- some people say hazard,
10 they say emergency lights. I guess
11 he had it on due to the rain so you
12 would see him stop.

13 Q. Did you see the flashers
14 as you proceeded southbound?

15 A. Yes, I did.

16 Q. And what color were they
17 do you recall?

18 A. Orange.

19 Q. And did you see them
20 flashing on and off?

21 A. Yes, I did.

22 Q. Did you see them before
23 you passed the tractor-trailer?

24 A. Yes, I saw them because
25 due to I coming down south, the

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IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA
CIVIL DIVISION

* * * * *

CHARLES MATTHES, *
Plaintiff * No. 00-88-CD
vs. *
KIETH W. PETERS, *
ECKLUND CARRIERS, *
WADE SCOTT BURKETT*
S & S TRUCKING, *
Defendants *

* * * * *

DEPOSITION OF
KENNETH L. LYTLE
APRIL 3, 2001

COPY

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by the certifying agency

12

1 you didn't have near the traffic
2 because once them garbage trucks
3 haul on that 153, I don't want on
4 it.

5 Q. Now, could you tell us
6 what the weather conditions were
7 like at the time of the accident?

8 A. Raining. I do know that.

9 Q. Had it rained all day, do
10 you remember?

11 A. Jeez, as you say, I can't
12 say, you know, of course, them days
13 I wasn't paying too much attention
14 but I know it was raining because I
15 got soaked.

16 Q. Now, do you recall seeing
17 a Glenn O. Hall Baker dump truck in
18 front of you prior to the accident?

19 A. Yes.

20 Q. Could you tell us when you
21 first saw the Glen O. Hall Baker
22 Dump truck?

23 A. I think it was coming up
24 over --- I followed him up over
25 Pennfield on the three lane.

1 A. It was stopped, so was the
2 car.

3 Q. Do you recall seeing any
4 four way flashers activated on the
5 tractor?

6 A. Yeah, I did.

7 Q. What color were they?

8 A. Amber on the front.

9 Q. Did you see any trailer
10 lights flashing at anytime either
11 before or after the accident? The
12 trailer lights ---?

13 A. On the back?

14 Q. Yes?

15 A. No, I don't recall that
16 --- well, at the impact that would
17 blow them bulbs. That would blow
18 them lights out because you change
19 them every other day.

20 Q. Can you tell me when you
21 first saw the tractor-trailer and
22 the car?

23 A. Before I seen the truck.

24 Q. The dump truck?

25 A. Yeah.

No. 00-88-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **BRIEF IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS, KEITH W. PETERS AND ECKLUND CARRIERS** has been served on the following by facsimile on this the 18th day of April, 2001:

William F. Goodrich, Esquire
Goodrich, Goodrich & Lazzara, P.C.
Suite 1400 - Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

Richard J. Trankocy, Jr., Esquire
Baginski and Bashline
Suite 1650
One PPG Place
Pittsburgh, PA 15222

EGLER, GARRETT & EGLER

BY: 
ATTORNEYS FOR DEFENDANT,
WADE SCOTT BURKETT
d/b/a S & S TRUCKING

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

Plaintiff,

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

Defendants.

CIVIL DIVISION

Case No. 00-88-CD

**PLAINTIFF'S REPLY TO DEFENDANTS
KEITH W. PETERS and ECKLUND CARRIERS'
MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT**

Filed on behalf of Plaintiff,
CHARLES MATTHES

Counsel of Record for
this Party:

WILLIAM F. GOODRICH, ESQUIRE
PA I.D. #30235

GOODRICH, GOODRICH & LAZZARA, P.C.
Suite 1400
Law & Finance Building
429 Fourth Avenue
Pittsburgh, PA 15219

(412) 281-1455

FRANK E. TOLBERT, ESQUIRE
MILLER, TOLBERT, MUEHLHAUSEN,
MUEHLHAUSEN, GROFF & DAMM, P.C.
216 Fourth Street, Caller Box 7010
Logansport, IN 46947

(219) 722-4343

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

CHARLES MATTHES,)
)
 Plaintiff,)
) Case No. 00-88-CD
 vs.)
)
 KEITH W. PETERS, ECKLUND)
 CARRIERS, WADE SCOTT BURKETT)
 and S& S TRUCKING,)
)
 Defendants.)

**PLAINTIFF'S REPLY TO DEFENDANTS KEITH W. PETERS
and ECKLUND CARRIERS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, CHARLES MATTHES, by and through his attorneys,
GOODRICH, GOODRICH & LAZZARA, P.C., WILLIAM F. GOODRICH, ESQUIRE;
MILLER, TOLBERT, MUEHLHAUSEN, MUEHLHAUSEN, GROFF & DAMM, P.C., and
FRANK E. TOLBERT, ESQUIRE and submit the following Reply to the Memorandum of Law
filed by Defendants Keith W. Peters and Ecklund Carriers, and in reply, sets forth the following:

Counsel for the Defendants, Keith W. Peters and Ecklund Carriers, cleverly refers only to
one section of Title 75 Pa.C.S.A. §4305 relative to the Defendants argument. The Defendants fail
to reference §4305(b)(1) and §4305(c) relative to the use of a vehicle able to maintain a speed of
25 mph because of weather, grade or other similar factors, and as such, is unable to maintain a
speed consistent with the normal flow of traffic.

Counsel for the Defendants fails to address the issue of the fact that Defendants, Keith W. Peters and Ecklund Carriers' tractor trailer, was unable to maintain a speed of at least 25 mph and was not maintaining at least a minimum speed established in accordance with the provisions of §3364 which requires that a vehicle shall not be driven at such a slow speed as would be less than the normal reasonable movement of traffic.

Defendants' argument fails to address the issue that the vehicle was blocking the lane of traffic, for whatever reason, and was impeding the movement of traffic.

§4305(b)(1) indicates that when a vehicle is unable to maintain a speed of at least 25 mph because of weather grade or other similar factors (similar factors not defined) or is unable to maintain a speed consistent with the flow of traffic, there is a duty to put the simultaneous flashing signal lamps on. The testimony of the Defendant, Wade Scott Burkett, was that he saw no flashing lights or any brake lights on the back of the tractor trailer as he crested the hill prior to the accident occurring. This Plaintiff's position is that a duty was owed to all on a roadway by Defendants, Keith W. Peters and Ecklund Carriers. This is a question of fact for the jury to determine whether or not that duty was breached. Accordingly, Plaintiff, Charles Matthes respectfully submits that the Defendants are not entitled to a judgment in their favor and that the matters are a question of fact for the jury to decide.

RESPECTFULLY SUBMITTED:

GOODRICH, GOODRICH & LAZZAKA

BY: 

WILLIAM F. GOODRICH, ESQ.
FRANK E. TOLBERT, ESQ.
Attorney for Plaintiff,
Charles Matthes

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Plaintiff's Reply to Defendants Keith W. Peters and Ecklund Carriers' Memorandum of Law in Support of Motion for Summary Judgment was served upon the following by mailing same by regular first class mail, postage prepaid to the following:

THE HONORABLE JOHN K. REILLY, JR.
CLEARFIELD COUNTY COURTHOUSE
230 E. Market Street
Clearfield, PA 16830

RICHARD J. TRANKOCY, JR., ESQUIRE
BAGINSKI & HUTTON
One PPG Place, Suite 1650
Pittsburgh, PA 15222
(Counsel for Defendants, Keith W. Peters and Ecklund Carriers)

EDWARD L. RUSSAKOFF, ESQUIRE
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219
(Counsel for Defendants, Wade Scott Burkett and S&S Trucking)

GOODRICH, GOODRICH & LAZZARA

4/17/01
DATE

BY: 
WILLIAM F. GOODRICH, ESQ.
FRANK E. TOLBERT, ESQ.
Attorneys for Plaintiff,
Charles Matthes

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

DEFENDANTS.

**DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS'
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

JURY TRIAL DEMANDED

BASHLINE & HUTTON
FIRM I.D. #150
ONE PPG PLACE, SUITE 1650
PITTSBURGH, PA 15222
(412) 391-7005

RECEIVED

APR 12 2001

COURT ADMINISTRATOR'S
OFFICE

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,) CIVIL DIVISION
)
Plaintiff,)
) COURT NUMBER: 00-88-CD
vs.)
)
KEITH W. PETERS, ECKLUND)
CARRIERS, WADE SCOTT)
BURKETT, S&S TRUCKING,)
)
Defendants.)

DEFENDANTS PETERS AND ECKLUND'S MEMORANDUM OF LAW

AND NOW, come the Defendants, KEITH W. PETERS and ECKLUND CARRIERS, by and through their attorneys, BASHLINE & HUTTON and RICHARD J. TRANKOCY, JR., ESQUIRE, and submit the following Memorandum of Law regarding Defendants Peters and Ecklund's Motion for Summary Judgment, and in support thereof, set forth the following:

This matter is before the Court on Defendants Keith W. Peters and Ecklund Carriers' Motion for Summary Judgment. There was a Pretrial Conference on April 10, 2001. The Court permitted these Defendants' to respond to Plaintiffs' arguments regarding Title 75 Pa.C.S.A. §4305 which governs the use of flashing lights. Defendants Peters and Ecklund respectfully submit that §4305 does not apply as there is simply no requirement for a vehicle stopped in traffic to engage flashing lights as claimed by Plaintiff.

Defendants Peters and Ecklund have filed a Motion for Summary Judgment arguing that under the facts and circumstances of this case, that they are entitled to dismissal as a matter of law. Briefly, the accident occurred on August 10, 1998, at around 11:30 a.m., during

daylight condition, although raining. Plaintiff occupied a vehicle that had stopped on State Route 153 in order to make a left turn onto T925. Defendant Ecklund Carriers travelling behind the Peters' vehicle came to a stop behind the vehicle occupied by Plaintiff. A third vehicle operated by Defendant Wade Scott Burkett for S&S Trucking collided into the rear of the Ecklund vehicle pushing it into the Plaintiff's vehicle.

Defendants submitted that they are entitled to summary judgment as there is no factual dispute that they had come to a complete stop without incident. Simply stated, Defendants had breached no duty to the Plaintiff for which they may be found liable.

Plaintiff cites 75 Pa.C.S.A. §4305(a) which provides as follows:

§4305. Vehicular hazard signal lamps

- (a) **General rule.** - Simultaneous flashing of the two front and two rear signal lamps shall indicate a vehicular traffic hazard. The driver of a motor vehicle equipped with simultaneous flashing signals shall use the signals when the vehicle is stopped or disabled on a highway, except when the vehicle is stopped in compliance with a traffic-control device or when legally parked. Drivers of other vehicles shall exercise extraordinary care in approaching overtaking and passing a vehicle displaying vehicular hazard warning signals. (Emphasis added).

Plaintiff argues that as Defendant Ecklund's vehicle had "stopped" behind the Plaintiff's vehicle, which was making a left-hand turn, that the Defendant was required to operate his hazard lights citing 75 Pa.C.S.A. §4305.

Plaintiff, however, fails to cite the Court to the statutory definitions of "stop" or "stopping" providing within the Motor Vehicle Code. The Pennsylvania Motor Vehicle Code defines "stop" and "stopping" as follows:

- (1) When required, means complete cessation from movement.
- (2) When prohibited, means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to

avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

75 Pa.C.S.A. §102. (Emphasis added).

Defendants Peters and Ecklund submit respectfully that the term “stop” within §4305 must be read within the definitions provided by the Motor Vehicle Code. When the statute provides a definition of a word, the statutory definition controls and not the words common meaning. These statutory definitions exclude from the meaning of “stop,” the stopping of vehicle when necessary to avoid conflict with other traffic. In short, when §4305 is read along with the statutory definitions, a driver is not required to use the signals when the vehicle is stopped to avoid conflict with other traffic, such as here, where Plaintiff’s vehicle was stopped to make a left turn.

Plaintiff cites this Court to no case defining §4305 to apply to circumstances such as this. That is, there are no cases that suggest that §4305 requires an operator to apply his flashing signals everytime his vehicle stops or to avoid conflict with other traffic. If Plaintiff’s interpretation of §4305 is correct, every operator would be required to operate his flashing signals each time he stops behind another vehicle in traffic. Likewise, such obligation would also be opposed upon Plaintiff’s vehicle. That is, if Plaintiff’s reading of the statute is correct, Plaintiff’s operator is not required simply to use a turn signal when he brings his car to a stop to make a left turn. He is also required to engage his flashing lights, which would then have the effect of negating the turn signal.

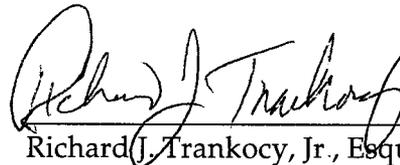
Defendants Peters and Ecklund respectfully submit that the interpretation of this statute section of 75 Pa.C.S.A. §4305 is one for the Court. The interpretation of this statute is a question of law, *Donnelly v. Bauer*, 553 Pa. 596, 720 A.2d 447 (1998). The interpretation of the statute is not a question of fact for the jury. Defendants Peters and Ecklund in their Motion for Summary Judgment respectfully submit that, as a matter of law, §4305 is not applicable to these

circumstances as Defendant's vehicle was "not stopped" within the meaning of the Motor Vehicle Code and this statute is not intended to apply or require operators to use flashing signals each time they stop in traffic.

Accordingly, Defendants Peters and Ecklund respectfully submit that they are entitled to judgment in their favor as a matter of law.

Respectfully Submitted:

BASHLINE AND HUTTON

A handwritten signature in black ink, appearing to read "Richard J. Trankocy, Jr.", written over a horizontal line.

Richard J. Trankocy, Jr., Esquire
Attorney for Defendants Keith W.
Peters and Ecklund Carriers

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within **DEFENDANTS PETERS AND ECKLUND'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was served upon counsel all counsel of record, via hand-delivery, on the 11th day of April, 2001.

**The Honorable John K. Reilly, Jr.
CLEARFIELD COUNTY COURTHOUSE
230 E. Market Street
Clearfield, PA 16830**

**William F. Goodrich, Esquire
GOODRICH, GOODRICH & LAZARRA, P.C.
1400 Law & Finance Building
Pittsburgh, PA 15219
(Counsel for Plaintiffs)**

**Edward I. Russakoff, Esquire
EGLER, GARRETT & EGLER
2100 Lawyers Building
428 Forbes Avenue
Pittsburgh, PA 15219
(Counsel for Defendants Burkett and S&S Trucking)**


Richard J. Trankocy, Jr., Esquire



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OF COUNSEL
Nancy Z. Goodrich

PENN HILLS OFFICE
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April 17, 2001

Honorable John K. Reilly, Jr.
Clearfield County Courthouse
Courtroom #1
230 E. Market Street
Clearfield, Pennsylvania 16830

FEDERAL EXPRESS #: 5308369474

Re: **CHARLES MATTHES v. KEITH W. PETERS, ECKLUND**
CARRIERS, WADE SCOTT BURKETT and S&S TRUCKING
Case No. 00-88-CD

Dear Judge Reilly:

I am enclosing a copy of my reply to Mr. Trankocy's Memorandum, which was apparently filed on the 12th of April, 2001 with the Court, a copy of which I received this morning by hand delivery. As such, please excuse my delay in responding thereto.

Very truly yours,

GOODRICH, GOODRICH & LAZZARA, P.C.,

William F. Goodrich, Esquire

WFG:mlm

Enclosure

CC: Richard Trankocy, Jr., Esquire (w/enc.)
Edward L. Russakoff, Esquire (w/enc.)



Goodrich, Goodrich & Lazzara, P.C.

Attorneys at Law

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April 17, 2001

Prothonotary of Clearfield County
Clearfield County Courthouse
230 E. Market Street
Clearfield, Pennsylvania 16830

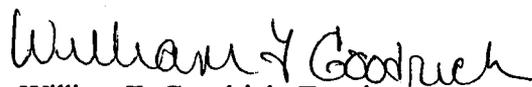
Re: **CHARLES MATTHES v. KEITH W. PETERS, ECKLUND**
CARRIERS, WADE SCOTT BURKETT and S&S TRUCKING
Case No. 88-00-CD

Dear Madam or Sir:

Enclosed please find an original and true and correct copy of Plaintiff's Reply to Defendants Peters and Ecklund's Memorandum of Law in Support of Motion for Summary Judgment with regard to the above matter. Please be so kind as to file original reply and forward a time-stamped copy of same in the enclosed self addressed stamped envelope. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

GOODRICH, GOODRICH & LAZZARA, P.C.,


William F. Goodrich, Esquire

WFG:mlm
Enclosures

CC: Judge John K. Reilly, Jr. (w/enc.)
Richard Trankocy, Jr., Esquire (w/enc.)
Edward L. Russakoff, Esquire (w/enc.)

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WILLIAM C. GALLISHEN
MINNA J. ALLISON

**Also admitted in Ohio
†Also admitted in West Va.
†† Also admitted in Maryland

April 17, 2001

VIA TELEFAX & FIRST-CLASS MAIL

The Honorable John K. Reilly, Jr.
CLEARFIELD COUNTY COURTHOUSE
230 E. Market Street, Suite 124
Clearfield, PA 16830

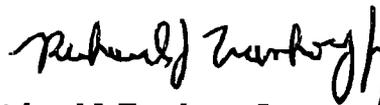
**RE: CHARLES MATTHES v. KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT AND S&S TRUCKING
Court of Common Pleas of Clearfield County, Pennsylvania
Docket No.: 00-88-CD
Claim No.: AB303-078343-01**

Dear Judge Reilly:

The Certificate of Service attached to our Memorandum of Law in Support of Defendants Peters and Ecklund's Motion for Summary Judgment was erroneously dated April 11, 2001, which was not hand-delivered to your office until April 12, 2001. A copy of the time-stamped coversheet is enclosed for your convenience.

Counsel was provided with a true and correct copy of the Memorandum via hand-delivery by me personally at 7:30 a.m. today. I am pointing this out to the Court so that there is no misunderstanding as to the date of service of the Memorandum of Law.

Very truly yours,



Richard J. Trankocy, Jr.

RJT,jr/kag
Enclosure

cc: William F. Goodrich, Esquire
Edward L. Russakoff, Esquire
(via telefax & first-class mail)
(w/enclosure)

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CHARLES MATTHES,

CIVIL DIVISION

PLAINTIFF,

NO.: 00-88-CD

vs.

KEITH W. PETERS, ECKLUND
CARRIERS, WADE SCOTT BURKETT
and S&S TRUCKING,

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS'
MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

DEFENDANTS.

FILED ON BEHALF OF:

DEFENDANTS KEITH W. PETERS AND
ECKLUND CARRIERS

COUNSEL OF RECORD FOR THIS
PARTY:

RICHARD J. TRANKOCY, JR., ESQUIRE
PA. I.D. #49087

JURY TRIAL DEMANDED

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APR 18 2001

COURT ADMINISTRATORS
OFFICE

Suite 1650, One PPG Place
Pittsburgh, Pennsylvania 15222



Fax

To: The Honorable John K. Reilly, Jr., William F. Goodrich, Esquire and Edward L. Russakoff, Esquire

cc:

From: Richard J. Trankocy, Esquire/Kimberly A. Geib

Fax: (814) 765-7649; (412) 232-4545 and (412) 391-2132

Pages: 2 **Date:** April 17, 2001

Re: Mathes v. Peters, et al.

Urgent For Review Please Comment Please Reply Please Recycle

● **Comments:**

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April 11, 2001

VIA HAND-DELIVERY

The Honorable John K. Reilly, Jr.
CLEARFIELD COUNTY COURTHOUSE
230 E. Market Street, Suite 124
Clearfield, PA 16830

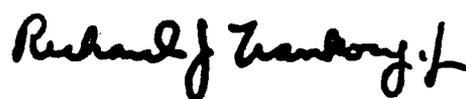
RE: *CHARLES MATTHES v. KEITH W. PETERS, ECKLUND CARRIERS,
WADE SCOTT BURKETT AND S&S TRUCKING*
Court of Common Pleas of Clearfield County, Pennsylvania
Docket No.: 00-88-CD
Claim No.: AB303-078343-01

Dear Judge Reilly:

As per your request at the Pretrial Conference on April 10, 2001, kindly find enclosed Defendants Keith W. Peters and Ecklund Carriers' Memorandum of Law in Support of their Motion for Summary Judgment for your consideration with reference to the above-captioned matter.

Thank you in advance for your anticipated cooperation in this regard.

Very truly yours,



Richard J. Trankocy, Jr.

RJT,jr/kag
Enclosure

cc: William F. Goodrich, Esquire
Edward L. Russakoff, Esquire
(w/enclosures)